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The President

Presidential Determination No. 2012–01 of October 4, 2011

Certification and Determination With Respect to the Child Soldiers Prevention Act of 2008

Memorandum for the Secretary of State

Pursuant to section 404 of the Child Soldiers Prevention Act of 2008 (CSPA) (title IV, Public Law 110–457), I hereby: certify that the Government of Chad has implemented measures that include an action plan and actual steps to come into compliance with the standards outlined in the CSPA, and has implemented policies and mechanisms to prohibit and prevent future government or government-supported use of child soldiers and to ensure that no children are recruited, conscripted, or otherwise compelled to serve as child soldiers.

I hereby determine that it is in the national interest of the United States to waive the application of the prohibition in section 404(a) of the CSPA with respect to Yemen; and further determine that it is in the national interest of the United States to waive in part the application of the prohibition in section 404(a) of the CSPA with respect to the Democratic Republic of the Congo, to allow for continued provision of International Military Education and Training and non-lethal Excess Defense Articles, and issuance of licenses for direct commercial sales of military equipment; and I hereby waive such provisions accordingly.

You are authorized and directed to submit this determination to the Congress, along with the accompanying Memorandum of Justification, and to publish the determination in the *Federal Register*.

THE WHITE HOUSE,
WASHINGTON, October 4, 2011.

Billing code 4710–10–P

MEMORANDUM OF JUSTIFICATION REGARDING THE CERTIFICATION AND DETERMINATIONS PURSUANT TO THE CHILD SOLDIERS PREVENTION ACT OF 2008

Pursuant to section 404 of the Child Soldiers Prevention Act of 2008 (Title IV, Public Law 110-457) (the "CSPA"), the President has certified that the Government of Chad has taken the necessary steps to allow for reinstatement of assistance pursuant to section 404(d), and determined that it is in the national interest of the United States to waive with respect to Yemen and to partially waive with respect to the Democratic Republic of the Congo, the application of the prohibition in section 404(a) of the CSPA. The justification for this determination with respect to each country is set forth in this memorandum.

Chad

The Government of Chad has implemented measures that include an action plan and actual steps to come into compliance with the standards outlined in the CSPA, and has implemented policies and mechanisms to prohibit and prevent future government or government-supported use of child soldiers and that are designed to ensure that children are not recruited, conscripted, or otherwise compelled to serve as child soldiers.

The United Nations-led Country Task Force on Monitoring and Reporting Children and Armed Conflict in Chad has reported that it has not verified any cases of child soldier recruitment or use by the Government of Chad in 2011. On June 14, 2011, the Government of Chad signed a comprehensive child soldier action plan with the United Nations. The plan includes commitments relating to cooperation with the United Nations; demobilization and reintegration of child soldiers; prevention, awareness raising, and capacity building; legal procedures and discipline for offenders; and access to military sites for detection and investigation of the use of child soldiers. Chad's action on some portions of the action plan, including the drafting of a child protection code to include penalties against those who use child soldiers and the issuance of an internal military order prohibiting the use of child soldiers, are still underway. To help ensure effective implementation of the plan, the Government of Chad has started convening regular interagency meetings on this plan and is currently in the process of naming high-level officials to serve as the focal points. The Government of Chad has instituted various mechanisms and policies to prevent and

prohibit recruitment and use of child soldiers, such as training sessions for military officials on child rights and child protection and providing access to international representatives to military installations and other sites of interest so that they can conduct monitoring activities. Since 2010, Chad has turned over some 1,000 children to UNICEF and nongovernmental organizations 'for reintegration programs.

Democratic Republic of the Congo (DRC)

The President has determined that it is in the national interest of the United States to partially waive application of the restrictions in section 404(a) of the CSPA to the DRC. The partial waiver will not allow the provision of Foreign Military Financing (FMF), but will allow for continued provision of International Military Education and Training (IMET) assistance and nonlethal Excess Defense Articles (EDA) and issuance of licenses for direct commercial sales of military equipment.

The Government of the DRC has taken some steps to reduce child soldiers (e.g., awareness campaigns among the Congolese Army and partnering with international organizations on training materials). In addition, some Armed Forces of the Republic of Congo (FARDC) commanders are making an effort to remove child soldiers from the ranks and turn them over to the U.N. Organization Stabilization Mission in the DRC, UNICEF, or other humanitarian organizations. However, the challenges the Government of the DRC faces in its efforts to integrate former rebel and militia groups, including the National Congress for the Defense of the People, into the FARDC have been a major hindrance to reducing the number of child soldiers. The integration process continues to be plagued by the persistence of separate command structures within the FARDC that do not respond to FARDC directives, including a specific prohibition against the use of child soldiers. As a result, the progress that has been made in the DRC on child soldiers does not yet represent the kind of institutional change required to make real progress toward eliminating child soldiers.

It is in the national interest of the United States to continue certain funding that would otherwise be restricted by this provision. Funding for programs that would be affected by the CSPA sanctions include programs that support the professionalization of the FARDC. For example, providing funds for IMET allows the United States to invite FARDC soldiers to training programs wherein U.S. values and norms are firmly inculcated into participants and through which the United States

will be able to emphasize its agenda on human rights, the rule of law, and civilian control of the military while professionalizing the DRC military. In addition to IMET courses taken in the United States, IMET also provides mobile training courses and seminars through the Defense International Institute for Legal Studies, the Defense Resource Management Institute, and the Center for Civil-Military Relations on human rights, rule of law, and professional standards that will also be continued under a partial national interest waiver.

Continuing U.s. support and assistance to the FARDC in the form of nonlethal EDA and licenses for direct commercial sales of U.S. origin defense articles would have a similarly positive effect on broader U.s. objectives with respect to increasing stability and providing greater civilian protection in the DRC, particularly in eastern DRC, and assist the DRC's security sector reform efforts. Continuing U.S. support and assistance to the FARDC on defense reform and training the next generation would have a direct and positive effect on reducing the use of child soldiers.

Although FMF funds also play a role in assisting the DRC's security sector reform efforts and achieving U.s. objectives with regard to security in the DRC, a partial rather than a full national interest waiver has been issued in order to send a clear message to the DRC that ending the practice of using child soldiers is a high priority for the United States Government.

In accordance with the 2011 Trafficking in Persons Report, and pursuant to the Victims of Trafficking and Violence Protection Act of 2000, the United States Government has already determined that it would not be appropriate to provide Fiscal Year 2011 and Fiscal Year 2012 Foreign Military Financing (FMF) funds to the ground forces of the FARDC. Pursuant to the CSPA, provision of Fiscal Year 2012 FMF to the air and maritime elements of the FARDC will also be prohibited. Restricting this funding will underscore the priority that the United States Government places on sanctioning those that use and recruit child soldiers. Continuing with other forms of assistance will emphasize our desire to continue to support programs that aid security sector reform and instill respect for universal human rights, including the imperative to adequately protect children, throughout the FARDC.

Yemen

The President has determined that a full waiver of the prohibition in section 404(a) of the CSPA with respect to Yemen is in the national interest of the United States.

Yemen is a key partner in counterterrorism operations against al-Qa'ida in the Arabian Peninsula, an al-Qa'ida affiliate that has previously attempted to attack the United States, and has vowed to continue such attacks in the future. Cooperation with the Yemeni government is a vital piece of the U.S. national strategy to disrupt, dismantle, and defeat al-Qa'ida and its affiliates and adherents by denying them sanctuary in the ungoverned spaces of Yemen's hinterland. Removing the Administration's flexibility to provide security assistance would have the potential to jeopardize the Yemeni government's capability to conduct special operations and counterterrorism missions.

The section 404(a) prohibition would affect the planned obligation of Fiscal Year 2012 IMET funding and FMF funding. In addition, Yemen would not be eligible for section 1206 funding to improve its counterterrorism capabilities. Were the Administration unable to provide these forms of assistance as warranted by conditions on the ground, the harm to the long-term bilateral relationship would be diminished and the overall capacity of the Government of Yemen to maintain security and conduct counterterrorism operations would be significantly hampered.

IMET programs are critical to the United States Government's ability to influence and train current and future Yemeni military leaders. Fiscal Year 2012 IMET would include the following types of activities: Yemeni attendance in junior officer professional military education, civil-military relations training, and English language instructor training and materials.

The FMF program for Yemen includes funding programmed for C-130 spare parts, training, and technical manuals that are critical to support Yemen's tactical lift capability, and support for UH-1 helicopters. Additionally, it will support critical training and unit and individual equipment for counterterrorism forces. Without FMF, the ability of Yemeni government forces to transport counterterrorism forces quickly throughout the country would substantially diminish. Further, FMF supports maritime security and interdiction capability (fast patrol boats, floating piers) which will expand the capacity of the Yemeni Navy and Coast Guard to patrol and protect their coastline and ports.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0018]

RIN 0579–AD37

Importation of Fresh Baby Kiwi From Chile Under a Systems Approach

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation into the continental United States of baby kiwi fruit from Chile, subject to a systems approach. Under this systems approach, the fruit must be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of *Brevipalpus chilensis.* The fruit must undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit must be inspected in Chile at an approved inspection site. Each consignment of fruit must be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections. This final rule allows for the safe importation of fresh baby kiwi from Chile using mitigation measures other than fumigation with methyl bromide.

DATES: *Effective Date:* November 25, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–52, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Previously, under the regulations, the importation into the United States of fresh baby kiwi (*Actinidia arguta*) from Chile was allowed only if the fruit was fumigated with methyl bromide. On March 21, 2011, however, we published in the **Federal Register** (76 FR 15225–15228, Docket No. APHIS–2010–0018) a proposal [1] to amend the fruits and vegetables regulations to allow the importation into the continental United States of baby kiwi fruit from Chile, subject to a systems approach. We proposed that the fruit would have to be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of *Brevipalpus chilensis.* The fruit would have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit would have to be inspected in Chile at an approved inspection site. Each consignment of fruit would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of *Brevipalpus chilensis* based on field and packinghouse inspections.

We solicited comments concerning our proposal for 60 days ending May 20, 2011. We received 23 comments by that date. They were from private citizens, growers, shippers, trade associations, a State department of agriculture, industry groups, and the Government of Chile. Most of the commenters supported the proposed rule, with only one opposing it outright and another supporting it with reservations. The issues raised by the commenters are discussed below.

One commenter, while generally supportive of the proposed rule, expressed concern about how the imports of baby kiwi from Chile that would be allowed under this rulemaking could affect domestic kiwi growers. The commenter suggested that we should have provided a more extensive discussion of that potential impact, including statistics, in the preamble to the March 2011 proposed rule. The commenter did not present any new information, however.

In the economic analysis that accompanied the proposed rule and was summarized in the preamble, we concluded that we expect the impact of fresh baby kiwi fruit imports from Chile to be minimal for domestic producers due to timing differences (baby kiwi would likely be imported from Chile during the off-season for U.S. producers) and the small quantity that we anticipated would be imported. The full economic analysis, which was conducted in accordance with Executive Order 12866 and the Regulatory Flexibility Act and was posted on the Regulations.gov Web site along with the proposed rule, featured a more extensive discussion of the possible economic impact of the rulemaking, including the potential impact on small growers. As the commenter did not present any evidence to the contrary, we stand by our original determination that the economic impact of the rulemaking on domestic growers of baby kiwi is likely to be minimal.

A commenter from a State Department of Agriculture stated that shipments of baby kiwi from Chile should not be allowed entry into Florida until the effectiveness of the phytosanitary measures required under the proposed systems approach has been demonstrated through their use on baby kiwi imported from Chile into lower-risk States.

We have determined, for the reasons described in the risk management document (RMD) that accompanied the March 2011 proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of baby kiwi from Chile. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenter.

For greater clarity, we are making a change in this final rule to the requirement for an additional declaration on the phytosanitary certificate accompanying shipments of

[1] To view the proposed rule, the PRA, the RMD, the economic analysis, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0018.*

baby kiwi from Chile. As originally proposed, the additional declaration had to state that the fruit in the consignment was inspected and found free of *Brevipalpus chilensis.* This final rule provides that the additional declaration must also state that the fruit was grown, packed, and shipped in accordance with the requirements of the systems approach.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

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. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule amends the regulations to allow the importation of fresh baby kiwi fruit from Chile into the continental United States under a systems approach. The systems approach provides an alternative to fumigation with methyl bromide of baby kiwi imported from Chile into the continental United States.

The impact of fresh baby kiwi fruit imports from Chile will be minimal for domestic producers due to timing differences (baby kiwi are likely to be imported from Chile during the off-season for U.S. producers) and the small quantity expected to be imported. Although most U.S. growers of baby kiwi fruit are small entities by the standards of the Small Business Administration, our analysis concludes that the effects of this rule on U.S. baby kiwi fruit producers, regardless of their size, will be minimal.

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 12988

This final rule allows baby kiwi to be imported into the continental United States from Chile. State and local laws and regulations regarding baby kiwi imported under this rule will be preempted while the fruit is in foreign commerce. Fresh baby kiwi are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0374.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–53 is added to read as follows:

§ 319.56–53 Fresh baby kiwi from Chile.

Fresh baby kiwi (*Actinidia arguta*) may be imported into the continental United States from Chile under the following conditions:

(a) *Production site registration.* The production site where the fruit is grown must be registered with the national plant protection organization (NPPO) of Chile. Harvested baby kiwi must be placed in field cartons or containers that are marked to show the official registration number of the production site. Registration must be renewed annually.

(b) *Low-prevalence production site certification.* The fruit must originate from a low-prevalence production site to be imported under the conditions in this section. Between 1 and 30 days prior to harvest, random samples of fruit must be collected from each registered production site under the direction of the NPPO of Chile. These samples must undergo a pest detection and evaluation method as follows: The fruit must be washed using a flushing method, placed in a 20- mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The process must then be repeated. The contents of the 200-mesh sieve must then be placed on a petri dish and analyzed for the presence of live *Brevipalpus chilensis* mites. If a single live *B. chilensis* mite is found, the production site will not qualify for certification as a low-prevalence production site. Each production site may have only one opportunity per season to qualify as a low-prevalence production site, and certification of low prevalence will be valid for one harvest season only. The NPPO of Chile will present a list of certified production sites to APHIS.

(c) *Post-harvest processing.* After harvest, all damaged or diseased fruits must be culled at the packinghouse and must be packed into new, clean boxes, crates, or other APHIS-approved packing containers. Each container must have a label identifying the registered production site where the fruit originated and the packing shed where it was packed.

(d) *Phytosanitary inspection.* Fruit must be inspected in Chile at an APHIS-approved inspection site under the direction of APHIS inspectors in coordination with the NPPO of Chile following any post-harvest processing. A biometric sample must be drawn and examined from each consignment. Baby kiwi in any consignment may be shipped to the continental United States under the conditions of this section only if the consignment passes inspection as follows:

(1) Fruit presented for inspection must be identified in the shipping documents accompanying each lot of fruit to specify the production site or sites in which the fruit was produced and the packing shed or sheds in which the fruit was processed. This identification must be maintained until

the fruit is released for entry into the United States.

(2) A biometric sample of the boxes, crates, or other APHIS-approved packing containers from each consignment will be selected by the NPPO of Chile, and the fruit from these boxes, crates, or other APHIS-approved packing containers will be visually inspected for quarantine pests. A portion of the fruit must be washed with soapy water and the collected filtrate must be microscopically examined for *B. chilensis.* If a single live *B. chilensis* mite is found during the inspection process, the certified low-prevalence production site where the fruit was grown will lose its certification.

(e) *Phytosanitary certificate.* Each consignment of fresh baby kiwi must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of *Brevipalpus chilensis* and was grown, packed, and shipped in accordance with the requirements of 7 CFR 319.56–53.

(Approved by the Office of Management and Budget under control number 0579–0374)

Done in Washington, DC, this 19th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27577 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 56

[Docket No. APHIS–2009–0031]

RIN 0579–AD21

National Poultry Improvement Plan and Auxiliary Provisions; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correcting amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on March 22, 2011, and effective on April 21, 2011, we amended the regulations for the control of H5/H7 low pathogenic avian influenza to simplify the list of types of poultry eligible for 100 percent indemnity, among other changes. This document corrects an error in our amendatory instructions accomplishing that change.

DATES: *Effective Date:* October 25, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. C. Stephen Roney, DVM, Senior Staff Officer, NPIP, VS, APHIS, USDA, 1506 Klondike Road, Suite 300, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

In a final rule that was published in the **Federal Register** on March 22, 2011 (76 FR 15791–15798, Docket No. APHIS–2009–0031), and effective on April 21, 2011, we amended the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. We also amended the regulations in 9 CFR part 56, which set out conditions for the payment of indemnity for costs associated with poultry that are infected with or exposed to the H5 or H7 subtypes of low pathogenic avian influenza.

In § 56.3, we simplified the list of types of poultry eligible for 100 percent indemnity in paragraph (b) by replacing former paragraphs (b)(1) through (b)(6) with new paragraphs (b)(1) and (b)(2) and redesignating former paragraph (b)(7) as paragraph (b)(3). However, our amendatory instructions for accomplishing this change neglected to remove former paragraph (b)(3), resulting in the presence of two paragraphs designated (b)(3) in the Code of Federal Regulations. This document corrects that error.

List of Subjects in 9 CFR Part 56

Animal diseases, Indemnity payments, Low pathogenic avian influenza, Poultry.

Accordingly, we are amending 9 CFR part 56 as follows:

PART 56—CONTROL OF H5/H7 LOW PATHOGENIC AVIAN INFLUENZA

■ 1. The authority citation for part 56 continues to read as follows:

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

§ 56.3 [Amended]

■ 2. In § 56.3, the first paragraph (b)(3) is removed.

Done in Washington, DC, this 19th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27579 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2011–0005]

Brucellosis in Swine; Add Texas to List of Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Texas to the list of validated brucellosis-free States. The interim rule was necessary to relieve certain restrictions on interstate movement of breeding swine from Texas.

DATES: Effective on October 25, 2011, we are adopting as a final rule the interim rule published at 76 FR 28885–28886 on May 19, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Troy Bigelow, Swine Health Programs, Aquaculture, Swine, Equine, and Poultry Programs, National Center for Animal Health Programs, VS, APHIS, 210 Walnut Street Room 891, Des Moines, IA 50309; (515) 284–4121.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease caused by bacteria of the genus *Brucella.* The disease mainly affects cattle, bison, and swine, but goats, sheep, horses, and even humans are susceptible. In its principal animal hosts, it causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. There is no economically feasible treatment for brucellosis in livestock. In humans, brucellosis initially causes flu-like symptoms, but the disease may develop into a variety of chronic conditions, including arthritis. Humans can be treated for brucellosis with antibiotics.

In an interim rule [1] effective and published in the **Federal Register** on May 19, 2011 (76 FR 28885–28886, Docket No. APHIS–2011–0005), we amended the brucellosis regulations in 9 CFR part 78 by adding Texas to the list of validated brucellosis-free States in § 78.43. That action relieved certain

[1] To view the interim rule and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0005.*

restrictions on the interstate movement of breeding swine from Texas.

Comments on the interim rule were required to be received on or before July 18, 2011. We received one comment by that date. The comment, from a State animal health agency, supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 76 FR 28885–28886 on May 19, 2011.

Done in Washington, DC, this 19th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27572 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0255; Directorate Identifier 2010–NM–253–AD; Amendment 39–16844; AD 2011–22–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A310 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes; and Model C4–605R variant F airplanes (collectively called A300–600 series airplanes). This 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:

An operator reported several cases of wire damages at the pylon/wing interface. Analysis revealed that wires damages are due to installation quality issue resulting from lack of information in installation drawings and job cards.

Moreover detailed analysis has highlighted that the Low Pressure Valve (LPV) wires were not segregated by design.

* * * * *

If left uncorrected, the wire chafing could impact fire protection and detection system. It may also induce dormant failure on LPV preventing its closure leading to a permanent and uncontrolled fire (in case of fire ignited upstream the High Pressure Valve (HPV)).

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 29, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 22, 2011 (76 FR 15870). That NPRM proposed to correct an unsafe condition for the specified products. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued revised parallel mandatory continuing airworthiness information (MCAI) AD 2010–0178R1, dated May 20, 2011. The revised MCAI states:

An operator reported several cases of wire damages at the pylon/wing interface. Analysis revealed that wires damages are due to installation quality issue resulting from lack of information in installation drawings and job cards.

Moreover detailed analysis has highlighted that the Low Pressure Valve (LPV) wires were not segregated by design.

Due to design similarities, A310, A300–600 and A300–600ST aeroplanes can be affected, depending on the wires installation in the concerned area.

If left uncorrected, the wire chafing could impact fire protection and detection system. It may also induce dormant failure on LPV preventing its closure leading to a permanent and uncontrolled fire (in case of fire ignited upstream the High Pressure Valve (HPV)).

For the reasons explained above, this AD requires the modification of the electrical installation in the pylon/wing interface to avoid wire damages.

Shortly after this [EASA] AD was issued, it was discovered that Airbus Service Bulletin (SB) A310–24–2106, associated to Airbus modification 13541, contained wrong Low Pressure Valve installation drawings. This makes it impossible for the operators to accomplish the SB instructions. Consequently, Airbus have revised the SB to correct the error.

Revision 1 of this [EASA] AD is issued to require modification 13541 to be incorporated in accordance with the instructions of Airbus SB A310–24–2106 at Revision 1.

The modification includes a general visual inspection of wires for damage, and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Change Compliance Time

UPS stated that it agreed with the actions proposed in the NPRM (76 FR 15870, March 22, 2011); however, it requested that the 30-month compliance time be extended to 36 months. UPS stated that extending the compliance time to 36 months would reduce the potential for special maintenance visits for unmodified airplanes. UPS stated that the additional 6 months would reduce potential operator hardship and allow for a timely correction of the unsafe condition. UPS also stated that, in accordance with EASA Airworthiness Directive 2010–0178, dated August 23, 2010; Airbus Mandatory Service Bulletin A300–24–6106, dated March 31, 2010; and Airbus Mandatory Service Bulletin A310–24–2106, dated May 27, 2010; the original wire damage was a result of installation defects during production, and the issues related to wiring segregation, conduit installation, and improved clamping and lacing were all identified by Airbus during the two-year investigation process. UPS stated that these design improvements are not related to the correction of the installation defects, and they are not

critical airworthiness concerns, thus justifying a longer compliance period.

We disagree with extending the compliance time. In developing an appropriate compliance time, we considered the safety implications and normal maintenance schedules for timely accomplishment of the modification. The FAA considered the potential repercussion of wire chafing and the fact that some failures are hidden. In particular, there may be some dormant failures on the LPV preventing its closure in case of fire upstream the HPVs. Accomplishment of the service bulletins will correct the electrical installation if there are any defects, avoiding further damages at the pylon/wing interface. Affected operators, however, may request an extension of the compliance time under the provisions of paragraph (h)(1) of this AD by submitting data substantiating that the change would provide an acceptable level of safety.

Revised Service Information

Since the NPRM (76 FR 15870, March 22, 2011) has been issued, EASA has issued Airworthiness Directive 2010–0178R1, dated May 20, 2011. We have received a report that Airbus Mandatory Service Bulletin A310–24–2106, dated May 27, 2010, associated with Airbus Modification 13541, contained the wrong installation drawings of the LPV. This made it impossible for operators to accomplish the instructions in that service bulletin. Airbus has issued Mandatory Service Bulletin A310–24–2106, Revision 01, including Appendix 01, dated April 4, 2011, to address the error. We have revised paragraph (g) of this AD accordingly to reflect the new service information.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Revised Costs of Compliance

Since the NPRM (76 FR 15870, March 22, 2011) was issued, Airbus has issued Mandatory Service Bulletin A310–24–2106, Revision 01, including Appendix 01, dated April 4, 2011, which updated the cost for required parts to $1,340 per product. We have revised the Costs of Compliance section of this AD accordingly to reflect the new parts cost.

Costs of Compliance

We estimate that this AD will affect 185 products of U.S. registry. We also estimate that it will take about 16 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost up to $1,340 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these 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 this AD to the U.S. operators to be up to $499,500, or $2,700 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 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 this AD:

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 AD and placed it in the AD docket.

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 the NPRM (76 FR 15870, March 22, 2011), 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.

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 AD:

2011–22–02 Airbus: Amendment 39–16844. Docket No. FAA–2011–0255; Directorate Identifier 2010–NM–253–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 29, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 B4–601, B4–603, B4–620, and B4–622

airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R and F4–622R airplanes; Model A300 C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

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

An operator reported several cases of wire damages at the pylon/wing interface. Analysis revealed that wires damages are due to installation quality issue resulting from lack of information in installation drawings and job cards.

Moreover detailed analysis has highlighted that the Low Pressure Valve (LPV) wires were not segregated by design.

* * * * *

If left uncorrected, the wire chafing could impact fire protection and detection system. It may also induce dormant failure on LPV preventing its closure leading to a permanent and uncontrolled fire (in case of fire ignited upstream the High Pressure Valve (HPV)).

* * * * *

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 30 months or 4,000 flight hours after the effective date of this AD, whichever occurs first: Modify the electrical installation in the pylon/wing interface on the left-hand and right-hand side by doing a general visual inspection of wires for damage and doing all applicable repairs, replace the cable tie with lacing tape, improve the electrical installation at the level of the electrical ramp, and improve the segregation of both routes of the LPV channels 1 and 2 between LPV connector and ramp; in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–6106, excluding Appendix 01, dated March 31, 2010 (for Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes); or Airbus Mandatory Service Bulletin A310–24–2106, Revision 01, including Appendix 01, dated April 4, 2011 (for Airbus Model A310 series airplanes). Do all applicable repairs before further flight.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-11-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0178R1, excluding Appendix 01, dated May 20, 2011; Airbus Mandatory Service Bulletin A300–24–6106, dated March 31, 2010; and Airbus Mandatory Service Bulletin A310–24–2106, Revision 01, including Appendix 01, dated April 4, 2011; for related information.

Material Incorporated by Reference

(j) You must use Airbus Mandatory Service Bulletin A300–24–6106, excluding Appendix 01, dated March 31, 2010; or Airbus Mandatory Service Bulletin A310–24–2106, Revision 01, including Appendix 01, dated April 4, 2011; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 11, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27005 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0650; Directorate Identifier 2010–NM–257–AD; Amendment 39–16846; AD 2011–22–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).

In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3rd, 2003, the [Joint Aviation Authorities] JAA recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 3,402 kg (7,500 lb) or more which have received their certification since January 1st, 1958, are required to conduct a design review against explosion risks.

* * * * *

The unsafe condition is insufficient electrical bonding of the over-wing refueling cap adapter, which could result in a possible fuel ignition source in the fuel tanks. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 29, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 29, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://*

www.regulations.gov or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 5, 2011 (76 FR 39035). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> [T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).
>
> In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA recommended the application of a similar regulation to the National Aviation Authorities (NAA).
>
> Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 3,402 kg (7,500 lb) or more which have received their certification since January 1st, 1958, are required to conduct a design review against explosion risks.
>
> * * * * *
>
> * * * [This EASA AD] requires the additional work introduced by Airbus SB A310–28–2142 at revision 3.

The unsafe condition is insufficient electrical bonding of the over-wing refueling cap adapter, which could result in a possible fuel ignition source in the fuel tanks. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 39035, July 5, 2011) or on the determination of the cost to the public.

Revision to Airbus Mandatory Service Bulletin A310–28–2142

Airbus has issued Mandatory Service Bulletin A310–28–2142, Revision 04, dated November 30, 2010. No additional work is included in this revision for airplanes modified by any previous issue of this document. We have changed paragraphs (g), (g)(1), (g)(2), (h), (k), and sub-paragraph (1) of Note 1 of this AD to refer to Airbus Service Bulletin A310–28–2142, Revision 04, dated November 30, 2010, and added paragraph (i) to this AD to give credit for actions accomplished in accordance with Airbus Mandatory Service Bulletin A310–28–2142, Revision 03, dated November 18, 2009.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 66 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $200 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these 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 this AD to the U.S. operators to be $35,640, or $540 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 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 this AD:

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 AD and placed it in the AD docket.

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 the NPRM (76 FR 39035, July 5, 2011), 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.

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 AD:

2011–22–04 Airbus: Amendment 39–16846. FAA–2011–0650; Directorate Identifier 2010–NM–257–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 29, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airbus Model A310–203, A310–204, A310–221 and A310–222 airplanes (without trim tank), all serial numbers, except airplanes on which Airbus Mandatory Service Bulletin A310–28–2143, dated July 20, 2005; and Airbus Mandatory Service Bulletin A310–28–2142, Revision 03, dated November 18, 2009; have been done; certificated in any category.

(2) Model A310–304, A310–322, A310–324, and A310–325 airplanes (fitted with trim tank), all serial numbers, except airplanes on which Airbus Mandatory Service Bulletin A310–28–2143, dated July 20, 2005; Airbus Mandatory Service Bulletin A310–28–2153, dated July 20, 2005; and Airbus Mandatory Service Bulletin 310–28–2142, Revision 03, dated November 18, 2009; have been done; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel System.

Reason

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

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).

In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3rd, 2003, the [Joint Aviation Authorities] JAA recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 3,402 kg (7,500 lb) or more which have received their certification since January 1st, 1958, are required to conduct a design review against explosion risks.

* * * * *

The unsafe condition is insufficient electrical bonding of the over-wing refueling cap adapter, which could result in a possible fuel ignition source in the fuel tanks.

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.

Resistance Measurement

(g) For configuration 05 and 06 airplanes, as identified in Airbus Mandatory Service Bulletin A310–28–2142, Revision 04, dated November 30, 2010, on which any Airbus service bulletin identified in table 1 of this AD has been done: Within 3 months after the effective date of this AD, do the actions in paragraph (g)(1) or (g)(2) of this AD, as applicable.

TABLE 1—PREVIOUSLY ACCOMPLISHED AIRBUS SERVICE BULLETINS

Airbus Service Bulletin	Revision	Date
Airbus Mandatory Service Bulletin A310–28–2142		August 26, 2005.
Airbus Mandatory Service Bulletin A310–28–2142	01	July 17, 2006.
Airbus Mandatory Service Bulletin A310–28–2142	02	September 3, 2007.

(1) For configuration 05 airplanes: Do a resistance check of the inboard and outboard over-wing refuel cap mounts between the flange face of the refuel insert and the wing, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–28–2142, Revision 04, dated November 30, 2010.

(2) For configuration 06 airplanes: Do a resistance check of the outboard over-wing refuel cap mounts between the flange face of the refuel insert and the wing, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–28–2142, Revision 04, dated November 30, 2010.

Corrective Action

(h) If during any resistance measurement required by paragraph (g)(1) or (g)(2) of this AD, a resistance of 10 milliohm (mohm) or greater is found: Before further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–28–2142, Revision 04, dated November 30, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Resistance measurements and corrective actions done in accordance with Airbus Mandatory Service Bulletin A310–28–2142, Revision 03, dated November 18, 2009, before the effective date of this AD are acceptable for compliance with the corresponding resistance measurements and corrective actions required by paragraphs (g) and (h) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) Airbus Mandatory Service Bulletin A310–28–2142, Revision 04, dated November 30, 2010, specifies that if any resistance measurement is more than 10 mohm, corrective actions must be done. This AD specifies that if any resistance measurement is 10 mohm or greater, corrective actions must be done.

(2) Paragraphs (1), (2), and (4) of European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0199, dated September 30, 2010, include actions that are not required in this AD. These actions are required by AD 2007–20–04, Amendment 39–15214 (72 FR 56258, October 3, 2007).

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. Send information to *Attn:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2010–0199, dated September 30, 2010; and Airbus Mandatory Service Bulletin A310–28–2142, Revision 04, dated November 30, 2010.

Material Incorporated by Reference

(l) You must use Airbus Mandatory Service Bulletin A310–28–2142, Revision 04, dated November 30, 2010, to do the actions

required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; *telephone:* +33 5 61 93 36 96; *fax:* +33 5 61 93 44 51; *e-mail: account.airworth-eas@airbus.com; Internet: http://www.airbus.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 13, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27393 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0993; Directorate Identifier 2010–NE–08–AD; Amendment 39–16849; AD 2011–22–07]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524 Series, RB211–Trent 700 Series, and RB211–Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued 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:

Cracking has been found on the inner wall between intermediate dilution chutes on a total of five front combustion liners of the standard corresponding to Rolls-Royce RB211 Service Bulletin No. 72–D133. The lives of two of these liners were confirmed to be below the currently valid borescope inspection interval. Ultimately, crack propagation could result in hot gas breakout with potential of downstream component distress and multiple turbine blade release beyond containment capabilities of the engine casings. Thus, cracking of this nature constitutes a potentially unsafe condition.

Since Rolls-Royce Service Bulletin No. 72–E902 introduces further developments of Rolls-Royce RB211 Service Bulletin No. 72–D133, engines incorporating Rolls-Royce RB211 Service Bulletin No. 72–E902 are also considered to be potentially affected and are therefore included in the applicability of this AD.

We are issuing this AD to detect cracks in the front combustion liner, which could result in hot section distress, multiple blade release, and possible damage to the airplane.

DATES: This AD becomes effective November 29, 2011. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 29, 2011.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* phone: 781–238–7143; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 5, 2010 (75 FR 61363). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Cracking has been found on the inner wall between intermediate dilution chutes on a total of five front combustion liners of the standard corresponding to Rolls-Royce RB211 Service Bulletin No. 72–D133. The lives of two of these liners were confirmed to be below the currently valid borescope inspection interval. Ultimately, crack propagation could result in hot gas breakout with potential of downstream component distress and multiple turbine blade release beyond containment capabilities of the engine casings. Thus, cracking of this nature constitutes a potentially unsafe condition.

Since Rolls-Royce Service Bulletin No. 72–E902 introduces further developments of Rolls-Royce RB211 Service Bulletin No. 72–D133, engines incorporating Rolls-Royce RB211 Service Bulletin No. 72–E902 are also considered to be potentially affected and are therefore included in the applicability of this AD.

This AD requires a change to the initial and repeat borescope inspection intervals for the front combustion liner.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Expand Address for Service Information

One commenter, Rolls-Royce plc (RR), asked us to consider changing the information for getting the service information to ''For any questions concerning the technical content of the requirements in this AD (NPRM), please contact your designated Rolls-Royce representative for a copy of the service information, please download the publication from your Aeromanager account at *http://www.aeromanager.com.* If you do not have a designated representative or an Aeromanager account, please contact Corporate Communications at Rolls-Royce plc, PO Box 31, Derby, DE24 8BJ, United Kingdom, phone: 011–44–1331–242424, fax: 011–44–1332–249936, or e-mail: *http://www.rolls-royce.com/contact/civil_team.jsp* identifying the correspondence as being related to Airworthiness Directives.'' RR states that this should make sure that any questions from operators of their engines and those from other parties are directed to the area best equipped to answer.

We partially agree. We agree that operators and maintenance providers need to get timely and accurate service information, and that additional information is worth including. We changed paragraph (k) of the AD to state ''* * * contact Corporate Communications at Rolls-Royce plc PO Box 31, Derby, DE24 8BJ, United Kingdom, Phone: 011–44–1331–242424, fax 011–44–1332–249936 or e-mail from *http://www.rolls-royce.com/contact/civil_team.jsp* identifying the correspondence as being related to Airworthiness Directives.''

We do not agree that operators or maintenance providers should contact RR for questions about this AD. We did not include that information in the AD.

Requests To Change References to the Service Bulletin That Is Incorporated by Reference

Two commenters, American Airlines (AA) and The Boeing Company (Boeing), asked us to add ''or later

revision'' after ''Service Bulletin No. RB.211–72–AF458, Revision 2, dated December 21, 2007.'' Boeing stated the latest revision of Service Bulletin (SB) No. RB.211–72–AF458 is Revision 4. Boeing stated that airlines have been inspecting their combustion liners to Revision 4 of the SB and the compliance intervals specified in the NPRM are consistent with RR SB RB.211–72–AF458, Revision 4 and EASA AD 2009–0243R1. AA stated the borescope inspection is the same on later revisions, so the life should be counted from the latest SB revision.

We do not agree. On review of the SB, we determined that the inspection requirements and limits called out in the SB are already in the engine and aircraft maintenance manuals. We changed the AD to remove the incorporation by reference of the SB.

One commenter, AA, asked us to revise paragraph (f) of the AD to specifically call out which paragraphs of SB RB.211–72–AF458 are incorporated by reference. AA stated the NPRM called out all of section 3 of the SB, which is too prescriptive given the nature of the inspections.

We do not agree. On review of the SB, we found incorporation by reference unnecessary. We changed the AD to remove the incorporation by reference of the SB.

Request To Remove an Engine Model From the Applicability

One commenter, AA, asked us to remove the RR RB211–535 engine model from the applicability of the proposed AD. AA stated they have recorded no crack findings against the RB211–535 model.

We agree. The thermal, acoustical, and vibratory stress environment of the RB211–535 combustion liner is different from that of the other engines to which this AD applies. We removed the RB211–535E4–37, RB211–535E4–B–37, RB211–535E4–C–37, and RB211–535E4–B–75 from the Applicability paragraph (c) of this AD, and updated our cost estimate to reflect the fewer affected engines.

Request To Change the Number of Cracking Events

One commenter, Boeing, asked us to change paragraph (d) of the proposed AD to specify that six cracking events have been found instead of five. Boeing states that changing paragraph (d) of the proposed AD will more accurately reflect the need for the inspections.

We agree. Although an additional cracking event has occurred, the AD was prompted by the investigation of five events. We changed paragraph (d) of this AD to reflect six known cracking events.

Request To Add a Grace Period for Compliance

One commenter, Boeing asked us to change paragraphs (f)(1)(i) and (f)(1)(iii) of the proposed AD to add ''within 15 cycles of the date of issue of the AD'' before the word ''or.'' Boeing states that adding the 15 cycle grace period will give operators time to get back to base for the inspection.

We partially agree. No additional grace period is required. This AD does not require inspecting any engine earlier than 250 cycles after the effective date of the AD. We clarified the wording of paragraph (f) to make this clearer.

Statement of the Possibility of Cost and Operational Impact Increasing

One commenter, Federal Express, stated that cost and operational impact could increase if certain RB211–535 models are added to the applicability of the proposed AD. The commenter provided no reason for its statement.

We agree. However, additional engine models are not being added, and we are specifically excluding the RB211–535 engine in response to another comment. We did not change the AD in response to this comment.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 46 products of U.S. registry. We also estimate that it will take about 1.5 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. No parts are required so parts will cost $0 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $5,865.

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 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 this AD:

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

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

3. Will not affect intrastate aviation in Alaska, and

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

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

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 AD:

2011–22–07 Rolls-Royce: Amendment 39–16849. Docket No. FAA–2010–0993; Directorate Identifier 2010–NE–08–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 29, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce (RR) turbofan engine models RB211–524G2–T–19, RB211–524G3–T–19, RB211–524H2–T–19, RB211–524H–T–36, RB211–Trent 768–60, RB211–Trent 772–60, RB211–Trent 772B–60, RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17 and RB211–Trent 895–17 that incorporate RR Service Bulletin (SB) RB.211–72–D133 or RB.211–72–E902. These engines are installed on, but not limited to, Airbus A330 series airplanes; Boeing 747–400 series, 767 series, and 777 series airplanes.

Reason

(d) This AD results from:

Cracking has been found on the inner wall between intermediate dilution chutes on a total of five front combustion liners of the standard corresponding to Rolls-Royce RB211 Service Bulletin No. 72–D133. The lives of two of these liners were confirmed to be below the currently valid borescope inspection interval. Ultimately, crack propagation could result in hot gas breakout with potential of downstream component distress and multiple turbine blade release beyond containment capabilities of the engine casings. Thus, cracking of this nature constitutes a potentially unsafe condition.

Since Rolls-Royce Service Bulletin No. 72–E902 introduces further developments of Rolls-Royce RB211 Service Bulletin No. 72–D133, engines incorporating Rolls-Royce RB211 Service Bulletin No. 72–E902 are also considered to be potentially affected and are therefore included in the applicability of this AD.

Since EASA issued its AD, another cracking event has occurred, bringing to six the total of crack events of which we are aware. We are issuing this AD to detect cracks in the front combustion liner, which could result in hot section distress, multiple blade release, and possible damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

Initial Inspection

(f) Perform a borescope inspection of the front combustion liner inner wall, before accumulating the cyclic limits specified in paragraphs (f)(2) and (f)(3) of this AD.

(1) If you incorporated paragraph 3.A.(2)(a) of RR Alert Service Bulletin (ASB) RB.211–72–AF458, Revision 4, dated March 9, 2009, or ASB RB.211–72–AF458, Revision 5, dated April 20, 2011, you have satisfied the requirements of paragraph (f) of this AD.

(2) If the engine has a combustion liner installed with:

(i) A LIFE on the effective date of this AD, that is equal to or greater than the initial inspection threshold specified in column (b) of Table 1 of this AD or a LIFE on the effective date of this AD, that is not known, within 250 cycles after the effective date of this AD, perform a borescope inspection as specified in paragraph (f) of this AD.

(ii) A LIFE on the effective date of this AD, that is less than the initial inspection threshold specified in column (b) of Table 1 of this AD, perform the borescope inspection before the LIFE exceeds the limit specified in column (c) of Table 1 of this AD.

Repeat Inspection

(3) Thereafter, repeat the borescope inspection specified in paragraph (f) of this AD at intervals not to exceed the cycles specified in column (d) of Table 1 of this AD.

TABLE 1—INITIAL INSPECTION THRESHOLDS AND LIMITS

Column (a)	Column (b)	Column (c)	Column (d)
Engine model	Initial inspectionthreshold	Initial inspection limit if LIFE is less than the initial inspection threshold	Repeat inspection interval
(i) RB211–524G2–T–19, 524G3–T–19 and 524H2–T–19	1,150 cycles	1,400 cycles	1,400 cycles.
(ii) RB211–524H–T–36	550 cycles	800 cycles	800 cycles.
(iii) RB211–Trent 768–60, 772–60 and 772B–60	1,250 cycles	1,500 cycles	1,500 cycles.
(iv) RB211–Trent 892–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 877–17, RB211–Trent 875–17, RB211–Trent 892B–17 and RB211–Trent 895–17 engines.	750 cycles	1,000 cycles	1,000 cycles.

Definitions

(g) This AD defines LIFE as the lowest of:

(1) The number of cycles-since-new of the combustion liner, or

(2) The number of cycles-in-service (CIS) since replacement of the inner wall, or

(3) The number of CIS since the inner wall of the combustion liner was last borescope-inspected, or inspected by performing paragraph 3.A.(2)(a) of RR ASB RB.211–72–AF458, Revision 4, dated March 9, 2009 or ASB RB.211–72–AF458, Revision 5, dated April 20, 2011.

FAA AD Differences

(h) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) in that the MCAI AD applies to the RB211–Trent 772C–60 engine, which is not type certificated in the United States. The MCAI also allows use of later revisions of the SBs. This AD does not.

Other FAA AD Provisions

(i) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine 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

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0243R2, Corrected, dated February 22, 2011, for related information.

(k) Rolls-Royce ASB RB.211–72–AF458, Revision 4, dated March 9, 2009, or ASB RB.211–72–AF458, Revision 5, dated April 20, 2011, provide information on how to do the actions required by this AD. For service information identified in this AD, contact Corporate Communications at Rolls-Royce plc, PO Box 31, Derby, DE24 8BJ, United Kingdom, phone: 011–44–1331–242424, fax: 011–44–1332–249936, or e-mail: *http://www.rolls-royce.com/contact/civil_team.jsp* identifying the correspondence as related to airworthiness directives.

(l) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* phone: 781–238–7143; fax: 781–238–7199, for more information about this AD.

Material Incorporated by Reference

(m) None.

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

Peter A. White,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–27513 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0757; Airspace Docket No. 11–AAL–10]

Establishment of Class E Airspace; Tatitlek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Tatitlek, AK, to accommodate the creation of one standard instrument approach procedure at the Tatitlek Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at the Tatitlek Airport.

DATES: Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Wednesday, August 10, 2011, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** to establish Class E airspace at Tatitlek, AK (76 FR 49388).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. A comment was received that the coordinates for the Tatitlek Airport were incorrect. That error is corrected in this action.

The Class E airspace areas are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at the Tatitlek Airport, Tatitlek, AK, to accommodate the creation of a standard instrument approach procedure. The Class E airspace provides adequate controlled airspace extending upward from 700 and 1,200 feet above the surface that is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it establishes Class E airspace sufficient in size to contain aircraft executing the instrument procedure at the Tatitlek Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011, is amended as follows:

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

* * * * *

AAL AK E5 Tatitlek, AK [Added]

Tatitlek Airport, AK

(Lat. 60°52′21″ N., long. 146°41′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Tatitlek Airport, AK and within 2 miles southwest and 3.4 miles northeast of the 149° radial from the Tatitlek Airport, AK extending from the 6.4-mile radius to 11.8 miles southeast of the Tatitlek Airport, AK and that airspace extending upward from 1,200 feet above the surface within a 60-mile radius of the Tatitlek Airport, AK.

Issued in Anchorage, AK, on October 14, 2011.

Marshall G. Severson,

Acting Manager, Alaska Flight Services.

[FR Doc. 2011–27368 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2011–0232; Airspace Docket No. 11–AWA–3

RIN 2120–AA66

Modification of Class B Airspace; Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Seattle, WA Class B airspace to ensure the containment of large turbine-powered aircraft operating to and from the Seattle-Tacoma International Airport. The FAA is taking this action to enhance safety, improve the flow of air traffic, and reduce the potential for midair collision in the Seattle, WA terminal area.

DATES: *Effective Date:* 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations, and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 17, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the Seattle, WA Class B airspace area (76 FR 35363). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Fourteen written comments were received in response to the NPRM. One comment did not pertain to the Seattle Class B proposal, addressing instead a Los Angeles, CA airspace issue. The Los Angeles, CA airspace comment was forwarded to the appropriate office for review. All other comments received were considered before making a determination on the final rule.

Discussion of Comments

Six commenters supported the proposed Class B airspace changes.

One commenter wrote that the use of letters such as ''O'' and ''Q'' to identify sections in the Class B description could lead to confusion because the letters look too similar. The FAA understands the potential misidentification issue; however, the letters are used only for rulemaking purposes to identify the various subareas of the Class B airspace. The letters are not published on the Sectional or Terminal Area Chart depictions, so this should not result in pilot confusion.

One commenter said the method of defining the lateral boundaries using DME from a central VOR (SEA) should be used to define the new Class B boundaries instead of using latitude/longitude fixes to allow DME-equipped aircraft to find the boundary more easily. The Class B description in this rule uses both methods. Initially, the FAA considered using radials and DME to define the airspace, but that method would have resulted in the designation of more Class B airspace than necessary to contain Seattle-Tacoma International Airport traffic. Therefore, the primary description method uses geographic coordinates (latitude and longitude). Wherever possible, however, the airspace corners, intersections and more central, lower altitude sections are described with a combination of latitude/longitude and radial/DME.

Four commenters suggested changes to accommodate paragliding and hang gliding operations at Tiger Mountain. The changes included raising the floor of Area J from the proposed 5,000 feet mean sea level (MSL) to 6,000 feet MSL, revising the northeast corner of Area J to expand the 6,000-foot area to cover most of the flight activity, or creating a cutout for the paragliding and hang gliding operations. Another suggestion was made to incorporate a soaring cylinder with a 3-nautical mile (NM) radius, up to 6,000 feet MSL to accommodate current flight activities. The FAA considered these suggestions but chose not to adopt them because raising the Class B floor to 6,000 feet MSL, or creating a cutout or cylinder, would impact the downwind leg for arrival traffic into Seattle-Tacoma International Airport as well as eastbound departure traffic flows from Seattle. This would result in difficulty containing arriving and departing aircraft within Class B airspace. Containment of turbine-powered aircraft within Class B airspace is required by FAA directives and is a prime safety consideration. Additionally, the Tiger Mountain launch site is in close proximity to Area M where the Class B floor remains at 6,000 feet MSL. Paragliders should either be at a low level just climbing off the launch site or be in a descending configuration to land at the landing zone when they are operating in Area J.

One commenter questioned the usefulness of the 7,000-foot Class B ceilings in the southwest and southeast sections compared to those in the northern part of the Class B airspace where pilots can transition the area above the Class B from multiple directions. The commenter further stated that there is no reason for the varied ceilings on the south end because these areas abut Class B areas with a 10,000-foot ceiling.

Over fifty percent of the inbound IFR traffic to Seattle-Tacoma International Airport comes from the south. Considering the FAA requirement to contain turbine-powered aircraft within Class B airspace and due to high terrain, there was less flexibility in the airspace design on the south side as compared to the north side. The FAA decided that Class B airspace was not needed above 7,000 feet MSL in the southwest and southeast sections based on the arrival and departure profiles, hence the lower ceiling in those areas.

Another commenter suggested that the upper limit of the Seattle Class B airspace be lowered from 10,000 feet MSL to 8,000 feet MSL to allow general aviation easier access across the airspace.

This Class B airspace area modification was initiated to ensure the containment of large turbine-powered aircraft within Class B airspace. It was determined that an 8,000-foot ceiling would not contain those aircraft as required by FAA directives. This rule, however, does establish dual ceilings of 10,000 feet MSL and 7,000 feet MSL for different sections of the Seattle Class B airspace. While there are other Class B locations with ceilings lower than 10,000 feet MSL, each Class B design is individually tailored to meet local requirements including, but not limited to, terrain, traffic volume, IFR procedures serving the primary airport, existing traffic flows through the area, etc.

One commenter contended that a 3,149-foot MSL obstacle, located 1.5 NM east of the gliding area, makes the 5,000-foot MSL airspace floor unnecessary in that vicinity.

The obstacle in question lies beneath Area M where the floor of Class B airspace is 6,000 feet MSL. Therefore, the obstacle is not a factor.

Differences From the NPRM

Editorial corrections have been made to the wording of the Seattle Class B airspace description for standardization. These corrections include adding ''lat.'' and ''long.'' before all geographic

coordinates, adding the words ''bounded by a line beginning at * * *'' where appropriate, and replacing the word ''clockwise'' with a direction (such as, ''thence east to * * *'') where an arc is not referenced. These corrections are to standardize the format only. Also, in the NPRM description of Area E, a typographical error that listed the ''40-mile'' arc of the SEA VORTAC is corrected to read the ''4-mile'' arc. Radials listed in this rule are stated in degrees relative to True North. With the exception of the above noted changes and minor editorial corrections, this rule is the same as that published in the NPRM.

The Rule

The FAA is amending 14 CFR part 71 to modify the Seattle, WA, Class B airspace area. This action (depicted on the attached chart) reduces the overall size of the Seattle Class B airspace by approximately 194 square miles and incorporates two different ceiling altitudes. The rule expands the eastern Class B boundary to ensure containment of turbojet aircraft, but eliminates unnecessary outer (arrival route) wings that currently extend to 30 NM. Where possible, certain Class B boundaries are aligned with existing VORTAC and geographical features resulting in improved boundary definition. The following are the revisions for section of the Seattle Class B airspace area:

Area A. 2 NM arc northeast of Seattle-Tacoma International Airport is straightened and realigned with the border of the Renton Class D airspace area. The area just south of SEA VORTAC is moved slightly to the west to better contain arrivals to Seattle-Tacoma International Airport runway 34L and departures from runway 16R.

Area B. No change.

Area C. Southeast corner is moved to the west, and floor of airspace is raised from 1,600 feet to 1,800 feet.

Area D. No change.

Area E. Southeast border of airspace is moved slightly to the west.

Area F. No change.

Area G. 2 NM arc northeast of Seattle-Tacoma International Airport is straightened and realigned with the border of the Renton Class D airspace area.

Area H. Entire airspace is moved east slightly. Northern and southern boundaries are depicted as angles instead of curves.

Area I. Floor is lowered to 4,000 feet and the area is narrowed and described with straight lines instead of curved lines.

Area J. New area joins existing areas that have floors of 5,000 feet.

Area K. New area with a floor of 5,000 feet.

Area L. Area narrowed and described with straight lines instead of curved lines.

Area M. Area expanded slightly on the northeast and southeast corners and described with straight lines instead of curved lines.

Area N. New area floor is raised from 3,000 feet to 4,000 feet in part of area, and lowered from 5,000 feet to 4,000 feet in part of area. Boundary described by straight lines.

Area O. Area is considerably smaller. Floor is lowered from 6,000 feet to 5,000 feet in part of area, and raised from 3,000 feet to 5,000 feet in part of area. Ceiling is lowered from 10,000 feet to 7,000 feet.

Area P. Area is considerably smaller. Floor is lowered from 6,000 feet to 5,000 feet in part of area and raised from 3,000 feet to 5,000 feet in part of area. Ceiling is lowered from 10,000 feet to 7,000 feet.

Area Q. Area is reshaped with straight lines instead of curved lines. Floor is lowered from 6,000 feet and 8,000 feet to 5,000 feet. Ceiling is lowered from 10,000 feet to 7,000 feet.

Area R. Size of area is significantly reduced and described by straight lines instead of curved lines.

Area S. Area is reshaped with straight lines instead of curved lines.

Area T. Area is reshaped with straight lines instead of curved lines and the ceiling is lowered from 10,000 feet to 7,000 feet.

The above changes ensure the containment of large turbine-powerd aircraft within Class B airspace as required by FAA directives.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this final rule.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for this determination follows.

After consultation with a diverse cross-section of stakeholders that participated in the Ad Hoc Committee to develop the recommendations contained in the proposed rule, and a review of the recommendations and comments, the FAA expects that this rule will result in minimal cost. This rule will enhance safety by containing all instrument approach procedures, and associated traffic patterns, within the confines of Class B airspace and better segregate IFR aircraft arriving/departing Seattle-Tacoma International Airport and VFR aircraft operating in the vicinity of the Seattle Class B airspace.

This rule will enhance safety, reduce the potential for a midair collision in the Seattle area and would improve the flow of air traffic. As such, we estimate a minimal impact with substantial positive net benefits. The FAA has, therefore, determined that this rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes the rule will not have a significant economic impact on a substantial number of small entities as the economic impact is expected to be minimal. The FAA received comments indicating the rule could have a significant impact on a substantial number of small entities but the FAA believes the rule will accommodate these operators and not impose costs. The areas of interest for paragliding/hang gliding are the landing zone which is ¾ of a mile inside area J and the launch site which is 2 miles inside area M. The new rule would allow general aviation pilots to miss the paragliders launch site (inside area M) and their landing zone (inside area J) and go east where they can climb and maneuver outside of the Class B airspace. Area J's new floor would be reduced from 6,000 feet to 5,000 feet. By reducing the floor to 5,000 feet, the FAA can safely contain aircraft in Class B airspace. A currently active pilot outreach program will be used to educate pilots on the types of operations that may be encountered in Areas in J and M.

Therefore, the FAA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the effect of this final rule and determined that it will enhance safety and is not considered an unnecessary obstacle to trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 3000 Subpart B—class B airspace.

* * * * *

ANM WA B Seattle, WA [Revised]

Seattle-Tacoma International Airport (Primary Airport)
(Lat. 47°27′00″ N., Long. 122°18′42″ W.)
Seattle VORTAC (SEA)
(Lat. 47°26′07″ N., Long. 122°18′35″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within an area bounded by a line beginning at the SEA 007° radial at 3.6 DME, thence to the SEA 007° radial at 4 DME, thence counterclockwise along the 4-mile arc of the SEA VORTAC to the intersection of the SEA 326° radial at the Puget Sound shoreline, thence south along the Puget Sound shoreline to the 2-mile arc of the SEA VORTAC, thence counterclockwise along the 2-mile arc of the SEA VORTAC to the SEA 202° radial, thence south to the SEA 197° radial at 4 DME, thence south to the SEA 192° radial at 6 DME, thence counterclockwise along the 6-mile arc of the SEA VORTAC to the SEA 163° radial, thence north to the SEA 159° radial at 4 DME, thence north to the SEA 146° radial at 2 DME, thence counterclockwise along the 2-mile arc of SEA VORTAC to the SEA 069° radial to the point of beginning.

Area B. That airspace extending upward from 1,100 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the SEA 007° radial at 4 DME, thence north along the SEA 007° radial to the 6-mile arc of the SEA VORTAC, thence counterclockwise along the 6-mile arc of the SEA VORTAC to the SEA 342° radial, thence south along the SEA 342° radial to the 4-mile arc of the SEA VORTAC, thence clockwise along the 4-mile arc of the SEA VORTAC to the point of beginning.

Area C. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within an area bounded by a line

beginning at the SEA 192° radial at 6 DME, thence south along the SEA 192° radial to the 12-mile arc of the SEA VORTAC, thence counterclockwise along the 12-mile arc of the SEA VORTAC to the SEA 166° radial, thence north to the SEA 163° radial at 8 DME, thence north to the SEA 163° radial at 6 DME, thence clockwise along the 6-mile arc of the SEA VORTAC to the point of beginning.

Area D. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the SEA 007° radial at 6 DME, thence counterclockwise along the 6-mile arc of the SEA VORTAC to the SEA 342° radial, thence northwest along the SEA 342° radial to the 12-mile arc of the SEA VORTAC, thence clockwise along the 12-mile arc of the SEA VORTAC to the SEA 007° radial, thence south along the SEA 007° radial to the point of beginning.

Area E. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the SEA 197° radial at 4DME, thence clockwise along the 4-mile arc of the SEA VORTAC to the SEA 326° radial, thence south along the Puget Sound shoreline to the 2-mile arc of the SEA VORTAC, thence counterclockwise along the 2-mile arc of the SEA VORTAC to the SEA 202° radial to the point of beginning.

Area F. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the SEA 342° radial at 4 DME, thence north along the SEA 342° radial to the Puget Sound shoreline, thence south along the Puget Sound shoreline to the SEA 326° radial at 4 DME, thence clockwise along the 4-mile arc of SEA VORTAC to the point of beginning.

Area G. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the SEA 007° radial at 3.6 DME, thence north along the SEA 007° radial to the 12-mile arc of the SEA VORTAC, thence clockwise along the 12-mile arc of the SEA VORTAC to the SEA 022° radial, thence south along the 022° radial to the 4-mile arc of the SEA VORTAC, thence clockwise along the 4-mile arc of the SEA VORTAC to the SEA 159° radial, thence north to the SEA 146° radial at 2 DME, thence counterclockwise along the 2-mile arc of the SEA VORTAC to the SEA 069° radial to the point of beginning.

Area H. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the SEA 338° radial at 20 DME, thence east to the SEA 023° radial at 20 DME, thence southeast to the SEA 033° radial at 16 DME, thence south to the SEA 135° radial at 12 DME, thence southwest to the SEA 157° radial at 18.3 DME, thence west to the SEA 200° radial at 18 DME, thence northwest to the SEA 212° radial at 15 DME, thence north to the SEA 335° radial at 18 DME to the point of beginning, excluding that airspace in the areas A through G.

Area I. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 47°48′13″ N., long. 122° 27′59″ W., (SEA 344° radial at 23NM), thence east to lat. 47°47′59″ N., long. 122°08′02″ W. (SEA 018° radial at 23NM), thence south to lat. 47°44′31″ N., long. 122°07′00″ W., (SEA 023° radial at 20NM), thence west to lat. 47°44′39″ N., long. 122°29′41″ W. (SEA 338° radial at 20NM) to the point of beginning.

Area J. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 47°39′31″ N., long. 122°05′41″ W., (SEA 033° radial at 16NM), thence southeast to lat. 47°37′49″ N., long. 121°59′59″ W., (SEA 047° radial at 17.2NM), thence south to lat. 47°17′36″ N., long. 122°00′04″ W., (SEA 124° radial at 15.2NM), thence west to lat. 47°17′38″ N., long. 122°06′07″ W., (SEA 135° radial at 12NM) to the point of beginning.

Area K. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 47°38′53″ N., long. 122°36′14″ W., (SEA 317° radial at 17.5NM), thence northeast to lat. 47°42′25″ N., long. 122°29′50″ W. (SEA 335° radial at 18NM), thence south to lat 47°13′24″ N., long. 122°30′14″ W. (SEA 212° radial at 15NM), thence north to lat. 47°16′09″ N., long. 122°36′01″ W. (SEA 230° radial at 15.5NM) to the point of beginning.

Area L. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 47°39′00″ N., long. 122°43′03″ W. (SEA 308° radial at 21NM), thence east to lat. 47°38′53″ N., long. 122°36′14″ W. (SEA 317° radial at 17.5NM), thence south to lat. 47°16′09″ N., long. 122°36′01″ W. (SEA 230° radial at 15.5NM), thence northwest to lat. 47°18′46″ N., long./ 122°42′45″ W. (SEA 246° radial at 18NM) to the point of beginning.

Area M. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 47°37′49″ N., long. 121°59′59″ W. (SEA 047° radial at 17.2NM), thence east to lat. 47°36′45″ N., long. 121°56′03″ W. (SEA 055° radial at 18.6NM), thence east to lat. 47°35′39″ N., long. 121°51′58″ W. (SEA 062° radial at 20.4NM), thence south to lat. 47°18′18″ N., long. 121°51′40″ W. (SEA 113° radial at 19.9NM), thence southwest to lat. 47°17′28″ N., long. 121°55′42″ W. (SEA 119° radial at 17.8NM), thence west to lat. 47°17′36″ N., long. 122°00′04″ W. (SEA 124° radial at 15.2NM) to the point of beginning.

Area N. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 47°09′13″ N., long. 122°27′36″ W. (SEA 200° radial at 18NM), thence east to lat. 47°09′17″ N., long. 122°08′06″ W. (SEA 157° radial at 18.3NM), thence south to lat. 47′06″ 16′N., long. 122°08′34″ W. (SEA 161° radial at 21NM), thence west to lat. 47°06′20″ N., long. 122°26′21″ W. (SEA 195° radial at 20.5NM) to the point of beginning.

Area O. That airspace extending upward from 5,000 feet MSL to and including 7,000 feet MSL within an area bounded by a line beginning at lat. 47°18′46″ N., long. 122°42′45″ W. (SEA 246° radial at 18NM), thence southeast to lat. 47°16′09″ N., long. 122°36′01″ W. (SEA 230° radial at 15.5NM), thence southeast to lat. 47°13′24″ N., long. 122°30′14″ W. (SEA 212° radial at 15NM), thence south to lat. 47°09′13″ N., long. 122°27′36″ W. (SEA 200° radial at 18NM), thence south to lat. 47°06′20″ N., long. 122°26′21″ W. (SEA 195° radial at 20.5NM), thence southwest to lat. 47°02′35″ N., long. 122°30′26″ W. (SEA 199° radial at 24.9NM), thence northwest to lat. 47°10′55″ N., long. 122°40′04″ W. (SEA 224° radial at 21.1NM) to the point of beginning.

Area P. That airspace extending upward from 5,000 feet MSL to and including 7,000 feet MSL within an area bounded by a line beginning at lat. 47°17′38″ N., long. 122°06′07″ W. (SEA 135° radial at 12NM), thence east to lat. 47°17′36″ N., long. 122°00′04″ W. (SEA 124° radial at 15.2NM), thence east to lat. 47°17′28″ N., long. 121°55′42″ W. (SEA 119° radial at 17.8NM), thence southwest to lat. 47°14′03″ N., long. 121°58′57″ W. (SEA 132°degree radial at 18NM), thence south to lat. 47°11′46″ N., long. 121°58′59″ W. (SEA 137° radial at 19.6NM), thence southwest to lat. 47°02′38″ N., long. 122°06′04″ W. (SEA 160° radial at 25NM), thence northwest to lat. 47°06′16″ N., long. 122°08′34″ W. (SEA 161° radial at 21NM), thence north to lat. 47°09′17″ N., long. 122°08′06″ W. (SEA 157° degree radial at 18.3NM) to the point to beginning.

Area Q. That airspace extending upward from 5,000 feet MSL to and including 7,000 feet MSL within an area bounded by a line beginning at lat. 47°51′15″ N., long. 122°30′00″ W. (SEA 343° radial at 26.3NM), thence east to lat. 47°51′09″ N., long. 122°05′46″ W. (SEA 019° radial at 26.5NM), thence southeast to lat. 47°41′54″ N., long. 121°55′57″ W. (SEA 044° radial at 22NM), thence south to lat. 47°36′45″ N., long 121°56′03″ W. (SEA 055° radial at 18.6NM), thence northwest to lat. 47°37′49″ N., long. 121°59′59″ W. (SEA 047° radial at 17.2NM), thence northwest to lat. 47°39′31″ N., long. 122°05′41″ W. (SEA 033° radial at 16NM), thence north to lat. 47°44′31″ N., long. 122°07′00″ W. (SEA 023° radial at 20NM), thence north to lat. 47°47′59″ N., long. 122°08′02″ W. (SEA 018° radial at 23NM) thence west to lat. 47°48′13″ N., long. 122°27′59″ W. (SEA 344° radial at 23NM), thence south to lat. 47°44′39″ N., long. 122°29′41″ W. (SEA 338° radial at 20NM), thence south to lat. 47°42′25″ N., long. 122°29′50″ W. (SEA 335° radial at 18NM), thence southwest to lat. 47°38′53″ N., long. 122°36′14″ W. (SEA 317° radial at 17.5NM), thence west to lat. 47°39′00″ N., long. 122°43′03″ W. (SEA 308° radial at 21NM) to the point of beginning.

Area R. That airspace extending upward from 6,000 feet MSL to and including 7,000 feet MSL within an area bounded by a line beginning at lat. 47°55′27″ N., long. 122°27′04″ W., (SEA 349° radial 29.9NM), thence east to lat. 47°55′31″ N., long. 122°08′29″ W., (SEA 013° radial at 30.2NM), thence southeast to lat. 47°51′09″ N., long. 122°05′46″ W., (SEA 019° radial at 26.5NM), thence west to lat. 47°51′15″ N., long. 122°30′00″ W., (SEA 343° radial at 26.3NM) to the point of beginning.

Area S. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 47°06′20″ N., long. 122°26′21″ W., (SEA 195° radial at 20.5NM), thence east to lat. 47°06′16″ N., long. 122°08′34″ W., (SEA 161° radial at 21NM), thence southeast to lat. 47°02′38″ N., long. 122°06′04″ W., (SEA 160° radial at 25NM), thence west to lat. 47°02′35″ N., long. 122°30′26″ W. (SEA 199° radial at 24.9NM) to the point of beginning.

Area T. That airspace extending upward from 6,000 feet MSL to and including 7,000 feet MSL within an area bounded by a line beginning at lat. 47°02′35″ N., long. 122°30′26″ W. (SEA 199° radial at 24.9NM), thence east to lat. 47°02′38″ N., long. 122°06′04″ W., (SEA 160° radial at 25NM), thence southwest to lat. 46°57′13″ N., long. 122°08′03″ W., (SEA 166° radial at 29.8NM), thence west to lat. 46°57′05″ N., long. 122°27′35″ W. (SEA 192° radial at 29.7NM), to the point of beginning.

Issued in Washington, DC, on October 17, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

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[FR Doc. 2011–27367 Filed 10–24–11; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30809; Amdt. No. 3449]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 25, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 25, 2011.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on October 14, 2011.

Ray Towles,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * *Effective Upon Publication*

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
17–Nov–11 ...	AZ	Phoenix	Phoenix Sky Harbor Intl	1/0068	9/23/11	This NOTAM, published in TL 11–23, is hereby rescinded in its entirety.
17–Nov–11 ...	GQ	Agana	Guam Intl	1/0544	9/29/11	This NOTAM, published in TL 11–23, is hereby rescinded in its entirety.
17–Nov–11 ...	GQ	Agana	Guam Intl	1/0545	9/29/11	This NOTAM, published in TL 11–23, is hereby rescinded in its entirety.
17–Nov–11 ...	GQ	Agana	Guam Intl	1/0546	9/29/11	This NOTAM, published in TL 11–23, is hereby rescinded in its entirety.
17–Nov–11 ...	GQ	Agana	Guam Intl	1/0547	9/29/11	This NOTAM, published in TL 11–23, is hereby rescinded in its entirety.
17–Nov–11 ...	CA	Los Angeles ..	Los Angeles Intl	1/0228	10/4/11	RNAV (RNP) Z RWY 6R, Orig.
17–Nov–11 ...	CA	Los Angeles ..	Los Angeles Intl	1/0229	10/4/11	RNAV (RNP) Z RWY 7L, Orig.
17–Nov–11 ...	CA	Los Angeles ..	Los Angeles Intl	1/0231	10/4/11	RNAV (RNP) Z RWY 24R, Orig.
17–Nov–11 ...	CA	Los Angeles ..	Los Angeles Intl	1/0233	10/4/11	RNAV (RNP) Z RWY 7R, Orig.
17–Nov–11 ...	CA	Los Angeles ..	Los Angeles Intl	1/0234	10/4/11	RNAV (RNP) Z RWY 6L, Orig.
17–Nov–11 ...	ID	Boise	Boise Air Terminal/Gowen Fld.	1/0239	8/9/11	RNAV (RNP) Z RWY 28R, Orig-A.
17–Nov–11 ...	ID	Boise	Boise Air Terminal/Gowen Fld.	1/0240	8/9/11	RNAV (RNP) Z RWY 10L, Orig-A.
17–Nov–11 ...	ID	Boise	Boise Air Terminal/Gowen Fld.	1/0242	8/9/11	RNAV (RNP) Z RWY 10R, Orig-A.
17–Nov–11 ...	ID	Boise	Boise Air Terminal/Gowen Fld.	1/0243	8/9/11	RNAV (RNP) Z RWY 28L, Orig-A.
17–Nov–11 ...	ID	Hailey	Friedman Memorial	1/0586	9/23/11	RNAV (RNP) Y RWY 31, Amdt 1A.
17–Nov–11 ...	AZ	Tucson	Tucson Intl	1/0831	10/4/11	RNAV (RNP) Y RWY 29R, Orig.
17–Nov–11 ...	AZ	Tucson	Tucson Intl	1/0832	10/4/11	RNAV (RNP) Y RWY 11L, Orig.
17–Nov–11 ...	PA	Zelienople	Zelienople Muni	1/2717	10/6/11	RNAV (GPS) RWY 35, Orig-C.
17–Nov–11 ...	MT	Butte	Bert Mooney	1/3061	9/26/11	ILS Y RWY 15, Amdt 7.
17–Nov–11 ...	OH	Chillicothe	Ross County	1/3080	10/6/11	Takeoff Minimums and Obstacle DP, Amdt 3.
17–Nov–11 ...	OH	Chillicothe	Ross County	1/3081	10/6/11	RNAV (GPS) RWY 23, Orig-A.
17–Nov–11 ...	FL	Ocala	Ocala Intl-Jim Taylor Field	1/3325	10/6/11	RNAV (GPS) RWY 18, Amdt 2.
17–Nov–11 ...	VA	Norfolk	Norfolk Intl	1/3530	10/6/11	ILS OR LOC RWY 5, Amdt 25.
17–Nov–11 ...	OR	Eugene	Mahlon Sweet Field	1/3644	9/28/11	RNAV (RNP) Z RWY 16L, Orig.
17–Nov–11 ...	IL	Effingham	Effingham County Memorial	1/4102	10/4/11	VOR RWY 1, Amdt 10.
17–Nov–11 ...	IL	Effingham	Effingham County Memorial	1/4103	10/4/11	RNAV (GPS) RWY 1, Orig.
17–Nov–11 ...	IL	Effingham	Effingham County Memorial	1/4104	10/4/11	Takeoff Minimums and Obstacle DP, Amdt 5.
17–Nov–11 ...	IL	Effingham	Effingham County Memorial	1/4107	10/4/11	LOC RWY 29, Amdt 1C.
17–Nov–11 ...	MI	Lansing	Capital Region Intl	1/4472	10/6/11	ILS OR LOC RWY 28L, Amdt 26A.
17–Nov–11 ...	TX	Uvalde	Garner Field	1/4475	10/6/11	RNAV (GPS) RWY 33, Orig.
17–Nov–11 ...	GA	Atlanta	Hartsfield-Jackson Atlanta Intl.	1/4513	10/6/11	ILS OR LOC RWY 27L, Amdt 16A; ILS RWY 27L (CAT II), Amdt 16A.
17–Nov–11 ...	NC	Goldsboro	Goldsboro-Wayne Muni	1/4568	10/4/11	Takeoff Minimums and Obstacle DP, Amdt 1.
17–Nov–11 ...	ME	Presque Isle ..	Northern Maine Rgnl Arpt At Presque Isle.	1/4664	10/4/11	Takeoff Minimums and Obstacle DP, Amdt 4.
17–Nov–11 ...	NE	Columbus	Columbus Muni	1/7813	9/19/11	VOR RWY 14, Amdt B.
17–Nov–11 ...	NE	Columbus	Columbus Muni	1/7814	9/19/11	VOR RWY 32, Amdt 14A.
17–Nov–11 ...	NE	Columbus	Columbus Muni	1/7815	9/19/11	VOR/DME RWY 32, Amdt 3.
17–Nov–11 ...	NE	Columbus	Columbus Muni	1/7816	9/19/11	LOC/DME RWY 14, Amdt 8A.
17–Nov–11 ...	NE	Columbus	Columbus Muni	1/7817	9/19/11	RNAV (GPS) RWY 14, Orig-A.
17–Nov–11 ...	MO	Kansas City ...	Charles B. Wheeler Downtown.	1/8566	9/19/11	ILS OR LOC RWY 19, Amdt 22.
17–Nov–11 ...	IA	Dubuque	Dubuque Rgnl	1/9888	9/23/11	VOR RWY 36, Amdt 6A.

[FR Doc. 2011–27361 Filed 10–24–11; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 162 and 163

[CBP Dec. 11–20; USCBP–2009–0029]

RIN 1515–AD65 (Formerly RIN 1505–AC00)

CBP Audit Procedures; Use of Sampling Methods and Offsetting of Overpayments and Over-Declarations

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations by adding provisions for the use of sampling methods in CBP audits and prior disclosure cases and for the offsetting of overpayments and over-declarations when an audit involves a calculation of lost duties, taxes, or fees or monetary penalties under 19 U.S.C. 1592. The sampling provision may be used by both CBP and private parties in certain circumstances. The offsetting provision is in accordance with CBP's authority under 19 U.S.C. 1509(b)(6).

DATES: This rule is effective December 27, 2011.

FOR FURTHER INFORMATION CONTACT: For Legal Aspects: Alan C. Cohen, Penalties Branch, Regulations and Rulings, Office of International Trade (202) 325–0062; For Audit and Operational Aspects: Keith Richard, Regulatory Audit, Office of International Trade, (704) 401–4701.

SUPPLEMENTARY INFORMATION:

I. Background

CBP is authorized to conduct audits under 19 U.S.C. 1509 (section 1509) (sometimes referred to in this document as CBP audits or section 1509 audits). The statute authorizes CBP to examine the records of, including conducting an audit of, parties subject to the agency's authority for the following purposes: ascertaining the correctness of any entry; determining the liability of any person for duty, fees, and taxes due, or which may be due, the United States; determining liability for fines and penalties; or insuring compliance with the laws of the United States administered by CBP. Under section 1509(b), specific procedures are set forth for conducting a formal audit authorized under the statute.

On October 21, 2009, CBP published in the **Federal Register** (74 FR 53964) a proposed rule to amend title 19 of the Code of Federal Regulations (19 CFR) pertaining to prior disclosure procedures and audit procedures by amending §§ 162.74, 163.1, and 163.11 (19 CFR 162.74, 163.1 and 163.11). The proposed amendments concerned the use of statistical sampling methods by CBP and private parties and the offsetting of overpayments of duties and fees or over-declarations of quantities or values on finally liquidated entries [1] against underpayments or under-declarations on finally liquidated entries under certain prescribed circumstances. The proposed changes regarding sampling methods were designed to reflect in the regulations (19 CFR 163.11) a practice recognized in both government and industry as the most practical and expeditious way to reliably assess voluminous numbers of transactions, such as are often encountered per audit in the modern commercial importation environment. A corresponding change was proposed to the CBP prior disclosure regulations (19 CFR 162.74) to reflect that sampling may be used by private parties submitting prior disclosures. The proposed changes regarding offsetting reflected the amendment made by the Trade Act of 2002 (''Trade Act'') (Pub. L. 107–210, 116 Stat. 933 (2002)) to section 1509 pertaining to CBP audit procedures (19 CFR 163.11).

Section 382 of the Trade Act amended section 1509(b) by adding the following paragraph (6):

> (6)(A) If, during the course of any audit conducted under this subsection, the Customs Service [now CBP] identifies overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit that the Customs Service [CBP] has defined, then in calculating the loss of revenue or monetary penalties under section 592 [of the Tariff Act of 1930, as amended; 19 U.S.C. 1592], the Customs Service [CBP] shall treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or under-declarations also identified on finally liquidated entries, if such overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law.
>
> (B) Nothing in this paragraph shall be construed to authorize a refund not otherwise authorized under section 520 [of the Tariff Act of 1930, as amended, 19 U.S.C. 1520].

The proposed amendments also included removal of the term ''compliance assessments'' from 19 CFR Part 163 as the term has become superfluous as a result of CBP policy changes with respect to audits.

II. Discussion of Comments

Comments were solicited on the proposed rule, and nine commenters responded. Collectively, the commenters raised numerous issues that CBP sets forth and responds to below.

A. Proposed Amendments Regarding Statistical Sampling

Comment: One commenter asserted that there is no authority in the customs laws for CBP to employ statistical sampling in an audit and that customs laws and regulations require an entry-by-entry review.

CBP response: CBP disagrees. Under section 1509, CBP is authorized to conduct audits of importers (and others subject to the customs laws and other laws enforced by CBP) to ensure compliance with the customs laws of the United States and other laws enforced by CBP. Section 1509 does not specify or limit the methods CBP may use in conducting an audit, thereby leaving these decisions to CBP discretion. Statistical sampling is a legitimate and widely accepted method of examining vast amounts of data to produce reliable results. As pointed out in the proposed rule regarding the proposed offsetting amendments, Congress acknowledged that CBP has and retains the authority to define an audit's time period, scope, and methodology.[2]

Comment: Several commenters requested that CBP provide audit guidelines and/or an informed compliance publication on statistical sampling that includes information on statistical sampling factors and parameters used by CBP in audits. These aids would help importers understand statistical sampling and effectively apply sampling in internal audits and prior disclosures.

[1] The term ''liquidation'' refers to the formal fixing of the terms of the entry by CBP. In liquidation, CBP fixes the appraisement, classification, and duties, taxes, and fees owed on imported merchandise (19 U.S.C. 1500). An entry is said to be ''finally liquidated'' when the period for filing a protest under 19 U.S.C. 1514 has expired. To protest the liquidation of an entry, the protest must be filed within 180 days of the date of liquidation (19 U.S.C. 1514(c)(3)(A)).

[2] In House Report 107–320 pertaining to the offsetting law, Congress provided that ''[a] government audit should be an even-handed and neutral evaluation of a person's compliance with the law.

* * * The Committee redrafted this provision on the basis of concerns from Customs [now CBP]. It is the Committee's intention that this provision shall not affect in any way Customs' [CBP's] current authority to define an audit's scope, time period, and methodology.'' While this report applies to the offsetting law, this statement of Congressional intent is relevant to CBP's audit authority.

CBP response: CBP cannot provide specific guidance regarding sampling parameters because assessing sampling risk and establishing sampling parameters involve the auditor's professional judgment applied on a case-by-case basis to the unique facts of a specific audit situation. However, information and basic guidelines on statistical sampling and auditing are currently provided as part of the Focused Assessment Program (FAP) on the CBP Web site at *http://cbp.gov/xp/cgov/trade/trade_programs/audits/focused_assessment/fap_documents/.* The Web site information will eventually be removed, and CBP will publish an informed compliance document following the effective date of this rule. As set forth in the proposed rule, CBP expects private parties to employ a sampling plan and sampling procedures that are consistent with generally recognized sampling approaches. A number of commercial statistical sampling programs are available for guidance on sampling in addition to the above mentioned sources. CBP may reject a private party's sampling plan and/or methodology if it is not consistent with generally recognized sampling approaches.

For purposes of clarity, CBP is adding to the regulation a description of ''projection,'' which refers to the application of the sampling results to the universe of transactions identified as within the time period and scope of the audit. Accordingly, a new paragraph (c)(2) under § 163.11 is added in this final rule, and paragraph (c)(2) of proposed § 163.11 is redesignated as paragraph (c)(3) in this final rule.

Comment: One commenter asserted that statistical sampling of entries and projection will not produce accurate audits unless an audit takes into account the specifics for each transaction, such as circumstances of sale, relationship of the seller to the buyer, related parties versus non-related parties, trade preference program transaction, etc.

CBP response: CBP conducts performance audits in accordance with generally accepted government audit standards (GAGAS) issued by the Government Accountability Office (GAO), which can be found on the GAO Web site at *http://www.gao.gov/govaud/ybk01.htm.* CBP auditors apply their professional judgment in establishing and executing sampling plans based on the particular factors, or relevant specifics, involved in a given audit situation. CBP auditors will apply appropriate sampling techniques, on a case-by-case basis, that address the commenter's concern. CBP is committed to employing sampling in accordance with widely accepted professional standards and best practices to ensure the efficiency and accuracy of audits that employ sampling.

Comment: One commenter requested that CBP clarify whether CBP will use statistical sampling to calculate penalties under 19 U.S.C. 1592 and the circumstances under which it may do so.

CBP response: As set forth in the proposed regulations and this final rule, CBP may use statistical sampling in an audit in circumstances it determines are appropriate for its use under section 1509, including the calculation of lost duties and/or monetary penalties under 19 U.S.C. 1592 (section 1592) or lost revenue and monetary penalties under 19 U.S.C. 1593a (section 1593a). In some circumstances, CBP may determine that an entry-by-entry review and calculation are more appropriate to the situation. CBP notes that use of sampling is not strictly limited to section 1509 audits (unlike offsetting which is so limited), but its use will be concentrated in the audit program.

Comment: One commenter suggested that CBP's use of sampling and projection to calculate penalties under section 1592 in an audit context should be subject to agreement by the audited party prior to commencement of the audit.

CBP response: Pursuant to section 1509, and as set forth in this final rule (19 CFR 163.11), CBP has sole discretion to determine the audit's methodology: either entry-by-entry, statistical sampling or, in some circumstances, both. Statistical sampling is a widely accepted and legitimate method of examining extensive quantities of data in an audit context and includes, by definition, projection of sample results to the universe of transactions set forth in the sampling plan. Neither the statute nor the regulations subject CBP's authority to determine an audit's methodology to the concurrence of the audited entity. In accordance with the proposed regulation and this final rule (§ 163.11(c)(1)), CBP and the audited entity will discuss the specifics of the sampling plan before commencement of the audit; however, CBP's authority to conduct the audit or employ a statistical sampling method is not dependent on the audited entity's concurrence or its acceptance of the sampling plan.

Comment: One commenter inquired whether the reduced penalties for prior disclosure would apply to projected violations (lost duty or revenue) where the audited entity makes a prior disclosure of a violation during a CBP audit.

CBP response: In most cases, the penalty for prior disclosure is based on the lost duty or lost revenue amount (interest on that amount). Thus, assuming that the prior disclosure meets all requirements and that CBP has approved the sampling results, including the projection as applied, the reduced penalty for the prior disclosure would apply to the lost duty or revenue as calculated, either by CBP or by the claimant with CBP approval. (*See* 19 CFR Part 171, App. B.)

Comment: One commenter claimed that statistical sampling will not reduce the cost to audited entities because the audit scope will be expanded to multiple years, thus requiring the audited entity to expend additional resources.

CBP response: CBP disagrees. Audits already cover multiple years, whether the review method is entry-by-entry or statistical sampling. The review of entries over a particular time period will be less costly when sampling is employed because fewer entries are actually examined by CBP, thus requiring less audit time on the audited entity's premises, less time required of the audited entity to pull supporting records and documents, and less time required from audited entity personnel.

Comment: One commenter asserted that statistical sampling should be utilized only to conduct annual audits of the audited entity and that expanded-scope audits by CBP as a result of statistical sampling should be limited to violations of 19 U.S.C. 1592 and/or 1593(a) that are discovered in the course of single-year audits.

CBP response: CBP disagrees. First, the scope of audits will not be expanded due to CBP's use of statistical sampling methods. Some audits cover multiple years whether the method of review is entry-by-entry or sampling. Second, it is within CBP's discretion to determine its audit program goals in accordance with agency priorities. That discretion includes determining the purpose and the time period and scope of audits. CBP will not adopt this limiting formula for implementing its audit program.

Comment: One commenter requested that CBP provide criteria for determining when an entry-by-entry or statistical sampling method is appropriate for an audit and asserted that CBP should not be able to change the audit's method midstream, before completing the audit.

CBP response: The decision regarding use of entry-by-entry or statistical sampling methodology in an audit is dependent on the unique circumstances involved and is therefore a matter of professional judgment. CBP auditors

will exercise that judgment on a case-by-case basis based on information and data available to CBP. Proposed § 163.11(c)(2), adopted without change as § 163.11(c)(3) in this final rule, provides general guidance on when sampling methods are appropriate: Review of 100% of the entries/transactions is impossible or impractical in the circumstances; the sampling plan is prepared in accordance with generally recognized sampling procedures; and the sampling procedure is executed in accordance with the sampling plan. The decision to employ sampling or entry-by-entry review is solely within the auditor's discretion.

Regarding changing methodology during the course of an audit, the auditor may encounter circumstances that were unknown when the sampling plan was created. The new circumstances may require changing the audit method from sampling to entry-by-entry, or vice-versa, in order to properly complete the audit. In some circumstances (*see* next comment response), CBP may expand the audit, either to address a disclosure presented by the audited entity during the course of the audit or to examine additional entries due to new circumstances. This may result in a change in the audit methodology or a different methodology applied to the expanded segment of the audit.

Comment: A commenter inquired whether the proposed regulations permit CBP to go outside the sampling plan to examine entries and, if so, under what circumstances may CBP do so.

CBP response: Generally, CBP will stay within the sampling plan. In some circumstances, the auditors may discover information or problems that warrant an expansion of the audit and a corresponding adjustment of the sampling plan if necessary. The amended regulations do not specify when CBP may expand the audit, as the various circumstances that may warrant an expansion or other adjustment cannot be captured categorically and evaluation of these circumstances must be left to the observation and professional judgment of the auditors involved. Two examples of when circumstances may warrant an expansion of the audit are where the audited entity requests approval to do self-testing of entries that do not fall within the sampling plan or where it presents a prior disclosure during the course of the audit. Again, expanding the audit will be at CBP discretion.

Comment: One commenter asserted that the inapplicability of ''finality of liquidation'' in proposed § 163.11(c)(1) is not supported by the law or the intent of Congress because it concerns only audits conducted to identify lost duty under section 1592.

CBP response: CBP disagrees. CBP may examine finally liquidated entries in an audit for the purpose of either determining compliance with applicable laws and regulations or identifying lost duties or revenue. Pursuant to sections 1592(d) and 1593a(d), CBP may demand payment of lost duties or revenues, respectively, and impose appropriate penalties relative to violations discovered in finally liquidated entries, notwithstanding the finality of liquidation rule.

Comment: One commenter requested that CBP define its supervisory role in self-testing.

CBP response: As used in the context of proposed § 163.11(c)(3) (redesignated as § 163.11(c)(4) in this final rule), CBP supervision means that CBP auditors will determine whether to approve the audited entity's request to do self-testing and whether the parameters of the sampling plan (including time period and scope), directing the execution of the sampling plan, and evaluating and verifying the sampling plan's execution and results. CBP may either provide the sampling plan to the audited entity for its execution or permit the audited entity to develop its own plan, with the auditors' direction, and present the plan to the auditors for acceptance prior to execution.

B. Proposed Amendment Regarding the Audited Entity's Waiver of the Ability To Object to the Sampling Plan and/or Methodology

Comments: Most commenters raised objections to the waiver provision of proposed § 163.11(c)(1), under which an audited entity, prior to commencement of the audit work that involves sampling,[3] would waive its ability to contest CBP's sampling plan and methodology once the parties have discussed and accepted it. Some of these comments also cited proposed § 162.74(j), since it permits sampling in a prior disclosure. The primary objections and points are represented in the following comments and responded to further below:

(a) An audited entity should not be limited to challenging only computational and clerical errors and should be allowed to challenge CBP's sampling plan, methodology, and results to ensure that the proposed sampling plan was actually implemented as proposed and that the results were correctly analyzed and presented. An audited entity's waiver of its ability to appeal or challenge CBP's findings would likely result in the unwillingness of audited entities to accept CBP's statistical sampling plan.

(b) Limiting an audited entity's right to challenge only computational and clerical errors is too narrow and would result in the audited entity waiving its right to challenge allegations of substantive and material errors, such as, for example, CBP allegations of misclassification, undervaluation, etc., and violations of sections 1592 or 1593a.

(c) The waiver is a violation of Congressional intent for even-handed audits.

(d) The regulation should reflect that once the parties accept the sampling plan, CBP waives its ability to subsequently contest the sampling plan's validity and methodology and, with the exception of fraud, waives its ability to review transactions outside the sampling plan for the purpose of determining the total loss of duties, taxes, and fees within the audit period and scope.

(e) The waiver presents due process and fairness concerns, as CBP's projection of underpayments (*i.e.,* violations) will result in a calculation of lost duty/revenue for entries that CBP has not examined, while the audited entity will have waived its ability to contest, administratively and judicially, what it believes may be CBP's failure to identify overpayments or its misidentification of lost duty or revenue.

(f) The regulations should clearly identify what is being waived and what is not being waived.

(g) The regulations should provide a procedure that would allow an audited entity the opportunity to be heard and to exhaust its available administrative and/or judicial challenges to violations alleged by CBP from the transactions actually examined.

(h) Proposed § 162.74(j) may be interpreted to bind the disclosing party to the sampling plan and methodology initially submitted with the prior disclosure without providing for an opportunity to modify and cure defects in the sampling before CBP makes its determination on the sampling results.

(i) An audited entity performing self-testing using an agreed upon sampling plan should also be able to demonstrate facts to contest the validity and/or methodology of that plan, and to propose remedies, before CBP makes a determination on the results.

[3] The use of sampling (or its possible use) will be discussed at the audit's opening conference, but normally cannot be discussed in detail until the audit work has begun and the auditors have been able to observe facts and circumstances involved in the particular audited entity's situation.

(j) CBP should clarify in the regulation that the waiver must be in writing and must be signed by a person with authority to make the waiver, such as an officer of the entity or other person with authority to sign it. If a corporation, the signed waiver should be accompanied by a board resolution or similar authorization.

(k) With respect to any dispute between CBP and the audited entity in the Court of International Trade, CBP's final calculation of the lost duty or revenue owed based on the projection of the sampling plan's results is not binding on the court.

CBP response: CBP believes that most of the concerns raised by the commenters, including those regarding due process, fairness, even-handedness, and waiving the right to challenge substantive findings or allegations, can be resolved with a fuller explanation of the waiver. The waiver takes effect when the audited entity accepts the sampling plan and methodology after having discussed it with CBP auditors. (This also applies when an audited entity has been authorized to do self-testing in an audit.) The waiver, which must be in writing (see below), is designed primarily to avoid the contention and delay that could result from disputes over the sampling plan and methodology at the end of an audit, and to later avoid a protracted battle of sampling experts in any administrative or judicial proceeding concerning the details of a sampling approach that both parties had agreed to previously.

It is noted, however, that the waiver is limited. The audited entity would be waiving only its ability to contest the sampling and methodology employed in the audit. The audited entity would not be waiving its ability to raise substantive objections it may have concerning the audit's underlying findings of violations of section 1592 (false statements in an entry regarding classification, valuation, etc., or failure to have required documentation) or violations of section 1593a (false drawback claims). As has always been the case where an audited entity has substantive disagreements with CBP's audit findings identifying violations of sections 1592 or 1593a and/or with the audit's lost duty or revenue calculations (that cannot be resolved through further discussions with, and working with, the auditors), the audited entity is not bound to tender payment in accordance with those findings and calculations. The audited entity instead may opt to pursue its substantive objections as the process continues through any ensuing administrative penalty action initiated by CBP with issuance of either a notice of liability for lost duty or revenue under sections 1592(d) or 1593a(d) or a prepenalty notice under sections 1592(b) or 1593a(b).

Through the formal penalty action, the audited entity, now the subject of this statutory process, will have access to various procedures under the current CBP regulations to challenge allegations, including audit findings upon which allegations are based. Under § 162.79b of the regulations, the subject may seek CBP Headquarters review when a notice of liability is issued under either section 1592(d) or 1593a(d). Under § 171.14, the subject may seek CBP Headquarters advice regarding the penalty allegations when CBP issues a prepenalty notice under section 1592(b)(1) or 1593a(b)(1). Also, as always, the subject would be able to raise its substantive objections in response to the prepenalty notice and in response to a later-issued penalty notice under section 1592(b)(2) or 1593a(b)(2), thereby having two opportunities to challenge CBP's determinations/allegations. The latter response would be in the form of a petition filed under 19 U.S.C. 1618 (section 1618). Where CBP decides the section 1618 petition to the subject's dissatisfaction, the subject may submit a supplemental petition under § 171.61 and § 171.62, still another opportunity to argue its case. At any time after CBP issues a decision on an initial petition, the subject may pursue an offer in compromise under 19 U.S.C. 1617, putting forth its substantive objections to support the settlement offer. Finally, the subject may defend withholding tender of the penalty and/or lost duty or revenue, and continue its substantive objections, in a judicial enforcement action where all substantive issues will be heard.

The sampling waiver also applies to prior disclosures submitted outside the context of a CBP audit under § 162.74(j) and § 163.11(c)(5) of this final rule, when the prior disclosure is reviewed by CBP's Office of International Trade, Regulatory Audit (RA). All such prior disclosures will be reviewed by RA in some form (although any claiming offsetting will get RA review; see comment response further below). Often, with these prior disclosures, the claimant and RA will have the opportunity to discuss any sampling proposed by the claimant after the initial disclosure is submitted.[4] The claimant's acceptance of the sampling approach arrived at through these discussions with RA constitutes the waiver, as limited per the discussion above. In this context, a claimant may request that CBP calculate the lost duty/revenue under § 162.74(c) and may seek CBP Headquarters review of the field office's calculation (subject to limitations, such as a minimum monetary amount and the statute of limitations), at which time the claimant can raise its substantive objections to the underlying CBP allegations involved.

Thus, under the proposed regulation, and as adopted in this final rule, an audited entity, or prior disclosure claimant in the circumstances described above, waives its ability to object to the sampling and methodology to which it agreed, but does not thereby forfeit its ability to challenge underlying substantive findings or allegations through available procedures under the regulations. CBP is modifying proposed §§ 162.74(j) and 163.11(c) in this final rule to clarify the waiver provision with respect to what is not being waived by, respectively, a prior disclosure claimant or an audited entity.

Regarding comments concerning the ability of a prior disclosure claimant, within or outside of a CBP audit, to cure defects in sampling once the disclosure is submitted to CBP, CBP, upon review of the sampling, will allow a reasonable opportunity for the claimant to resolve defects. It is recognized that in some cases the sampling will be so flawed it cannot form the basis of an acceptable prior disclosure or be cured through reasonable efforts.

The recommendations that the regulations include a waiver by CBP of its ability to challenge or change the sampling or methodology or to go outside the sampling plan to examine entries, after there is acceptance of the sampling plan by the parties, cannot be adopted in this final rule. CBP is authorized under law to conduct audits to ensure compliance with the customs laws and other laws in order to protect the revenue and enforce various restrictions. The audit program is CBP's primary means for ensuring this compliance. It is a critical oversight and enforcement function. To effectively perform this function, CBP must have flexibility to make necessary adjustments while conducting audits.

Regarding the recommendation that the regulations provide for a written waiver, CBP agrees that a written waiver would be appropriate. Therefore, CBP is

[4] To establish the basic elements of the prior disclosure claim before CBP initiates an investigation, claimants will often submit the prior disclosure letter to disclose the circumstances of the violation and request an extension to finalize the calculation and submit lost duties/revenue. In discussions with CBP, the claimant may propose a sampling plan, work with CBP to develop one, or explain one that it has already worked through (without finalizing the calculation).

adding to the regulation in this final rule (19 CFR 163.11(c)(1)) that a management official with authority to bind the audited entity must sign the waiver on the audited entity's behalf. This official should have responsibility over the company's importation or trade matters and/or other matters involving the customs laws and regulations, or other trade related laws and regulations. The appropriate RA field director will have authority to sign for CBP. It is noted, however, that in some instances, the sampling plan and/or methodology must be adjusted or modified after it has been discussed and accepted or after it has been commenced. In these instances, further discussions of these adjustments/modifications would require another written waiver to evidence the audited entity's acceptance of the changes.

C. Proposed Amendments Regarding Offsetting

Comment: Several commenters requested clarification as to whether an audited entity authorized (pre-approved) by CBP to conduct self-testing in a CBP audit, under CBP supervision, may apply offsetting in a prior disclosure resulting from the self-testing.

CBP response: An audited entity in the described circumstances (self-testing in a CBP audit) may apply offsetting in a prior disclosure. The offsetting will be approved where, upon review, RA determines that all the requirements for offsetting set forth in this final rule have been met and RA approves the audited entity's implementation and results of the self-testing, whether an entry-by-entry or sampling methodology was used.

Comment: Several commenters asserted that offsetting should be permitted for overpayments in prior disclosures that are not submitted in the context of a CBP audit. Several commenters also requested that CBP clarify, for purposes of offsetting, the circumstances under which CBP's verification or review of a prior disclosure submitted outside the context of a CBP audit would constitute a section 1509 audit as defined by the proposed regulation (§ 163.1(c)).

CBP response: CBP's offsetting authority under section 1509(b)(6)(A) was limited by Congress to audits conducted by CBP under section 1509 and to calculations of lost duty and monetary penalties under section 1592. The law does not include exceptions to this restriction. CBP cannot apply offsetting in an audit calculating lost revenue under section 1593a; nor can CBP apply offsetting in a prior disclosure submitted to CBP outside the context of a section 1509 audit unless CBP performs such an audit or review of the prior disclosure submission. The proposed regulation did not include a provision for offsetting in a prior disclosure submitted outside the context of a CBP audit, but that scenario was discussed in the proposed rule's preamble. Based on the many comments received on this issue and further consideration of the matter, CBP, in this final rule, is providing a regulatory process for ensuring that all of these prior disclosures are referred to RA for review and evaluation of the offsetting.

Initially, it is noted that, consistent with the proposed rule, this final rule recognizes that some CBP audits will be full-scale reviews that follow all the procedural steps for a formal on-site review of an audited entity's records, such as would be appropriate to conduct a focused assessment audit, and others will be less formal and extensive for conducting audits with a more narrow purpose. The definition of ''audit'' set forth in proposed § 163.1(c), and adopted with a minor change in this final rule, provides that a CBP audit ''may be as extensive or simple as CBP determines is warranted to achieve the audit's purpose under applicable laws and regulations.'' This concept is consistent with CBP's practice under current regulations. CBP has always had the flexibility to vary the approach of audits depending on the audit's purpose and the circumstances involved. Proposed § 163.11(f) is modified in this final rule to reflect this flexibility, as the formal process of § 163.11(a) is not conducive to a CBP RA review of a prior disclosure.

The referenced change to the proposed definition of ''audit'' reflects a refining of terms, as the words ''examination or review'' have been replaced in this final rule with the word ''evaluation.'' Another modification to the definition is designed to clarify that the self-testing approved by CBP within the time period and scope of the audit includes the time period and scope as originally set and as sometimes later modified by CBP at its discretion where warranted.

Under this final rule, all prior disclosures with offsetting submitted outside the context of a CBP audit will be referred to CBP's RA for a review and evaluation that will be deemed a section 1509 audit for offsetting purposes. Due to limits stemming from the availability of resources and the press of other priorities and responsibilities, RA will vary its approach to reviewing these prior disclosures depending on their circumstances. The extent of the review will be based on an internal evaluation of the prior disclosure's complexity and risk factors. The monetary value of the disclosure also may be a factor at times. In some instances, RA will review sufficient documentation submitted by the claimant plus CBP's own records and databases. In other instances, RA may contact the claimant for discussion or additional documentation. In still other instances, an on-site visit may be warranted, with a partial or full-scale review of entries/documents depending on RA's assessment of the circumstances. Where RA determines that its review of the prior disclosure, whether limited or extensive, shows, to its satisfaction, that the claim and its calculations of lost duty meet all statutory and regulatory requirements regarding offsetting, and sampling where sampling is employed, offsetting may be applied, provided it meets the basic requirements of the prior disclosure regulations, as determined by the appropriate Fines, Penalties, and Forfeitures (FP&F) office.

CBP notes that offsetting may not be allowed in every case, but CBP is committed to providing offsetting in accordance with the statute and this final rule whenever, under its procedures, it performs a section 1509 audit/review involving lost duty calculations under section 1592.

Comment: One commenter claimed that CBP's disallowance of offsetting under proposed § 163.11(d)(5), in cases where identified underpayment entries involve fraud, violates Congressional intent for even-handed audits under the Trade Act. Under this paragraph, all properly identified overpayments would be disallowed for offsetting, while CBP would seek collection for all properly identified underpayments (violations). This commenter also asserted that the restriction on refunds under proposed § 163.11(d)(8) violates this Congressional intent. Under that paragraph, refund payments are limited to properly identified overpayment entries that qualify for a refund under the requirements of 19 U.S.C. 1514 (section 1514) or 19 U.S.C. 1520 (section 1520). These statutes provide for a refund where the audited party can identify an error correctable under one of their provisions.

CBP response: CBP disagrees. Section 1509(b)(6)(A) precludes offsetting when overpayments/over-declarations were made for the purpose of violating any provision of law. Proposed § 163.11(d)(5)'s disallowance of offsetting when entries identified in an audit were made knowingly and intentionally (fraudulently) is self-evident and consistent with CBP's

treatment of fraud violations under section 1592 as distinct from violations based on negligence or gross negligence. An importer should not be permitted to gain through offsetting in instances where it committed knowing and intentional violations. This provision is retained in this final rule as § 163.11(d)(6).

Regarding the disallowance of refunds under proposed § 163.11(d)(8) (§ 163.11(d)(9) in this final rule), it is in fact the intent of Congress to limit refund payments to specific, limited circumstances. Under section 1509(b)(6)(B), the offsetting provision is not to be construed as authorizing a refund that is not otherwise authorized under section 1520. This clearly means that a refund is payable only if the particular circumstances of the overpayment entries involved would independently meet the very specific circumstances set forth under any provision of section 1520 that involves liquidated entries, including any requirement to timely file a petition or claim for relief under the provision.

It is noted that the proposed regulation and the regulation as amended in this final rule includes section 1514 in its refund restriction, along with the statutorily enumerated section 1520, on the grounds that Congress intended that CBP have the authority to pay a refund when an overpayment entry's circumstances constitute clerical error, mistake of fact, or other inadvertence now correctable under section 1514(a). At the time the offsetting law was enacted, relief for a clerical error, mistake of fact, or other inadvertence was provided for under section 1520.

Comment: One commenter asserted that CBP should make clear that the inapplicability of the ''finality of liquidation'' rule is limited to an audit conducted to assess lost duties, including offsetting of overpayments, only in cases of 19 U.S.C. 1592. The commenter also requested that CBP clarify whether offsetting is permitted for overpayments on unliquidated entries identified within the time period and scope of the audit.

CBP response: The proposed rule made clear that offsetting would apply only to finally liquidated entries identified in a CBP audit for calculating lost duties and monetary penalties under section 1592, provided that all requirements for offsetting are met, including that the identified overpayments are within the audit's time period and scope (and within the time period and scope of any sampling plan applied in accordance with proposed § 163.11(c)) (proposed § 163.11(d)(3) is § 163.11(d)(4) in this final rule). It also made clear that section 1592 permits the lost duty calculation on liquidated entries despite the fact that their liquidations have become final. This calculation of lost duties under section 1592 now includes offsetting of overpayments by virtue of section 1509(b)(6)(A).

Regarding offsetting for unliquidated entries, it is possible that both unliquidated and liquidated entries may be properly identified in a CBP audit; however, section 1509(b)(6)(A) limits offsetting to overpayments/over-declarations identified on finally liquidated entries, provided that the overpayments/over-declarations were not made by the audited entity for the purpose of violating any provision of law and meet the other requirements of the statute.

Comment: One commenter recommended that members of the Importer Self-Assessment Program (ISA) be allowed to benefit from offsetting.

CBP response: The ISA program is a voluntary partnership program between CBP and companies operating under the customs laws, generally importers. An ISA program member receives certain benefits under the program, the most notable being removal from the pool of companies subject to focused assessment audits (the general audit program administered by RA for ensuring compliance with the customs laws and regulations). CBP has a high degree of confidence in member companies based on RA's initial evaluation of the companies' internal processes and systems during the application process. ISA members are companies with high compliance ratings, and CBP believes that the trust it has in members is warranted and the benefits enjoyed by members are earned and deserved. In addition to their initial evaluation by CBP in the application process, member companies must perform an annual self review of its customs operations that it submits to RA. The ISA annual self-review may occasionally result in the discovery of errors that lead to the filing of a prior disclosure.

The benefit of offsetting in prior disclosures is available to ISA members just as it is available to any importer. As trusted members of the ISA program whose records, systems performance, and regular monitoring engender CBP confidence, ISA member prior disclosures may not require extensive CBP RA review, though that is a judgment for RA to make on a case-by-case basis.

Comment: One commenter stated that because offsetting is an importer's right under the statute, the discretionary ''may'' should be changed to ''shall'' and ''will'' under, respectively, proposed § 163.11(d)(1) pertaining to CBP's authority to allow offsetting and proposed § 163.11(d)(2) pertaining to an audited entity's offsetting when self-testing under CBP supervision.

CBP response: CBP agrees that ''may'' should be changed. Therefore, ''may'' has been changed to ''will'' in both provisions. CBP has also added language in both provisions to clarify that the approval of offsetting by CBP is dependent on all the requirements for offsetting in § 163.11(d) being met.

Comment: One commenter stated that proposed § 163.11(d)(4) has an incorrect reference to paragraph (d)(4) that should instead reference paragraph (d)(3).

CBP response: CBP agrees and has made the correction. However, in this final rule, proposed § 163.11(d)(3) has been redesignated as § 163.11(d)(4) and proposed § 163.11(d)(4) has been redesignated as § 163.11(d)(5). Thus, the reference is now to § 163.11(d)(4) and is found in § 163.11(d)(5).

D. Proposed Amendments to Prior Disclosure Regulations

Comment: One commenter requested that CBP modify proposed § 162.74(j) to require that CBP approve the statistical sampling plan proposed by a private party prior to submission of a prior disclosure. The commenter stated that failure by CBP to accept the sampling plan prior to submission could subject the private party to expensive and time consuming entry-by-entry analysis even though the statistical sampling analysis and lost duties/revenues have been tendered to CBP. One commenter inquired whether a prior disclosure claimant would have an opportunity to correct a prior disclosure sampling plan that CBP, upon post-submission review, is unable to accept due to a defect in the plan or its execution.

CBP response: CBP's review of a prior disclosure with sampling may include, at CBP's discretion, reasonable efforts, as determined in the circumstances by CBP, to work with the private party to cure defects in the sampling plan or its execution. It is recognized that in some cases the sampling will be so flawed it cannot form the basis of an acceptable prior disclosure or be cured through reasonable efforts.

In this regard, to effectively review a prior disclosure claimant's sampling and calculations or sampling/methodology proposal, CBP must be able to understand them. Therefore, the claimant must submit with its disclosure a brief but clear explanation of its sampling plan and methodology.

Proposed § 162.74(j) has been modified accordingly in this final rule.

Comment: One commenter inquired whether an audited entity authorized by CBP to conduct self-testing in a CBP audit can file a prior disclosure without triggering a formal investigation.

CBP response: Where an audited entity performs self-testing during a CBP audit, the discussion that precedes the self-testing concerns the particulars involved, and it is not likely that an investigation would be triggered by such discussions. However, an audited entity is advised to be aware of the restrictions to prior disclosure set forth in the prior disclosure regulations. Under these regulations, a prior disclosure may be approved where the claimant discloses the circumstances of a violation before, or without knowledge of, the commencement of a formal investigation (*see* §§ 162.74(a) and 162.74(g)). Thus, where CBP auditors have already uncovered evidence of violations, created a writing recording those suspected violations (commencing a formal investigation), and raised those suspected violations with the audited entity (§ 162.74(i)(1)(i)), the restriction to prior disclosure eligibility may apply.

E. Proposed Amendment Regarding Restriction on Defense of Reasonable Care

Comment: One commenter recommended that CBP clarify proposed § 163.11(e)'s restriction on the defense of ''reasonable care'' [5] as applied to entries involved in a previous audit's sampling plan.

CBP response: Under proposed § 163.11(e), the mere fact that an entry was within the time period and scope of a previous CBP audit that employed a sampling plan cannot be claimed as a defense in a later penalty action. The proposed provision is retained in this final rule without change.

III. Conclusion Regarding Comment Analysis and Additional Changes

Based on the comments received and CBP's reconsideration of the various issues raised and discussed in this document, CBP is adopting as final the proposed rule's changes, with certain modifications and additions that are explained throughout the comment discussion section of this document. The major additions are as follows:

(1) A requirement that a private party's prior disclosure that employs sampling must include an explanation of the sampling plan and methodology employed. The explanation must be adequate, to CBP's satisfaction, to permit CBP to understand the sampling and methodology employed. This reflects in the regulation a procedure that is already practiced by prior disclosure claimants. An explanation of the sampling and methodology is fundamental and inherent in a proper prior disclosure using sampling as a means of disclosing the circumstances of the violations involved. (*See* 19 CFR 162.74(j) and 163.11(c)(5) of this final rule.)

(2) A requirement that a written waiver evidence a private party's acceptance of the sampling plan and methodology to be employed in an audit or, where appropriate, in circumstances of self-testing or prior disclosure as described in 19 CFR 163.11(c)(4) and (c)(5), respectively. The waiver limits the private party's objections to the sampling procedure to but does not limit any other substantive claims. The appropriate RA field director will sign for CBP. Acceptance of subsequent adjustments or modifications to the sampling plan or methodology also must be in writing. (*See* 19 CFR 163.11(c)(1) of this final rule.)

(3) A provision under which CBP will refer to RA for review and evaluation all prior disclosures submitted outside the context of a CBP audit that apply or seek to apply offsetting under 19 CFR 163.11(d). (See 19 CFR 163.11(d)(3) of this final rule.) RA will approve the offsetting where it determines that the requirements of the statute and this final rule are satisfied.

IV. Statutory and Regulatory Reviews

A. Executive Order 12866

Executive Order 12866 (Regulatory Planning and Review; September 30, 1993) requires Federal agencies to conduct economic analyses of significant regulatory actions as a means to improve regulatory decision-making. Significant regulatory actions include those that may ''(1) [h]ave 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) [c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) [m]aterially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) [r]aise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' This rule does not meet any of the above criteria and is thus not a significant regulatory action. This rule has not been reviewed by the Office of Management and Budget (OMB) under this order.

As described above, this final rule does not impose additional requirements or procedural burdens on entities affected and would not have an economic impact on them except in certain penalty cases in which the entities affected would realize a reduction in the amount of a penalty, or in the amount of lost revenue owed, due to the allowance of offsetting. CBP did not receive any comments that would contradict our conclusion that this rule is not a significant regulatory action or our assertion that to the extent this rule does have economic impacts, they will be marginally beneficial to the trade community and CBP.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business; a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The entities affected by this final rule are importers and various other parties who are subject to a CBP audit under the CBP regulations. ''Importers'' are not defined as a ''major industry'' by the Small Business Administration (SBA) and do not have a unique North American Industry Classification System (NAICS) code; rather, virtually all industries classified by SBA include entities that import goods and services into the United States. Thus, entities affected by this final rule would likely consist of the broad range of large, medium, and small businesses operating under the customs laws and other laws that CBP administers and enforces. These entities include, but are not limited to, importers, brokers, and freight forwarders, as well as other businesses that operate under drawback, bonded warehouse, and foreign trade zone procedures and those conducting various activities under bond.

[5] Under 19 U.S.C. 1484(a)(1), an importer of record, or its agent, is obligated to exercise reasonable care in performing certain actions related to the entry of merchandise into the United States. Under 19 CFR Part 171, App. B, Para. (C)(1), a penalty is warranted where a person fails to exercise ''the degree of reasonable care and competence expected'' in the circumstances, and the failure results in a false statement or material omission under the statute. Generally, a showing that the importer acted with reasonable care is a defense to allegations of a negligence violation under 19 U.S.C. 1592 or 1593a.

The finalized rule concerning audit procedures brings the CBP regulations up to date with CBP practices by explicitly providing for the use of sampling methods in audits conducted by CBP under 19 U.S.C. 1509. The use of sampling methods is expected to facilitate and enhance the effectiveness of the CBP audit process for both CBP and private entities, thus making the process less burdensome for all involved. The finalized rule brings the regulations up to date with existing law regarding the offsetting of overpayments and over-declarations for the purpose of calculating loss of revenue or monetary penalties under 19 U.S.C. 1592.

Because these amendments to the regulations affect such a wide-ranging group of entities involved in the importation of goods to the United States, the number of entities subject to this final rule would be considered ''substantial.'' Additionally, these changes to the regulations would confer a small, positive economic benefit to affected entities as a result of a more efficient audit process and, in some cases, a reduction of duties found owing to the government. Neither of these benefits, however, would rise to the level of being considered a ''significant'' economic impact. We solicited comments on this conclusion and did not receive any comments contradicting our findings. Therefore, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The collections of information in part 163 of the current CBP regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and have been assigned OMB control number 1651–0076 (General recordkeeping and record production requirements). This final rule does not involve a change to either the number of respondents or the burden estimates contained in the existing approved information collection. Affected persons are already required to provide relevant information or records requested by CBP during an audit procedure conducted under the authority of 19 U.S.C. 1509 (the CBP audit statute) and the CBP regulations. Records or information having to do with overpayments or over-declarations for offset purposes under paragraph (b)(6) of the statute fall within this existing requirement. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

D. Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his or her delegate) to approve regulations pertaining to certain revenue functions.

List of Subjects

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs audits, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, parts 162 and 163 of the CBP regulations (19 CFR Parts 162 and 163) are amended as set forth below:

PART 162—INSPECTION, SEARCH AND SEIZURE

■ 1. The general authority citation for part 162 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624; 6 U.S.C. 101; 8 U.S.C. 1324(b).

* * * * *

■ 2. Section 162.74 is amended by adding new paragraph (j) to read as follows:

§ 162.74 Prior disclosure.

* * * * *

(j) *Prior disclosure using sampling.* (1) A private party may use statistical sampling to ''disclose the circumstances of a violation'' and for calculation of lost duties, taxes, and fees or lost revenue for purposes of prior disclosure, provided that the statistical sampling satisfies the criteria in 19 CFR 163.11(c)(3). The prior disclosure must include an explanation of the sampling plan and methodology that meets with CBP's approval. The time period, scope, and any sampling plan employed by the private party, as well as the execution and results of the self-review, are subject to CBP review and approval. In accordance with 19 CFR 163.11(c)(1), in circumstances where the private party and CBP have discussed and accepted the sampling plan and its methodology, or adjustments to it, the private party submitting a prior disclosure employing sampling under this paragraph may not contest the validity of the sampling plan or its methodology, and challenges of the sampling itself will be limited to computational and clerical errors after CBP conducts its review and makes a determination. This is not a waiver of the private party's right to later contest substantive issues it may properly raise under applicable regulations, as provided in 19 CFR 163.11(c)(1).

(2) If a private party submits a prior disclosure claim employing sampling, CBP may review other transactions from the same time period and scope that are the subject of the prior disclosure.

PART 163—RECORDKEEPING

■ 3. The general authority citation for part 163 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

* * * * *

§ 163.0 [Amended]

■ 4. Section 163.0 is amended by removing from the second sentence the words, ''or compliance assessment''.

■ 5. Section 163.1 is amended by:

■ a. Revising paragraph (c); and

■ b. Removing paragraph (e) and redesignating existing paragraphs (f) through (l) as paragraphs (e) through (k).

The revision of § 163.1(c) reads as follows:

§ 163.1 Definitions.

* * * * *

(c) *Audit.* ''Audit'' means an evaluation by CBP under 19 U.S.C. 1509 of records required to be maintained and/or produced by persons listed in § 163.2, or pursuant to other applicable laws or regulations administered by CBP, for the purpose of furthering any investigation or review conducted to: ascertain the correctness of any entry; determine the liability of any person for duties, taxes, and fees due, or revenue due, or which may be due the United States; determine liability for fines, penalties, and forfeitures; ensure compliance with the laws of the United States administered by CBP; or determine that information submitted or required is accurate, complete, and in accordance with any laws and regulations administered or enforced by CBP. An audit does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone. An audit may be as extensive or simple as CBP determines is warranted to achieve the audit's purpose under applicable laws and regulations.

* * * * *

§ 163.6 [Amended]

■ 6. Section 163.6 is amended by removing the words ''or compliance assessment'' in paragraph (c)(1), first sentence, and in paragraph (c)(2), first sentence.

§ 163.7 [Amended]

■ 7. Section 163.7 is amended by removing the words ''or compliance assessment'' in paragraph (a), first sentence.

■ 8. Section 163.11 is revised to read as follows:

§ 163.11 Audit procedures.

(a) *General requirements.* In conducting an audit under 19 U.S.C. 1509(b), the CBP auditors, except as otherwise provided in paragraph (f) of this section, will:

(1) Provide notice, telephonically and in writing, to the person to be audited of CBP's intention to conduct an audit and a reasonable estimate of the time to be required for the audit;

(2) Inform the person who is to be the subject of the audit, in writing and before commencement of the audit, of that person's right to an entrance conference, at which time the objectives and records requirements of the audit, and any sampling plan to be employed or offsetting that may apply, will be explained and the estimated termination date of the audit will be set. Where a decision on a sampling plan and methodology is not made at the time of the entrance conference, CBP will discuss these matters with the person being audited as soon as possible after the discovery of facts and circumstances that warrant the possible need to employ sampling;

(3) Provide a further estimate of any additional time for the audit if, during the course of the audit, it becomes apparent that additional time will be required;

(4) Schedule a closing conference upon completion of the audit on-site work to explain the preliminary results of the audit;

(5) Complete a formal written audit report within 90 calendar days following the closing conference referred to in paragraph (a)(4) of this section, unless the Executive Director, Regulatory Audit, Office of International Trade, CBP Headquarters, provides written notice to the person audited of the reason for any delay and the anticipated completion date; and

(6) After application of any disclosure exemptions contained in 5 U.S.C. 552, send a copy of the formal written audit report to the person audited within 30 calendar days following completion of the report.

(b) *Petition procedures for failure to conduct closing conference.* Except as otherwise provided in paragraph (f) of this section, if the estimated or actual termination date of the audit passes without a CBP auditor providing a closing conference to explain the results of the audit, the person audited may petition in writing for a closing conference to the Executive Director, Regulatory Audit, Office of International Trade, Customs and Border Protection, Washington, DC 20229. Upon receipt of the request, the director will provide for the closing conference to be held within 15 calendar days after the date of receipt.

(c) *Use of statistical sampling in calculation of loss of duties or revenue.* (1) *General.* In conducting an audit under this section, regardless of the finality of liquidation under 19 U.S.C. 1514, CBP auditors have the sole discretion to determine the time period and scope of the audit and will examine a sufficient number of transactions, as determined solely by CBP. In addition to examining all transactions to identify loss of duties, taxes, and fees under 19 U.S.C. 1592 or loss of revenue under 19 U.S.C. 1593a, or to determine compliance with any other applicable customs laws or other laws enforced by CBP, CBP auditors, at their sole discretion, may use statistical sampling methods. During the audit, CBP auditors will explain the sampling plan and how the results of the sampling will be projected over the universe of transactions for purposes of calculating lost duties, taxes, and fees or lost revenue and, where appropriate, overpayments and over-declarations eligible for offsetting under paragraph (d) of this section. The person being audited and CBP will discuss the specifics of the sampling plan before audit work under the plan is commenced. Once the sampling plan is accepted, the audited person waives the ability to contest the validity of the sampling plan or its methodology at a later date and challenges of the sampling will be limited to challenging computational and clerical errors. CBP's authority to conduct the audit or employ statistical sampling is not dependent on the audited person's acceptance of the specifics of the sampling plan. An audited person's acceptance of the sampling plan and methodology must be in writing and signed by a management official with authority to bind the company in matters of trade, imports, and/or other affairs under the customs laws, CBP regulations, or other applicable laws. The audited person may submit the signed waiver to the CBP auditor. The appropriate field director, Regulatory Audit, will sign the waiver for CBP. Where the sampling plan or methodology is subsequently adjusted or modified, at CBP's discretion, acceptance of the adjustments or modifications also must be in writing and signed. This is not a waiver of the audited person's right to later contest substantive issues, such as misclassification, undervaluation, etc., that may properly be raised under applicable regulations, including in a request for CBP Headquarters advice under 19 CFR 171.14, a request for CBP Headquarters review under 19 CFR 162.74(c), a response to a prepenalty notice issued by CBP under 19 U.S.C. 1592(b)(1) or 19 U.S.C. 1593a(b)(1), a petition submitted in response to a penalty notice issued by CBP under 19 U.S.C. 1592(b)(2) or 19 U.S.C. 1593a(b)(2) (19 CFR part 171) and 19 U.S.C. 1618, a supplemental petition submitted under 19 CFR 171.61 and 171.62, or any action commenced in a court of proper jurisdiction.

(2) *Projection.* For purposes of this section, ''projection'' of sampling results over the universe of transactions is the process by which the results obtained from the sample entries actually examined are applied to the universe of entries set within the time period and scope of the sampling plan to yield a reliable assessment of that which is sought to be ascertained or measured in the audit, including, but not limited to, lost duties or revenue, or overpayments or over-declarations, as described in paragraph (d)(1) of this section.

(3) *When CBP uses statistical sampling.* CBP auditors have the sole discretion to use statistical sampling techniques when:

(i) Review of 100 percent of the transactions is impossible or impractical;

(ii) The sampling plan is prepared in accordance with generally recognized sampling procedures; and

(iii) The sampling procedure is executed in accordance with that plan.

(4) *Statistical sampling by audited persons under CBP supervision.* CBP may authorize a person being audited to conduct, under CBP supervision, self-testing of its own transactions within the time period and scope of the audit as originally set or later modified by CBP at its discretion. Audited persons permitted in advance by CBP to conduct self-testing of certain transactions under CBP supervision within the time period and scope of a CBP audit may use statistical sampling methods, provided that the criteria contained in paragraph (c)(3) of this section are satisfied. CBP

will determine the time period and scope of the CBP-approved and supervised self-testing and will explain any sampling plan to be employed in accordance with paragraph (c)(1) of this section. The execution and results of the self-testing and the sampling plan are subject to CBP approval, and the audited person is subject to the waiver of paragraph (c)(1) of this section.

(5) *Statistical sampling by a private party submitting a prior disclosure.* A private party conducting an independent review of certain transactions and a calculation of lost duties, taxes, and fees or lost revenue for purposes of prior disclosure, in accordance with 19 CFR 162.74(j), may use statistical sampling, provided that the private party submits an explanation of the sampling plan and methodology employed and that the criteria in paragraph (c)(3) of this section are satisfied. Where the private party submits a prior disclosure employing statistical sampling, the time period, scope, and any sampling plan employed by the private party, as well as the execution and results of the self-review, are subject to CBP review and approval. Where CBP and the private party discuss and accept the sampling plan and methodology, or an adjustment to it, the waiver of paragraph (c)(1) of this section applies.

(d) *Offset of overpayments and over-declarations in 19 U.S.C. 1592 penalty cases.* (1) *General.* In conducting any audit authorized under 19 U.S.C. 1509 and this section for the purpose of calculating the loss of duties, taxes, and fees or monetary penalty under any provision of 19 U.S.C. 1592, CBP auditors identifying overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit, as established solely by CBP, will treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or under-declarations also identified on finally liquidated entries, provided that:

(i) The identified overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law, including laws other than customs laws,

(ii) The identified underpayments or under-declarations were not made knowingly and intentionally, and

(iii) All other requirements of this paragraph (d) are met.

(2) *When audited person conducts self-testing under CBP supervision.* Offsetting will apply to self-testing conducted by an audited person under CBP supervision (i.e., during a CBP audit), provided that all requirements of this paragraph (d) are met, CBP approves the self-testing in advance and, upon review of the self-testing, CBP approves its execution and results.

(3) *When a private party submits a prior disclosure.* Offsetting will apply when a private party submits a prior disclosure, provided that the prior disclosure is in accordance with 19 CFR 162.74 and CBP approves the private party's self-review, including its execution and results. CBP's Office of International Trade, Regulatory Audit will review and evaluate all such prior disclosures and approve offsetting where it is satisfied that the requirements of 19 U.S.C. 1509(b)(6) and this paragraph (d) are met.

(4) *Time period and scope determined by CBP; projection when sampling employed.* In conducting an audit under paragraph (d)(1) of this section or authorizing an audited person's self-testing as described in paragraph (d)(2) of this section, CBP will have the sole authority to determine the time period and scope of the audit. In conducting a review of a private party's prior disclosure as described in paragraph (d)(3) of this section, the time period and scope employed will be subject to CBP approval. In each of these circumstances, where statistical sampling is involved, CBP auditors will examine only the selected sample transactions. The results of the sample examination, with respect to properly identified overpayments and over-declarations and properly identified underpayments and under-declarations, will be projected over the universe of transactions to determine the total overpayments and over-declarations that are eligible for offsetting and to determine the total loss of duties, taxes, and fees.

(5) *Same acts, statements, omissions, or entries not required.* Offsetting may be permitted where the overpayments or over-declarations were not made by the same acts, statements, or omissions that caused the underpayments or under-declarations, and is not limited to the same entries that evidence the underpayments or under-declarations, provided that they are within the time period and scope of the audit as established by CBP and as described in paragraph (d)(4) of this section.

(6) *Limitations.* Offsetting will not be allowed with respect to specific overpayments or over-declarations made for the purpose of violating any provision of law, including laws other than customs laws. Offsetting will not be allowed with respect to overpayments or over-declarations resulting from a failure to timely claim or establish a duty allowance or preference. Offsetting will be disallowed entirely where CBP determines that any underpayments or under-declarations identified for offsetting purposes were made knowingly and intentionally.

(7) *Audit report.* Where overpayments or over-declarations have been identified in accordance with paragraph (d)(1) of this section, the audit report will state whether they have been made within the time period and scope of the audit.

(8) *Disallowance determinations referred to Fines, Penalties, and Forfeitures office.* Any determination that offsets will be disallowed where overpayments/over-declarations were made for the purpose of violating any law, or where underpayments or under-declarations were made knowingly and intentionally, will be made by the appropriate Fines, Penalties, and Forfeitures (FP&F) office to which the issue was referred. CBP will notify the audited person of a determination whether to allow offsetting in whole or in part. The FP&F office will issue a notice of penalty under 19 U.S.C. 1592(b) and/or notice of liability for lost duties, taxes, and fees under 19 U.S.C. 1592(d) where it determines that such action is warranted. If the FP&F office issues a notice of penalty, the audited person may file a petition under 19 U.S.C. 1592(b)(2), 19 U.S.C. 1618, and 19 CFR part 171 to challenge the action.

(9) *Refunds limited.* An overpayment of duties and fees will only be credited toward a refund if the circumstances of the overpayment meet the requirements of 19 U.S.C. 1520 or the requirements of 19 U.S.C. 1514(a) pertaining to clerical error, mistake of fact, or other inadvertence in any entry, liquidation, or reliquidation.

(e) *Sampling not evidence of reasonable care.* The fact that entries were previously within the time period and scope of an audit conducted by CBP in which sampling was employed, in any circumstances described in this section, is not evidence of reasonable care by a violator in any subsequent action involving such entries.

(f) *Exception to procedures.* The provisions of paragraph (a) of this section may not apply when a private party submits a prior disclosure under paragraph (d)(3) of this section. Paragraphs (a)(5), (a)(6), (b), (d)(8), and (d)(9) of this section do not apply once CBP and/or ICE commences an

investigation with respect to the issue(s) involved.

Alan D. Bersin,

Commissioner, Customs and Border Protection.

Approved: October 19, 2011.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2011–27511 Filed 10–24–11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0899]

RIN 1625–AA00

Safety Zone; Waverly Country Club Fireworks Display on the Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Willamette River located at the Waverly Country Club for a private event in Portland, Oregon. The safety zone is necessary to help ensure the safety of the maritime public during the displays and will do so by prohibiting persons and vessels from entering the safety zones unless authorized by the Captain of the Port or his designated representatives.

DATES: This rule is effective from 8:30 p.m. until 10:30 p.m. on November 5, 2011 as detailed in the rule.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0899 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0899 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BM1 Silvestre Suga III, Waterways Management Division, Coast Guard MSU Portland; telephone 503–240–9319, e-mail *silvestre.g.suga@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 immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the fireworks launching and display sites. Following normal rulemaking procedures in this case would be impracticable and contrary to public interest since the event will have taken place by the time the notice could be published and comments taken.

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** because immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the fireworks launching and display sites. Following normal rulemaking procedures in this case would be impracticable and contrary to the public interest, as this inherently dangerous event will have taken place by the time notice could be published and comments taken.

Background and Purpose

Fireworks displays create hazardous conditions for the maritime public because of the large number of vessels that congregate near the displays as well as the noise, falling debris, and explosions that occur during the event. The establishment of a safety zone helps ensure the safety of the maritime public by prohibiting persons and vessels from coming too close to the fireworks display and other associated hazards.

Discussion of Rule

This rule establishes a safety zone on the Willamette River in the vicinity of the Waverly Country Club for a private event that will be held on Saturday November 5, 2011. The safety zone will close a section of the Willamette River between two lines; line one starts on the east bank at latitude 45°27′9.13″ N, longitude 122°39′20.99″ W then stretches across the river to the west bank at latitude 45°27′6.78″ N, longitude 122°39′31.31″ W, line two starts twelve hundred feet upstream on the east bank at latitude 45°26′57.09″ N, longitude 122°39′14.35″ W then stretches across the river to the west bank at latitude 45°26′53.81″ N, longitude 122°39′25.40″ W.

Geographically this safety zone covers all waters of the Willamette River in front of the Waverly Country Club extending upriver and downriver 600 feet from the firing site at approximate latitude 45°27′3.60″ N, longitude 122°39′17.99″ W and extending over the river to the west bank in a rectangular shape.

All persons and vessels will be prohibited from entering the safety zones during the dates and times they are effective unless authorized by the Captain of the Port or his designated representative.

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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. 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).

The Coast Guard has made this determination based on the fact that the safety zone will only be 2 hours in duration on one evening. Because of this short duration, the impact on maritime operators is minimal. Before the effective period, we will publish advisories in the Local Notice to Mariners available to users of the river. Maritime traffic will be able to schedule their transits around this safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a

substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: the owners or operators of vessels wishing to transit the safety zone established by this rule. The rule will not have a significant economic impact on a substantial number of small entities because the safety zone will only be in effect for 2 hours late in the evening when vessel traffic is low. Before the effective period, we will publish advisories in the Local Notice to Mariners available to users of the river. Maritime traffic will be able to schedule their transits around this safety zone.

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 affect 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, as supplemented by Executive Order 13566 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–195 to read as follows:

§ 165.T13–195 Safety Zone; Waverly Country Club Fireworks Display on the Willamette River, Portland, OR.

(a) *Location.* This rule establishes a safety zone on the Willamette River in the vicinity of the Waverly Country Club, Portland, Oregon: all waters on the Willamette River between two lines; line one starts on the east bank at latitude 45°27′9.13″ N, longitude 122°39′20.99 W then stretches across the river to the west bank at latitude 45°27′6.78″ N, longitude 122°39′31.31″ W, line two starts twelve hundred feet upstream on the east bank at latitude 45°26′57.09″ N, longitude 122°39′14.35″ W then stretches across the river to the west bank at latitude 45°26′53.81″ N, longitude 122°39′25.40″ W. Geographically this safety zone covers all waters of the Willamette River in front of the Waverly Country Club extending upriver and downriver 600 feet from the firing site at approximate latitude 45°27′3.60″ N, longitude 122°39′17.99″ W and extending over the river to the west bank in a rectangular shape.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, Subpart C, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port or his designated representative. Designated representatives are Coast Guard personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, Subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone detailed in paragraph (a) is effective from 8:30 p.m. until 10:30 p.m. on November 5, 2011.

Dated: September 22, 2011.

B.C. Jones,

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

[FR Doc. 2011–27515 Filed 10–24–11; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[CG Docket No. 11–47; FCC 11–150]

Contributions to the Telecommunications Relay Services Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts rules to implement a provision of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), which requires each provider of interconnected voice over Internet protocol (VoIP) service or non-interconnected VoIP service to begin participating in and contributing to the interstate Telecommunications Relay Services (TRS) Fund in a manner prescribed by regulation that is consistent with and comparable to the obligations of other TRS Fund contributors.

DATES: Effective November 25, 2011.

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

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2075 or e-mail *Rosaline.Crawford@fcc.gov.* For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in document FCC 11–150, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918 or e-mail *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Contributions to the Telecommunications Relay Service Fund*, Report and Order (*Order*), document FCC 11–150, adopted October 7, 2011, released October 7, 2011, in CG Docket No. 11–47.

The full text of document FCC 11–150 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *http://www.bcpiweb.com.* Document FCC 11–150 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/encyclopedia/twenty-first-century-communications-and-video-accessibility-act-0* and at *http://transition.fcc.gov/cgb/dro/trs.html.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

This document contains new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the general public to comment on the information collection requirements contained in document FCC 11–150 as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' *See* 44 U.S.C. 3506(c)(4). In this present document, the Commission has assessed the effects of the rules for contributions to the TRS Fund and finds that the collection of information requirements will not have a significant impact on small business concerns with fewer than 25 employees. The Commission received pre-approval from OMB for the information collection requirements on May 23, 2011, and the information collection requirements were adopted as proposed. *See* OMB Control Number 3060–0855.

Congressional Review Act

The Commission will send a copy of document FCC 11–150 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

Synopsis

1. Document FCC 11–150 implements a provision of the CVAA, Public Law 111–260, 124 Stat. 2751 (2010). The CVAA added a new section 715, 47 U.S.C. 616, to the Communications Act of 1934, as amended (the Act), which

requires each interconnected VoIP service provider and each provider of non-interconnected VoIP service to participate in and contribute to the TRS Fund. Section 715 of the Act also requires the Commission to adopt regulations to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to the TRS Fund. Currently, providers of interstate and international telecommunications services and interconnected VoIP service contribute to the TRS Fund, but non-interconnected VoIP providers do not. In document FCC 11–150, the Commission affirms that TRS Fund contributions are assessed against interstate end-user revenues. Where interstate end-user revenues are generated from non-interconnected VoIP services offered with other (non-VoIP) services, the Commission directs that TRS contributions not be assessed against those revenues unless the providers of such services (1) also offer the non-interconnected VoIP service on a stand-alone basis for a fee; or (2) also offer the non-VoIP services without the non-interconnected VoIP services at a different (discounted) price. Document FCC 11–150 also affirms that only service providers with interstate end-user revenues must contribute a minimum of $25 to the TRS Fund. In addition, document FCC 11–150 addresses registration and reporting requirements, the methodology for calculating interstate end-user revenues by non-interconnected VoIP service providers, and the implementation deadlines for these providers.

Background

2. Section 225 to the Communications Act, 47 U.S.C. 225(b)(1), requires the Commission to ensure that TRS are available to enable persons with hearing or speech disabilities in the United States to make and receive calls. The Commission has recognized and permits compensation for various forms of TRS, including TTY-to-voice, speech-to-speech, captioned telephone relay service, and Internet-based forms of TRS, such as video relay service, Internet protocol (IP) relay, and IP captioned telephone relay service.

3. There are two components to the cost recovery framework for interstate TRS: (1) Collecting contributions which are put into the TRS Fund; and (2) compensating eligible TRS providers from the TRS Fund for the costs of providing eligible TRS services. Carriers and, since 2007, interconnected VoIP service providers contribute to the TRS Fund on the basis of interstate end-user telecommunications and interconnected VoIP revenues. The contribution amount is the product of the service provider's interstate end-user revenues and a contribution factor determined annually by the Commission. Contributors are required to register with the Commission, designate a District of Columbia agent for service of process, and file a completed Telecommunications Reporting Worksheet (FCC Form 499–A) by April 1 of each year to report their interstate end-user revenues.

4. Unlike providers of interconnected VoIP service, providers of ''non-interconnected VoIP service'' have not been required to contribute to the TRS Fund. Nor have non-interconnected VoIP service providers been required to register with the Commission, designate a District of Columbia agent for service of process, or report revenues through the annual filing of FCC Form 499–A for any purpose.

5. On March 3, 2011, the Commission released a Notice of Proposed Rulemaking seeking comment on proposals to implement section 715 of the Act's requirement for VoIP service providers to participate in and contribute to the TRS Fund. *See Contributions to the Telecommunications Relay Services Fund,* Notice of Proposed Rulemaking, published at 76 FR 18490, April 4, 2011 (*TRS Contribution NPRM*).

Definitions

6. As proposed in the *TRS Contribution NPRM,* the Commission amends the TRS rules to adopt the CVAA definition of ''interconnected VoIP service,'' 47 U.S.C. 153(25), as defined in § 9.3 of the Commission's rules, ''as such section may be amended from time to time.'' *See* 47 CFR 9.3 of the Commission's rules.

7. In addition, the Commission adds the definition of ''non-interconnected VoIP service,'' as set forth in the CVAA, 47 U.S.C. 153(36), to the TRS rules at 47 CFR 64.601(a). The CVAA defines ''non-interconnected VoIP service'' as a service that (1) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; (2) requires Internet protocol compatible customer premises equipment; and (3) does not include any service that is an interconnected VoIP service.

Participation in and Contribution to the TRS Fund

8. *Revenue Base.* Currently, contributions to the TRS Fund from carriers and interconnected VoIP service providers are based on ''interstate end-user telecommunications revenues.'' 47 CFR 64.604(c)(5)(iii)(A) of the Commission's rules. To achieve consistency with the obligations of other providers that must contribute to the TRS Fund, the Commission will base all TRS Fund contributions of non-interconnected VoIP service providers only on their interstate end-user revenues at this time. The Commission will not require non-interconnected VoIP service providers who do not generate interstate end-user revenues (*i.e.,* who offer their services for free) to contribute to the TRS Fund. The Commission reserves the right to re-visit ways to assess contributions based on revenue from alternate or additional sources from providers of these technologies (*e.g.,* advertising) to support TRS in the future.

9. Specifically, the Commission requires providers that offer non-interconnected VoIP services on a stand-alone basis for a fee to contribute to the TRS Fund on the basis of their interstate end-user revenues generated from such services. The Commission also requires providers of non-interconnected VoIP services that are offered with other (non-VoIP) services that generate end-user revenues to allocate a portion of those end-user revenues to the non-interconnected VoIP service in two circumstances: (1) When those providers also offer the non-interconnected VoIP service on a stand-alone basis for a fee; or (2) when those providers also offer the other (non-VoIP) services without the non-interconnected VoIP service feature at a different (discounted) price. Such providers may use the safe harbor methods established in the *CPE Bundling Order* for allocating revenues, published at 66 FR 19398, April 6, 2001. The Commission also notes that nothing in document FCC 11–150 disturbs or calls into question the validity of apportioning assessable revenues from bundled services offerings for purposes of Universal Service Fund (USF) contributions, as currently allowed under the *CPE Bundling Order.*

10. For all other providers of non-interconnected VoIP service, the Commission finds good cause to waive their TRS Fund contribution obligations until further notice. In other words, the Commission waives the TRS Fund contribution requirements (registration, reporting, and payment of contributions) for providers of non-interconnected VoIP services other than (A) providers that offer non-interconnected VoIP services on a stand-alone basis for a fee; and (B) providers of non-interconnected VoIP services that are offered with other (non-VoIP)

services that generate end-user revenues (1) when those providers also offer the non-interconnected VoIP service on a stand-alone basis for a fee, or (2) when those providers also offer the other (non-VoIP) services without the non-interconnected VoIP service feature at a different (discounted) price. As the Commission gains experience with the practices of providers of non-interconnected VoIP services, it may re-visit the continued need for this waiver and the extent to which it needs to revise its rules governing these assessments, to ensure consistent and comparable obligations among all TRS Fund contributors.

11. *Minimum Contribution Requirement.* The Commission's current rules do not require telecommunications or interconnected VoIP service providers that have no end-user revenues for a given reporting year to contribute the minimum $25 or a ''de minimis'' amount to the TRS Fund. Because the Commission finds that imposing a minimum contribution requirement for non-interconnected VoIP service providers with no end-user revenues would not be consistent with or comparable to the obligations of other contributors, as directed by the CVAA, it will not require a minimum contribution requirement for these providers.

12. *Contributor Registration.* The Commission requires non-interconnected VoIP service providers with interstate end-user revenues to register with the Commission and designate a District of Columbia agent for service of process. Registration with the Commission includes obtaining an FCC registration number (FRN) from the Commission registration system (CORES), in accordance with the FCC Form 499–A Instructions. The Commission further adopts this registration requirement as part of the TRS rules and also amends 47 CFR 1.47(h) of its rules to make these requirements applicable to non-interconnected VoIP service providers with interstate end-user revenues that are subject to contribution to the TRS Fund.

13. *FCC Form 499–A.* The Commission amends the TRS rules to require non-interconnected VoIP service providers to contribute to the TRS Fund and directs them to use FCC Form 499–A to report their interstate end-user revenues for purposes of TRS Fund contributions. The 2012 version of FCC Form 499–A has a new line 418.4 designated for reporting ''non-interconnected VoIP revenues not included in any other category,'' which shall be used for this purpose. The Commission also modifies TRS rule 47 CFR 64.604(c)(5)(iii)(A) of its rules by replacing the phrase ''interstate end-user telecommunications revenues'' with ''interstate end-user revenues'' and by deleting the last sentence. These changes will serve to distinguish non-interconnected VoIP service revenues from telecommunications revenues when these are reported on FCC Form 499–A.

14. *Interstate Revenue Safe Harbor.* Because some interconnected VoIP service providers may not have the ability to identify whether their calls are interstate, the Commission's rules permit an interconnected VoIP service provider to use actual revenues, a traffic study, or the interim safe harbor percentage of 64.9 (to estimate the interstate portion of total end-user revenues) for the purposes of reporting interstate end-user revenues on the FCC Form 499–A and making TRS Fund contributions. The Commission now concludes that it is also appropriate to permit non-interconnected VoIP service providers to report their interstate end-user revenues using actual revenues, a traffic study, or the interim 64.9 percent safe harbor.

15. *Billed or Collected Revenue.* The Commission concludes that, consistent with the manner in which USF assessable revenues are determined, the contribution base for TRS will be determined from gross billed revenues, minus uncollectible revenues/bad debt expenses. Revising calculations in this manner will achieve greater consistency in the administration of the USF and TRS Fund.

16. *Conforming Amendments to Rules.* The Commission replaces the terms ''carrier,'' ''carriers,'' and ''service providers'' in 47 CFR 64.604(c)(5)(iii)(B) of its rules with the term ''contributor(s).'' Similarly, the Commission replaces the terms ''interstate end-user telecommunications revenues'' and ''interstate end-user revenues of such services'' in 47 CFR 64.604(c)(5)(iii)(B) of its rules with the term ''revenues subject to contributions.''

17. *Implementation Deadlines.* Section 715 of the Act requires the Commission to ensure that each provider of interconnected and non-interconnected VoIP service participates in and contributes to the TRS Fund within one year after the CVAA's enactment, *i.e.,* by October 8, 2011. Interconnected VoIP service providers have already met this statutory requirement because they have been reporting revenues and contributing to the TRS Fund on an annual basis since 2007. The Commission adopts the following deadlines for non-interconnected VoIP service providers that have interstate end-user revenues that are subject to contribution to the TRS Fund:

- By December 31, 2011, non-interconnected VoIP service providers shall register with the Commission and designate a District of Columbia agent for service of process using FCC Form 499–A in accordance with the form's instructions.
- By April 1, 2012, non-interconnected VoIP service providers shall complete and submit FCC Form 499–A to report fourth-quarter 2011 interstate end-user revenues, which shall be the basis for TRS Fund contributions for the 2012–2013 funding period.

Final Regulatory Flexibility Certification

18. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' *See* 5 U.S.C. 603. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

19. The Commission adopts rules to require providers of non-interconnected VoIP service to contribute to the interstate TRS Fund. Non-interconnected VoIP services enable real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol, requires Internet protocol compatible customer premises equipment, and does not include any service that is an interconnected VoIP service. 47 U.S.C. 153(36). TRS are services that enable individuals who are deaf, hard of hearing, deaf-blind, or who have a speech disability to make and receive calls. 47 U.S.C. 225(b)(1). There are two components to the cost recovery framework for interstate TRS: (1) Collecting contributions which are put into the interstate TRS Fund; and (2) compensating TRS providers from the

TRS Fund for the costs of providing TRS services. Document FCC 11–150 addresses the first component—contributions to the interstate TRS Fund.

20. In summary, the rules adopted in document FCC 11–150 require providers of non-interconnected VoIP services that generate interstate end-user revenues to take the following actions: Register with the Commission; designate a District of Columbia agent for service of process; complete and submit a Telecommunications Reporting Worksheet (FCC Form 499–A) annually to report their interstate end-user revenues; and contribute approximately one percent of their interstate end-user revenues or a minimum $25 to the TRS Fund. As described more fully below, these actions will not have a significant economic impact on providers of non-interconnected VoIP services with interstate end-user revenues. Further, the rules adopted in document FCC 11–150 will have no economic impact on providers of free non-interconnected VoIP services, because those providers are not required to take any action.

21. In the *TRS Contribution NPRM,* published at 76 FR 18490, April 4, 2011, the Commission concluded that no Initial Regulatory Flexibility Analysis was required because, even if a substantial number of small entities might be affected by the proposed rules, the cumulative economic impact on any entity required to participate in and contribute to the TRS Fund will be *de minimis.* The Commission now certifies that the rules adopted in document FCC 11–150 will not have a significant economic impact on a substantial number of small entities.

22. The rules adopted in document FCC 11–150 implement section 103(b) of the CVAA, Public Law 111–260, section 103(b), 124 Stat. 2751, 2755 (2010). Section 103(b) of the CVAA adds section 715 to the Communications Act. 47 U.S.C. 616. Section 715 of the Act requires each provider of interconnected VoIP service provider or non-interconnected VoIP service to participate in and contribute to the interstate TRS Fund by October 8, 2011, in a manner that is consistent with and comparable to the obligations of other TRS Fund contributors. Carriers have been contributing to the TRS Fund since its inception. Providers of interconnected VoIP services have been contributing to the TRS Fund since 2007. The CVAA, in effect, affirms the contribution requirement for providers of interconnected VoIP services, and extends this contribution requirement to non-interconnected VoIP service providers.

23. Currently, all TRS Fund contributors must register with the Commission and designate a District of Columbia agent for service of process. Contributors file a completed FCC Form 499–A annually to report their interstate end-user revenues. Contributions to the TRS Fund are made on the basis of interstate end-user revenues. The amount of interstate end-user revenues reported on FCC Form 499–A is multiplied by a contribution factor, determined annually by the Commission, to compute the amount of the TRS Fund contribution for that year. Historically, contributions to the TRS Fund have been slightly less than one percent of interstate end-user revenues.

24. The rules adopted in document FCC 11–150 require non-interconnected VoIP service providers with interstate end-user revenues to also register with the Commission and designate a District of Columbia agent for service of process using FCC Form 499–A in accordance with its instructions. These providers must also complete and submit FCC Form 499–A annually to report their interstate end-user revenues. It has previously been estimated that filling out the FCC Form 499–A takes 13.5 hours (*i.e.,* less than two work days of a single full-time employee) annually. Thus, completing and submitting FCC Form 499–A does not have a significant economic impact upon small entities.

25. Document FCC 11–150 affirms that contributions to the TRS Fund are made on the basis of interstate end-user revenues. Non-interconnected VoIP service providers that offer their services for free have no interstate end-user revenues and, therefore, no requirement to register with the Commission, designate a District of Columbia agent for service of process, complete and submit a FCC Form 499–A, or contribute any amount to the TRS Fund. Consequently, these rules will not have any economic impact on providers of free non-interconnected VoIP services.

26. TRS Fund contributions will be assessed against interstate end-user revenues from non-interconnected VoIP services provided as a stand-alone offering for a fee (not for free). TRS Fund contributions will also be assessed against the interstate end-user revenues generated from other (non-VoIP) services (*e.g.,* a video gaming service) that have a non-interconnected VoIP service feature or function: (1) When these providers also offer the non-interconnected VoIP service on a stand-alone basis for a fee; or (2) when these providers also offer the other (non-VoIP) services without the non-interconnected VoIP service feature at a different (discounted) price. Such providers may use the safe harbor methods identified in the *CPE Bundling Order* for allocating and reporting revenues. *See CPE Bundling Order,* published at 66 FR 19393, April 16, 2001. Historically, contributions to the TRS Fund have been slightly less than one percent of revenues. The contribution factor for the 2011–2012 TRS Fund year is 1.058 percent. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program,* Order, published at 76 FR 44326, July 25, 2011. This contribution rate will not have a significant economic impact upon small entities.

27. Document FCC 11–150 also affirms that service providers with interstate end-user revenues must contribute a minimum of $25 to the TRS Fund. *See* 47 CFR 64.604(c)(5)(iii)(B) of the Commission's rules. A $25 contribution does not constitute a significant economic impact on small entities.

28. Therefore, based on the foregoing analysis of all foreseeable economic impacts, the Commission certifies that the requirements of document FCC 11–150 will not have a significant economic impact on a substantial number of small entities.

29. The Commission will send a copy of document FCC 11–150, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, document FCC 11–150 and the final certification will be sent to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 605(b).

Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), 4(j), 225, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, and 616, document FCC 11–150 *is adopted.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 11–150, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 64 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

■ 2. In § 1.47, revise paragraph (h) to read as follows:

§ 1.47 Service of documents and proof of service.

* * * * *

(h) Every common carrier and interconnected VoIP provider, as defined in § 54.5 of this chapter, and non-interconnected VoIP provider, as defined in § 64.601(a)(15) of this chapter and with interstate end-user revenues that are subject to contribution to the Telecommunications Relay Service Fund, that is subject to the Communications Act of 1934, as amended, shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all notices, process, orders, decisions, and requirements of the Commission may be made for and on behalf of such carrier, interconnected VoIP provider, or non-interconnected VoIP provider in any proceeding before the Commission. Such designation shall include, for the carrier, interconnected VoIP provider, or non-interconnected VoIP provider and its designated agents, a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address. Such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall additionally list any other names by which it is known or under which it does business, and, if the carrier, interconnected VoIP provider, or non-interconnected VoIP provider is an affiliated company, the parent, holding, or management company. Within thirty (30) days of the commencement of provision of service, such carrier, interconnected VoIP provider, or non-interconnected VoIP provider shall file such information with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. Such carriers, interconnected VoIP providers, and non-interconnected VoIP providers may file a hard copy of the relevant portion of the Telecommunications Reporting Worksheet, as delineated by the Commission in the **Federal Register,** to satisfy this requirement. Each Telecommunications Reporting Worksheet filed annually by a common carrier, interconnected VoIP provider, or non-interconnected VoIP provider must contain a name, business address, telephone or voicemail number, facsimile number, and, if available, Internet e-mail address for its designated agents, regardless of whether such information has been revised since the previous filing. Carriers, interconnected VoIP providers, and non-interconnected VoIP providers must notify the Commission within one week of any changes in their designation information by filing revised portions of the Telecommunications Reporting Worksheet with the Chief of the Enforcement Bureau's Market Disputes Resolution Division. A paper copy of this designation list shall be maintained in the Office of the Secretary of the Commission. Service of any notice, process, orders, decisions or requirements of the Commission may be made upon such carrier, interconnected VoIP provider, or non-interconnected VoIP provider by leaving a copy thereof with such designated agent at his office or usual place of residence. If such carrier, interconnected VoIP provider, or non-interconnected VoIP provider fails to designate such an agent, service of any notice or other process in any proceeding before the Commission, or of any order, decision, or requirement of the Commission, may be made by posting such notice, process, order, requirement, or decision in the Office of the Secretary of the Commission.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 3. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k), 227; secs. 404(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, and 620, unless otherwise noted.

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

■ 4. The authority citation for subpart F is revised to read as follows:

Authority: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

■ 5. In § 64.601, revise paragraph (a)(10), redesignate paragraphs (a)(15) through (a)(28) as paragraphs (a)(16) through (a)(29), and add new paragraph (a)(15) to read as follows:

§ 64.601 Definitions and provisions of general applicability.

(a) * * *

(10) *Interconnected VoIP service.* The term ''interconnected VoIP service'' has the meaning given such term under § 9.3 of title 47, Code of Federal Regulations, as such section may be amended from time to time.

* * * * *

(15) *Non-interconnected VoIP service.* The term ''non-interconnected VoIP service''—

(i) Means a service that—

(A) Enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol; and

(B) Requires Internet protocol compatible customer premises equipment; and

(ii) Does not include any service that is an interconnected VoIP service.

* * * * *

6. In § 64.604, revise paragraphs (c)(5)(iii)(A) and (c)(5)(iii)(B), remove paragraph (c)(5)(iii)(D), redesignate paragraph (c)(5)(iii)(C) as paragraph (c)(5)(iii)(D), and add new paragraph (c)(5)(iii)(C) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(A) *Contributions.* Every carrier providing interstate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund on the basis of interstate end-user revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contributions to the TRS fund shall be the product of their

subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to the contributors' revenues subject to contribution. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject contributor that has revenues subject to contribution must contribute at least $25 per year. Contributors whose annual contributions total less than $1,200 must pay the entire contribution at the beginning of the contribution period. Contributors whose contributions total $1,200 or more may divide their contributions into equal monthly payments. Contributors shall complete and submit, and contributions shall be based on, a ''Telecommunications Reporting Worksheet'' (as published by the Commission in the **Federal Register**). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer and Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

(C) *Registration Requirements for Providers of Non-Interconnected VoIP Service.*

(*1*). Applicability. A non-interconnected VoIP service provider that will provide interstate service that generates interstate end-user revenue that is subject to contribution to the Telecommunications Relay Service Fund shall file the registration information described in paragraph (c)(5)(iii)(C)(*2*) of this section in accordance with the procedures described in paragraphs (c)(5)(iii)(C)(*3*) and (c)(5)(iii)(C)(*4*) of this section. Any non-interconnected VoIP service provider already providing interstate service that generates interstate end-user revenue that is subject to contribution to the Telecommunications Relay Service Fund on the effective date of these rules shall submit the relevant portion of its FCC Form 499–A in accordance with paragraphs (c)(5)(iii)(C)(*2*) and (*3*) of this section.

(*2*). Information required for purposes of TRS Fund contributions. A non-interconnected VoIP service provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(*1*) of this section shall provide the following information:

(*i*) The provider's business name(s) and primary address;

(*ii*) The names and business addresses of the provider's chief executive officer, chairman, and president, or, in the event that a provider does not have such executives, three similarly senior-level officials of the provider;

(*iii*) The provider's regulatory contact and/or designated agent;

(*iv*) All names that the provider has used in the past; and

(*v*) The state(s) in which the provider provides such service.

(*3*). Submission of registration. A provider that is subject to the registration requirement pursuant to paragraph (c)(5)(iii)(C)(*1*) of this section shall submit the information described in paragraph (c)(5)(iii)(C)(*2*) of this section in accordance with the Instructions to FCC Form 499–A. FCC Form 499–A must be submitted under oath and penalty of perjury.

(*4*). Changes in information. A provider must notify the Commission of any changes to the information provided pursuant to paragraph (c)(5)(iii)(C)(*2*) of this section within no more than one week of the change. Providers may satisfy this requirement by filing the relevant portion of FCC Form 499–A in accordance with the Instructions to such form.

* * * * *

[FR Doc. 2011–27480 Filed 10–24–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 10–153; RM–11602; DA 11–1674]

Facilitating the use of Microwave for Wireless Backhaul and Other Uses and Providing Additional Flexibility To Broadcast Auxiliary Service and Operational Fixed Microwave Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** on Tuesday, September 27, 2011 (76 FR 59559), of a *Report and Order and Memorandum Opinion and Order*, FCC 11–120, adopted and released on August 9, 2011. This document corrects Appendix A by correcting adopted § 101.147(p).

DATES: Effective on October 27, 2011.

FOR FURTHER INFORMATION CONTACT: John Schauble, Wireless Telecommunications Bureau, Broadband Division, at 202–418–0797 or by e-mail to *John.Schauble@fcc.gov.*

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** on September 27, 2011 (76 FR 59559), adopting final rules in § 101.147(p). In the **Federal Register** document FCC 11–120, published on September 27, 2011 (76 FR 59559), the table under § 101.147(p)(2)(v) was incorrect. This document makes the following correction.

PART 101 [CORRECTED]

§ 101.147 [Corrected]

■ In the FR Doc. 2011–23001, published on September 27, 2011 (76 FR 59559), make the following correction. On page 59574, in the first and second columns, § 101.147(p)(2)(v) is corrected to read as follows:

(v) 50 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
12725	12950
12775	13000
12825	13050
12875	13100

Federal Communications Commission.

Blaise A. Scinto,

Chief, Broadband Division, Wireless Telecommunications Bureau.

[FR Doc. 2011–27585 Filed 10–24–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523 and 535

[NHTSA 2010–0079; EPA–HQ–OAR–2010–0162; FRL–9455–1]

RIN 2127–AK74

Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule regulations (49 CFR parts 523 and 535), which were published in the **Federal Register** of Thursday, September 15, 2011 (76 FR 57106). The regulations established fuel efficiency standards for medium- and heavy-duty engines and vehicles, as prescribed under the Energy Independence and Security Act (49 U.S.C. 32902(k)(2)).

DATES: *Effective Date:* November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Lily Smith, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

Background

NHTSA and EPA published in the **Federal Register** of September 15, 2011, final rules to establish a comprehensive Heavy-Duty National Program that will increase fuel efficiency and reduce greenhouse gas emissions for on-road heavy-duty vehicles, responding to the President's directive on May 21, 2010, to take coordinated steps to produce a new generation of clean heavy-duty vehicles.

Need for Correction

As published, the final regulations inadvertently inserted a new definition for ''base tire'' in 49 CFR part 523 instead of 49 CFR part 535. The new definition was intended to be applied to heavy-duty vehicles. It was not intended to replace the definition of ''base tire'' for light-duty vehicles, as its current location would suggest. To correct the mistake, NHTSA is moving the definition to its original intended location in 49 CFR part 535, and adding the words ''for heavy-duty vehicles'' to alleviate any confusion. The previous definition for ''base tire'' for light duty vehicles will be restored, and the words ''for passenger automobiles, light trucks and medium-duty passenger vehicles'' will be added.

List of Subjects in 49 CFR Parts 523 and 535

Fuel efficiency.

Accordingly, 49 CFR parts 523 and 535 are corrected by making the following correcting amendments:

PART 523—VEHICLE CLASSIFICATION

■ 1. The authority citation for part 523 continues to read as follows:

Authority: 49 U.S.C. 32901, delegation of authority at 49 CFR 1.50.

■ 2. In § 523.2, revise the definition of ''Base tire'' to read as follows:

§ 523.2 Definitions.

* * * * *

Base tire for passenger automobiles, light trucks and medium-duty passenger vehicles means the tire specified as standard equipment by a manufacturer on each vehicle configuration of a model type.

* * * * *

PART 535—MEDIUM- AND HEAVY-DUTY VEHICLE FUEL EFFICIENCY PROGRAM

■ 3. The authority citation for part 535 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

■ 4. In § 535.4, add a definition of ''Base tire'' to read as follows:

§ 535.4 Definitions.

* * * * *

Base tire for heavy-duty vehicles means the tire specified as standard equipment by a manufacturer on each subconfiguration of a model type.

Issued: October 18, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, Department of Transportation.

[FR Doc. 2011–27502 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907301205–0289–02]

RIN 0648–XA767

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to the Atlantic Herring Management Area 1A Sub-Annual Catch Limit

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS adjusts the 2011 Fishing Year sub-annual catch limit for Atlantic Herring Management Area 1A due to an under-harvest in the New Brunswick weir fishery. This action complies with the 2010–2012 specifications and management measures for the Atlantic Herring Fishery Management Plan.

DATES: Effective November 1, 2011, through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978–675–2179, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of the overfishing limit, acceptable biological catch (ABC), annual catch limit (ACL), optimum yield (OY), domestic harvest and processing, U.S. at-sea processing, border transfer and sub-ACLs for each management area. The 2011 Domestic Annual Harvest is 91,200 metric tons (mt); the 2011 sub-ACL allocated to Area 1A is 26,546 mt and 0 mt of the sub-ACL is set aside for research (75 FR 48874, August 12, 2010). Due to the variability of Canadian catch in the New Brunswick weir fishery, a portion of the buffer between ABC and OY (the buffer to account for Canadian catch) is allocated to Area 1A, provided New Brunswick weir landings are lower than the amount specified in the buffer.

The NMFS Regional Administrator is required to monitor the fishery landings in the New Brunswick weir fishery each year. If the New Brunswick weir fishery landings through October 15 are less than 9,000 mt, then 3,000 mt of the weir fishery allocation is added to the Area 1A sub-ACL in November of the same

year. When such a determination is made, NMFS is required to publish a notification in the **Federal Register** to adjust the Area 1A sub-ACL for the remainder of the fishing year (FY).

The Regional Administrator has determined, based on the best available information, that the New Brunswick weir fishery landings for FY 2011 through October 15, 2011, were 3,601 mt. Therefore, effective November 1, 2011, 3,000 mt will be allocated to the Area 1A sub-ACL, increasing the FY 2011 Area 1A sub-ACL from 26,546 mt to 29,546 mt. This allocation of 3,000 mt to Area 1A will be taken into consideration when NMFS projects that catch will reach 95 percent of the Area 1A sub-ACL.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it is impracticable and contrary to the public interest. This action increases the sub-ACL for Area 1A by 3,000 mt (from 26,546 mt to 29,546 mt) through December 31, 2011. The regulations at § 648.201(f) require such action to help mitigate some of the negative economic effects associated with the recent reduction in the Area 1A sub-ACL (40 percent less than in 2009). The herring fishery extends from January 1 to December 31. Data indicate the New Brunswick weir fishery landed 3,601 mt through October 15, 2011. There is a limited amount of time between October 15 (when the New Brunswick weir fishery slows for the year) and the end of the U.S. herring fishing year on December 31. If implementation of this Area 1A sub-ACL increase is delayed to solicit prior public comment, the increase may not be effective prior to the end of the 2011 fishing year and the 3,000 mt allocation would not be available for harvest. Additionally, the availability of herring in Area 1A is seasonal. As the end of the fishing year approaches, herring can disperse or move out of Area 1A, and/or the approach of winter weather can hinder fishery access to herring in Area 1A. The best available information indicates that current catch is close to 95 percent of the Area 1A sub-ACL. If implementation of this increase is delayed to solicit prior public comment, herring may no longer be available to the fishery for harvest in Area 1A, thereby undermining the intended economic benefits associated with this action. NMFS further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: October 20, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–27593 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA782

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2011 allocation of Pacific ocean perch in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 20, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The allocation of Pacific ocean perch, in the Eastern Aleutian District, allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery was established as 495 metric tons (mt) by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement 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 a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Pacific ocean perch fishery in the Eastern Aleutian District for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 19, 2011. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 20, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–27604 Filed 10–20–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA784

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Crab Prohibited Species Catch Allowances in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of the 2011 crab prohibited species catch (PSC) allowances from the Bering Sea and Aleutian Islands trawl limited access sector to the Amendment 80 cooperatives in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the Amendment 80 cooperatives to fully harvest their 2011 groundfish allocations.

DATES: Effective October 25, 2011, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Administrator, Alaska Region, NMFS, has also determined that 259,000 crabs of Zone 1 *C. bairdi* tanner crab PSC, 750,000 crabs of Zone 2 *C. bairdi* tanner crab PSC, 37,000 crabs of Zone 1 red king crab PSC, and 1,300,000 crabs of *C. opilio* Bycatch Limitation Zone (COBLZ) *C. opilio* tanner crab PSC from the BSAI trawl limited access sector will not be needed to support BSAI trawl limited access fisheries. Therefore, in accordance with § 679.91(f)(5), NMFS is reallocating these crab PSC amounts from the BSAI trawl limited access sector to the Amendment 80 cooperatives in the BSAI.

In accordance with § 679.91(f)(1), NMFS will reissue cooperative quota permits for the reallocated crab PSC following the procedures set forth in § 679.91(f)(4) and § 679.91(f)(5).

The harvest specifications for crab PSC allowances included in the final harvest specifications for crab in the BSAI (76 FR 11139, March 1, 2011) are modified as follows in Tables 8a, 8c, and 8d:

TABLE 8a—FINAL 2011 AND 2012 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

PSC species	Total non-trawl PSC	Non-trawl PSC remaining after CDQ PSQ [1]	Total trawl PSC	Trawl PSC remaining after CDQ PSQ [1]	CDQ PSQ reserve [1]	Amendment 80 sector		BSAI trawl limited access fishery	
						2011	2012	2011	2012
Halibut mortality (mt) BSAI	900	832	3,675	3,349	393	2,375	2,325	875	875
Herring (mt) BSAI	n/a	n/a	2,273	n/a	n/a	n/a	n/a	n/a	n/a
Red king crab (animals) Zone 1 [1]	n/a	n/a	197,000	175,921	21,079	130,432	87,925	16,797	53,797
C. opilio (animals) COBLZ [2]	n/a	n/a	8,310,480	7,421,259	889,221	5,175,381	3,647,549	1,085,193	2,385,193
C. bairdi crab (animals) Zone 1 [2]	n/a	n/a	830,000	741,190	88,810	590,608	312,115	89,285	348,285
C. bairdi crab (animals) Zone 2	n/a	n/a	2,520,000	2,250,360	269,640	1,315,966	532,660	303,394	1,053,394

[1] Section 679.21(e)(3)(*i*)(A)(*2*) allocates 326 mt of the trawl halibut mortality limit and § 679.21(e)(4)(*i*)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.
[2] Refer to § 679.2 for definitions of zones.
[3] Sector apportionments may not total precisely due to rounding.

TABLE 8c—FINAL 2011 AND 2012 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR AND NON-TRAWL FISHERIES

BSAI trawl limited access fisheries	Prohibited species and area [1]				
	Halibut mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
2011					
Yellowfin sole	167	14,799	1,022,610	75,172	289,709
Rock sole/flathead sole/other flatfish [2]	0	0	0	0	0
Turbot/arrowtooth/sablefish [3]	0	0	0	0	0
Rockfish April 15–December 31	5	0	1,738	0	244
Pacific cod	453	1,873	43,460	13,027	12,219
Pollock/Atka mackerel/other species	250	125	17,384	1,086	1,222
Total BSAI trawl limited access PSC	875	16,797	1,085,193	89,285	303,394

Non-trawl fisheries	Catcher/processor	Catcher vessel
Pacific cod—Total	760	15
January 1–June 10	455	10
June 10–August 15	190	3

Non-trawl fisheries						
August 15–December 31	115	2				
Other non-trawl—Total		58				
May 1–December 31		58				
Groundfish pot and jig		Exempt				
Sablefish hook-and-line		Exempt				
Total non-trawl PSC		833				
BSAI trawl limited access fisheries	Prohibited species and area [1]					
	Halibut mortality (mt) BSAI		Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
					Zone 1	Zone 2
2012						
Yellowfin sole		167	47,397	2,247,640	293,234	1,005,879
Rock sole/flathead sole/other flatfish [2]		0	0	0	0	0
Turbot/arrowtooth/sablefish [3]		0	0	0	0	0
Rockfish April 15–December 31		5	0	3,821	0	849
Pacific cod		453	6,000	95,523	50,816	42,424
Pollock/Atka mackerel/other species [4]		250	400	38,209	4,235	4,242
Total BSAI trawl limited access PSC		875	53,797	2,385,193	348,285	1,053,394
Non-trawl fisheries	Catcher/ processor	Catcher vessel				
Pacific cod—Total	760	15				
January 1–June 10	455	10				
June 10–August 15	190	3				
August 15–December 31	115	2				
Other non-trawl—Total		58				
May 1–December 31		58				
Groundfish pot and jig		Exempt				
Sablefish hook-and-line		Exempt				
Total non-trawl PSC		833				

[1] Refer to § 679.2 for definitions of areas.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.
[3] Arrowtooth flounder for PSC monitoring includes Kamchatka flounder.
[4] "Other species" for PSC monitoring includes sculpins, sharks, skates, and octopuses.
[5] Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 8d—FINAL 2011 PROHIBITED SPECIES BYCATCH ALLOWANCE FOR THE BSAI AMENDMENT 80 COOPERATIVES

Cooperative	Prohibited species and zones [1]				
	Halibut ≤mortality (mt) BSAI	Red king crab (animals) Zone 1	*C. opilio* (animals) COBLZ	*C. bairdi* (animals)	
				Zone 1	Zone 2
Alaska Seafood Cooperative	1,643	88,830	3,341,355	415,769	907,979
Alaska Groundfish Cooperative	732	41,602	1,834,026	174,839	407,987

[1] Refer to § 679.2 for definitions of zones.
[2] Sector apportionments may not total precisely due to rounding.

This will enhance the socioeconomic well-being of harvesters of groundfish dependent upon these PSC allowances. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch and stated future harvesting intent of BSAI trawl limited access sector fisheries and, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperatives that participates in this BSAI fishery. The Regional Administrator also has determined that this action will create no threats of exceeding TACs for any species or species group.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement 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 requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of crab PSC allowances from the BSAI trawl limited access sector to the Amendment 80 cooperatives in the BSAI. Since the fisheries are currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of these fisheries, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 17, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: October 20, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–27606 Filed 10–20–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA783

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Bering Sea subarea and Eastern Aleutian district (BS/EAI) of the Bering Sea and Aleutian Island management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2011 total allowable catch (TAC) of Atka mackerel in these areas allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 20, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2011 TAC of Atka mackerel, in the BS/EAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 2,859 metric tons by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the BS/EAI by vessels participating in the BSAI trawl limited access fishery.

After the effective dates of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement 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 a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel fishery in the BS/EAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 19, 2011. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 20, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–27609 Filed 10–20–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 206
Tuesday, October 25, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2008–0055]

RIN 0579–AD53

Controlled Import Permits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of plants and plant products by establishing the controlled import permit as a single type of authorization for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes. Currently, some sections of the regulations provide for those articles to be imported under a departmental permit, while other sections provide for their importation under administrative instructions or conditions specified by the Administrator or Deputy Administrator. This action would consolidate and harmonize the conditions for obtaining authorization for the importation of otherwise prohibited or restricted plant material for scientific or certain other purposes.

DATES: We will consider all comments that we receive on or before December 27, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2008-0055-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2008–0055, 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-2008-0055* 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.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William Aley, Senior Import Specialist, Plant Health Programs, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–5057.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in 7 CFR part 319, Foreign Quarantine Notices, prohibit or restrict the importation into the United States of certain plants and plant products to prevent plant pests and noxious weeds from being introduced into and spread within the United States.

These regulations are administered and enforced by the Plant Protection and Quarantine program (PPQ) of the Animal and Plant Health Inspection Service (APHIS) under the authority of the Plant Protection Act (7 U.S.C. 7701 *et seq.*). The regulations in part 319 designate specific articles as prohibited or restricted, and assign conditions to their movement, if allowed, into the United States according to the risks posed by each article to agriculture in the United States.

The current regulations contain provisions for several different means of authorizing the importation of plants and plant products. These means of authorization have been used to allow restricted articles to be imported under conditions that differ from the generally applicable provisions of the particular subpart; other types have been used to authorize the importation of articles that would otherwise be prohibited under the regulations.

The means of authorizing these types of movements that is most commonly found in the regulations is the departmental permit. In § 319.40–1, we define a departmental permit as ''a document issued by the Administrator authorizing the importation of a regulated article for experimental, scientific, or educational purposes.'' The departmental permit has been used to allow researchers and scientists affiliated with the United States Department of Agriculture (USDA) to import prohibited or restricted articles for scientific, analytical, experimental, or research purposes. It is currently available under several subparts of the regulations. In other areas of the regulations, we have referred to the departmental permit when we have stated that a regulated article may be allowed to be imported ''by the U.S. Department of Agriculture for experimental or scientific purposes.'' In still other areas of the regulations, the regulations state that, under certain circumstances, regulated articles may be imported under conditions ''modified to be less stringent'' than those contained in the regulations.

In recent years, the number of requests to import, for research purposes, articles that are otherwise prohibited or restricted has increased as the number and types of possible uses for such articles in the United States has expanded. Also, entities requesting to import these articles now include private scientific and academic laboratories and researchers, and commercial and other nongovernmental organizations.

We recognize that research and investigations concerning restricted or prohibited plant material may benefit agricultural interests in the United States in several ways. Such benefits may include the introduction of plants or varieties or cultivars of plants adaptable to certain environments or resistant to domestic plant pests in the United States, suitable to consumers in the United States, or with value to certain markets. Other benefits may include the establishment of new markets, the introduction of new plant varieties, or trade opportunities.

We are committed to making our permit procedures found in the various subparts of the regulations consistent according to the plant pest risks associated with the plant material and its intended use. We are also committed to making our regulations more

transparent and easier to use and implement.

Therefore, we are proposing to amend the regulations in part 319 to standardize the type of authorization used to permit the importation of plants and plant products for experimental, therapeutic, or developmental purposes. We would also amend these portions of the regulations that contain outdated language or that refer to procedures for importation that we believe pose unnecessary risks to agriculture in the United States.

We are proposing to establish the controlled import permit (CIP) as the permit that would be used in place of departmental permits and the other types of authorizations discussed previously that we have used to allow the importation of otherwise prohibited articles or of articles under different conditions than those found in the regulations. We are also proposing to use the CIP as the form of permit required for the importation of plant materials for postentry quarantine.

We propose to define *controlled import permit* as ''a written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6.''

The CIP would be issued based on consideration of the plant pest risks of the imported plant material, whether such risks can be mitigated sufficiently, the intended use of the plant material, and the plant pest risks associated with such use. We would also consider the taxon of the plant material and country of origin. The CIP would be available to all entities in the United States and no longer limited to researchers and scientists affiliated with the USDA.

The CIP would be issued only for articles subject to the regulations in part 319; we would not provide for the issuance of a CIP for the movement of plant pests regulated under 7 CFR part 330, genetically engineered plant material regulated under 7 CFR part 340, noxious weeds regulated under 7 CFR part 360, or seeds regulated under 7 CFR part 361. We believe that the restrictions imposed on the movement of these articles by the regulations in parts 330, 340, 360, and 361 are effective in preventing the introduction and dissemination of plant pests or noxious weeds into or within the United States.

General Requirements for a Controlled Import Permit

We would add a new ''Subpart—Controlled Import Permits'' (§ 319.6) that would contain the general requirements regarding the proposed CIP.

In paragraph (a) of § 319.6, we would define the terms *Administrator, developmental purposes, experimental purposes,* and *therapeutic purposes,* the latter three being the purposes for which the CIP may be issued. We would define *Administrator* as the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead. *Developmental purposes* would be defined as the evaluation, monitoring, or verification of plant material for plant health risks and/or the adaptability of the material for certain uses or environments. *Experimental purposes* would be defined as scientific testing of plant material which utilizes collected data and employs analytical processes under controlled conditions to create qualitative or quantitative results. We would define *therapeutic purposes* as the application of specific scientific processes designed to eliminate, isolate, or remove potential plant pests or diseases.

An application for a CIP could be obtained through any of the means currently available for applying for other types of permits to import regulated plant material, *i.e.,* through the Internet using the APHIS ePermits Web site or using applications obtained from APHIS headquarters or from local offices of PPQ; paper applications could be submitted by fax or by mail. The regulations in § 319.6(c) would provide the necessary mailing address, fax number, and the address of the APHIS ePermits Web site. An application would have to be submitted at least 60 days prior to the proposed arrival of the article at the port of entry.

The application for a CIP would have to contain the following information:

- Name, address in the United States, and contact information of the applicant;
- Identity (common and botanical [genus and species] names) of the plant material to be imported; country of origin and country shipped from;
- Intended experimental, therapeutic, or developmental purpose for the importation; and
- Intended ports of departure and entry; quantity of importation; means of conveyance; estimated date of arrival.

This information would allow us to evaluate the risks associated with the proposed importation. A CIP would be issued only if APHIS determines that the plant pest risks associated with the plant material and the intended experimental, therapeutic, or developmental use of the plant material can be effectively mitigated. The CIP would contain the applicable conditions for importation and subsequent handling of the plant material if it is deemed eligible for importation into the United States.

With limited exceptions, plant material to be offered for importation under a CIP would have to be selected from apparently disease-free and pest-free sources, and be free of foreign matter or debris, other prohibited plants, noxious weed seeds, soil, living organisms such as parasitic plants, pathogens, insects, snails and mites, and other prohibited matter. The plant material would also have to be free of fungicide, insecticide, pesticide, coating, dipping, spraying, or other applied treatments that would make the consignment difficult or hazardous to inspect. Similarly, plant materials could not be wrapped or otherwise packaged in a manner that impedes or prevents adequate inspection or treatment at the port of entry.

Although we would generally require all material imported under a CIP to be apparently disease-free and pest-free, under certain circumstances and for specific purposes, we may permit plant material to be imported under a CIP for scientifically approved treatment therapies. For example, we may permit the importation under a CIP of plant material not considered free of plant pests to an approved facility capable of applying approved scientific techniques to eliminate plant pests and verifying freedom from plant pests.

All plant material offered for importation under a CIP would have to be moved in an enclosed container or one completely enclosed by a covering adequate to prevent the possible escape or introduction of plant pests during shipment. Any packing material used in the consignment would have to meet the requirements of § 319.37–9, and wood packing material used in the consignment would have to meet the requirements of § 319.40–3(b) and (c). The CIP would identify the manner in which the consignment is to be shipped (*e.g.,* as cargo, by mail, as air freight). Under certain circumstances, we may allow the plant material to be hand-carried.

The plant material would have to be offered for importation at the port of entry or plant inspection station specified in the CIP. A copy of the CIP and an invoice or packing list indicating

the contents of the consignment would have to accompany each consignment. All consignments would be required to be labeled as specified in the permit, and to bear a tag provided with the CIP.

Depending on the intended purpose of the plant material presented for importation and the risks associated with such importation, we may require that the plant material be transported from the plant inspection station for release only to preapproved facilities. We would assess a facility prior to issuing a permit to ensure that it has the infrastructure and equipment identified by APHIS as being necessary to manage the risks associated with the imported plant material.

At the approved facility, the plant material imported under a CIP would have to be identified and labeled as quarantined material to be used only in accordance with a valid CIP. Such plant material would have to be maintained in a secure place and be under the supervision and control of the permit holder, and could not be moved or distributed without prior written permission. During regular business hours, properly identified officials, either Federal or State, would have to be allowed to inspect the plant material and the facility in which the plant material is maintained.

The permit holder would be required to keep the permit valid for the duration of the authorized experimental, therapeutic, or developmental activity. A CIP would be valid for a period of 1 year and could be renewed if we believed the additional time was necessary to complete the experimental, therapeutic, or developmental purpose for which the permit was issued.

In the event the permit holder leaves the institution in which the plant material is kept, another person would be required to assume responsibility for the continued maintenance of the plant material and obtain a new CIP for the material or it would have to be destroyed.

Any conditions of the CIP or assigned safeguarding or mitigation measures would be clearly explained in the CIP. Failure to comply with all of the conditions specified in the CIP or any applicable regulations or administrative instructions, or forging, counterfeiting or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of future permits, and civil or criminal penalties for the permit holder.

Proposed paragraph (g) of § 319.6 would address the circumstances under which an application for a CIP may be denied or a CIP may be revoked after issuance. Under these provisions, the Administrator would deny an application for a CIP permit when the Administrator determines that:

- No safeguards adequate or appropriate to prevent the dissemination of a plant pest or plant disease can be implemented;
- The applicant, as a previous permittee, failed to maintain the safeguards or otherwise comply with all the conditions prescribed in a previous permit and failed to demonstrate the ability or intent to observe them in the future;
- The application for a permit is found to be false or deceptive in any material particular;
- Such an importation would involve the potential dissemination of a plant pest or plant disease which outweighs the probable benefit that could be derived from the proposed importation and use of the regulated plant material;
- The importation is adverse to the conduct of an APHIS eradication, suppression, control, or regulatory program; or
- The government of the State or Territory into which the plant material would be imported objects to the proposed importation and provides a written explanation of its concerns based on plant pest risks.

The Administrator would revoke any outstanding CIP when the Administrator determines that information is received subsequent to the issuance of the CIP of circumstances that would constitute cause for the denial of an application described above, or the permittee fails to maintain the safeguards or otherwise observe the conditions specified in the CIP or in any applicable regulations or administrative instructions.

All denials of an application for a permit, or revocation of an existing permit, would be provided to the applicant or permittee in writing. The reasons for the denial or revocation would be stated in writing as promptly as circumstances permit.

We would require that, upon revocation of a permit, the permittee must either:

- Surrender all regulated plant material covered by the revoked CIP to an APHIS inspector;
- Destroy all regulated plant material covered by the revoked CIP under the supervision of an APHIS inspector; or
- Remove all regulated plant material covered by the revoked CIP from the United States.

We would provide for the appeal of the denial or revocation of a CIP. Any person whose application for a permit has been denied or whose permit has been revoked may appeal the decision in writing to the Administrator within 10 days after receiving written notification of the denial or revocation. The appeal would have to state all facts and reasons upon which the person was relying to show that the CIP was wrongfully denied or revoked. The Administrator would grant or deny the appeal, in writing, as promptly as circumstances permit, and would state in writing the reason for the decision. If there is a conflict as to any material fact, a hearing would be held to resolve such conflict. Rules of practice concerning such a hearing would be adopted by the Administrator. The permit denial or revocation would remain in effect during the resolution of the appeal.

Regulations That Would Include References to the CIP

We are proposing to use the CIP to authorize the importation of certain prohibited or restricted plant material for experimental, therapeutic, or developmental purposes in the current regulations in part 319. In doing so, we would replace the current provisions for importations for these purposes.

In the paragraphs that follow, we discuss the changes we are proposing and cite the specific areas of the regulations we are proposing to change.

- *Foreign cotton and covers regulated under §§ 319.8 through 319.8–26.* In § 319.8, which establishes a notice of quarantine for parts or products of plants of the genus *Gossypium,* we would replace the current text, which is dated and difficult to follow, with a clear statement that the importation of the plants and plant products listed in the section is prohibited unless they are imported in accordance with the regulations of the subpart or imported for experimental, therapeutic, or developmental purposes under the provisions of a CIP. We would remove and reserve §§ 319.8–19 and 319.8–20, as provisions for the importation of plant material regulated by the subpart for experimental or scientific purposes would be covered in the revised § 319.8.
- *Sugarcane regulated under § 319.15.* In § 319.15(a), we would remove the provision that sugarcane and its related products may be imported for scientific or experimental purposes under a departmental permit only by the USDA, and provide that these articles may be moved under the conditions specified in a CIP.
- *Citrus fruit and nursery stock regulated under §§ 319.19 and 319.28.* In §§ 319.19(b) and 319.28(d) we would remove the provision that plants or plant parts of the botanical family Rutaceae may be imported for scientific or experimental purposes under conditions as prescribed by the APHIS

Administrator or the PPQ Deputy Administrator, and instead provide that these articles may be moved under the conditions specified in a CIP. We would also remove the statement that the paragraph's provisions apply only to importations by the USDA.

• *Indian corn or maize and related plants and their seeds regulated under §§ 319.24 through 319.24–5 (the corn diseases subpart), and §§ 319.41 through 319.41–6 (the Indian corn or maize, broomcorn, and related plants subpart).* In § 319.24(b) we would remove the provision that portions of Indian corn or maize and related plants may be imported into Guam under conditions less stringent than those of the subpart as prescribed by the Deputy Administrator, and the statement that the paragraph's provisions apply only to USDA importers and instead provide that these articles may be moved under the conditions specified in a CIP. Paragraph (c) of § 319.41 has an identical provision regarding importations into Guam which we would also remove and instead provide that the articles may be moved under the conditions specified in a CIP.

• *Nursery stock, plants, roots, bulbs, seeds, and other plant products regulated under §§ 319.37 through 319.37–14.* In § 319.37–1 we would remove the definition of *Deputy Administrator* and add definitions of *Administrator* and *controlled import permit* for use in the subpart. In § 319.37–2(c)(1), we would add that importations for experimental, therapeutic, or developmental purposes may be allowed under the conditions of a CIP, and remove the statement that the paragraph's provisions apply only to importations by the USDA. In paragraphs (c)(3) through (c)(5) we would replace references to a departmental permit with references to the CIP. In § 319.37–3, we would add a new paragraph (g) requiring that the importation of restricted articles into the United States for experimental, therapeutic, or developmental purposes would require application for a CIP in accordance with § 319.6, and add a new paragraph (h) indicating that restricted articles imported into the United States that are required to be grown under postentry quarantine provisions must be accompanied by a CIP obtained in accordance with § 319.6.

Section 319.37–7 contains provisions governing postentry quarantine activities. Postentry quarantine is required for an established length of time following importation of certain restricted plants so they may be investigated and monitored for freedom from plant pests of foreign origin. Current paragraphs (a)(2) and (d) of this section require that an importer of the listed restricted articles from the designated regions complete and submit to PPQ a postentry quarantine growing agreement and an application for a written permit for the importation of the article in accordance with § 319.37–3. Section 319.37–3 designates articles whose importation requires a permit and indicates the information a permit application must contain, how a permit is issued, and under which circumstances a permit may be withdrawn.

We are proposing to amend § 319.37–7(a)(2) and (d) to state that the CIP is the form of permit required to accompany a postentry quarantine growing agreement. We believe that the information required in the application for a CIP will allow us to make a more informed decision about the specific article submitted for the postentry quarantine program, and allow us to provide more specific conditions for the issuance of the permit. It will also allow us more control over the plant material selected for the postentry quarantine program.

As noted above, current § 319.37–7(a)(2) and (d) require that the application for the written permit be made in accordance with § 319.37–3. We would add a new paragraph (h) to § 319.37–3, which would require that the importation of restricted articles into the United States to be grown under the postentry quarantine provisions of § 319.37–7 must be authorized by a CIP obtained in accordance with § 319.6. Since we are proposing to change the type of permit required by § 319.37–7(a)(2) and (d) to accompany a postentry quarantine growing agreement to the CIP, we would amend those provisions to require that a CIP, as provided for in the newly added § 319.37–3(h), be obtained.

• *Logs, lumber, and other unmanufactured wood articles regulated under §§ 319.40–1 through 319.40–11.* In § 319.40–1 we would add a definition of *controlled import permit* for use in the subpart, and remove that of *departmental permit.* In § 319.40–2(d)(1), we would add that importations for experimental, therapeutic, or developmental purposes may be allowed under the conditions of a CIP, and we would remove the statement that the paragraph's provisions apply only to importations by the USDA. In paragraphs (d)(2) and (d)(3), we would replace the references to a Departmental permit with references to a CIP.

• *Rice regulated under §§ 319.55 through 319.55–7.* In § 319.55(c), we would remove the provision that all seed or paddy rice, rice straw, and rice hulls may be imported, when public interests will permit, into Guam under conditions less stringent than those of the subpart as prescribed by the Deputy Administrator, and in its place provide that the articles may be moved under the conditions specified in a CIP.

• *Plant material subject to wheat diseases regulated under §§ 319.59–1 through 319.59–4.* In § 319.59–1 we would add a definition for the *controlled import permit* for use in the subpart. In paragraph (b) of § 319.59–2 we would remove the statement that the paragraph's provisions apply only to importations by the USDA and in its place provide that the articles may be moved under the conditions specified in a CIP. We would replace the references to a departmental permit with references to a CIP in paragraphs (b)(2), (b)(3), and (b)(4).

• *Packing materials regulated under §§ 319.69 through 319.69–5.* Section 319.69 prohibits certain plants and plant products and restricts certain others for use as packing materials. In paragraph (c) we would replace outdated language with the statement that the importation of those prohibited or restricted plant products may be imported for experimental, therapeutic, or developmental purposes under the provisions of a CIP.

• *Cut flowers regulated under §§ 319.74–1 through 319.74–4.* In § 319.74–1 we would add a definition for the *controlled import permit* for use in the subpart. We would remove the provision that regulated articles may be imported for experimental or scientific purposes if moved under conditions prescribed by the Deputy Administrator in § 319.74–3 and instead provide that the articles may be moved under the conditions specified in a CIP.

• *Articles restricted in order to prevent the entry of khapra beetle under §§ 319.75 through 319.75–9.* In § 319.75(c), we would remove the statement that the paragraph's provisions apply only to importations by the USDA and would replace references to a departmental permit with references to a CIP.

We believe that these proposed changes would consolidate and harmonize requirements for obtaining a permit for the importation of plant material imported for scientific or certain other purposes, and therefore make the requirements of part 319 clearer and easier to use and implement.

In addition to these specific proposed changes regarding the CIP, we are also proposing to update the subparts discussed above by replacing references to ''Deputy Administrator'' wherever

they still appear with references to the Administrator. In some subparts, this would include removing a definition of *Deputy Administrator* and adding one for *Administrator.* Most APHIS regulations refer to the Agency's Administrator rather than the Deputy Administrators of specific programs like PPQ. This proposed change would make the regulations in part 319 consistent with other APHIS regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this proposed rule, which is set out below. The analysis provides a basis for our determination that this action would not have a significant economic impact on a substantial number of small entities.

For the purpose of this analysis and following the Small Business Administration (SBA) guidelines, we note that a major segment of entities potentially affected by the proposed changes are classified within the following industries: Nursery and Tree Production (NAICS 111421), and Floriculture Production (NAICS 111422). The nursery and floriculture industries are representative of other agricultural and nonagricultural industries in terms of being comprised largely of small entities. According to the Census of Agriculture, these two categories included 52,845 farms in 2007, and represented 3 percent of all farms in the United States. These entities are considered small by SBA standards if their annual sales are $750,000 or less. Over 93 percent of the farms in these industries had annual sales of less than $500,000.

Research and development establishments within Physical, Engineering, and Life Sciences (NAICS 541711) that provide professional, scientific, and technical services may also be affected by this proposed rule. These entities are considered small by SBA standards if they employ not more than 500 persons. According to the 2002 Economic Census, 82 percent of these establishments are small.

The CIP would replace the departmental permit and other forms of authorizations that have been in use. Because this is an administrative change, we do not anticipate that the replacement would have any significant economic impact on the concerned entities. From January 1, 2007, to December 31, 2009, a total of 108 postentry quarantine permits and 1,012 departmental permits were issued. The proposed rule is not expected to affect the number of permits issued.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2008–0055. Please send a copy of your comments to: (1) APHIS–2008–0055, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the regulations concerning the importation of plants and plant products by establishing the controlled import permit as a single type of authorization for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes. Currently, some sections of the regulations provide for those articles to be imported under a departmental permit, while other sections provide for their importation under administrative instructions or conditions specified by the Administrator or Deputy Administrator. This action would consolidate and harmonize the conditions for obtaining authorization for the importation of otherwise prohibited or restricted plant material for scientific or certain other purposes.

This proposed rule will require the use of a controlled import permit, annual inspection report, and the identification of the commodity being imported.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.8125 hours per response.

Respondents: Researchers, for-profit organizations, and foreign government officials.

Estimated annual number of respondents: 1,200.

Estimated annual number of responses per respondent: 6.667.

Estimated annual number of responses: 8,000.

Estimated total annual burden on respondents: 6,500 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to

E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new subpart consisting of § 319.6 is added to read as follows:

Subpart—Controlled Import Permits

Sec.
319.6 Controlled import permits.

Subpart—Controlled Import Permits

§ 319.6 Controlled import permits.

(a) *Definitions.*

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Developmental purposes. The evaluation, monitoring, or verification of plant material for plant health risks and/or the adaptability of the material for certain uses or environments.

Experimental purposes. Scientific testing which utilizes collected data and employs analytical processes under controlled conditions to create qualitative or quantitative results.

Therapeutic purposes. The application of specific scientific processes designed to eliminate, isolate, or remove potential plant pests or diseases.

(b) *Purpose and scope.* The regulations in this part prohibit or restrict the importation into the United States of certain plants, plant products, and other articles to prevent the introduction and dissemination of plant pests and noxious weeds within and throughout the United States. The regulations in this subpart provide a process under which a controlled import permit (CIP) may be issued to authorize the importation, for experimental, therapeutic, or developmental purposes, of an article whose importation is prohibited under this part. A CIP may also be issued to authorize, for those same purposes, the importation of an article under conditions that differ from those prescribed in the relevant regulations in this part.

(c) *Application process.* Applications for a CIP are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine (PPQ), Permit Unit, 4700 River Road, Unit 136, Riverdale, MD 20737–1236, or from local PPQ offices. Applications may be submitted by fax, mail, or electronically and must be submitted at least 60 days prior to arrival of the article at the port of entry. Mailed applications must be submitted to the address above, faxed applications may be submitted to 301–734–4300, and electronic applications may be submitted through the ePermits Web site at *https://epermits.aphis.usda.gov/epermits.*

(1) The completed application for a CIP must provide the following information:

(i) Name, address in the United States, and contact information of the applicant;

(ii) Identity (common and botanical [genus and species] names) of the plant material to be imported, quantity of importation, country of origin, and country shipped from;

(iii) Intended experimental, therapeutic, or developmental purpose for the importation;

(iv) Intended ports of export and entry, means of conveyance, and estimated date of arrival.

(2) APHIS may issue a CIP if the Administrator determines that the plant pest risks associated with the plant material and its intended experimental, therapeutic, or developmental use can be effectively mitigated. The CIP will contain the applicable conditions for importation and subsequent handling of the plant material if it is deemed eligible to be imported into the United States. The plant material may be imported only if all applicable requirements are met.

(d) *Shipping conditions.* Consignments of plant material to be offered for importation under a CIP must meet the following requirements, unless otherwise specified under the conditions of the CIP:

(1) The plant material must be selected from apparently disease-free and pest-free sources.

(2) The plant material must be free of soil, other foreign matter or debris, other prohibited plants, noxious weed seeds, and living organisms such as parasitic plants, pathogens, insects, snails, and mites.

(3) Fungicides, insecticides, and other treatments such as coatings, dips, or sprayings must not be applied before shipment, unless otherwise specified. Plant materials may be refused entry if they are difficult or hazardous to inspect because of the presence of such treatments. Plant materials must not be wrapped or otherwise packaged in a manner that impedes or prevents adequate inspection or treatment.

(4) The plant material must be moved in an enclosed container or one completely enclosed by a covering adequate to prevent the possible escape or introduction of plant pests during shipment. Any packing material used in the consignment of the plant material must meet the requirements of § 319.37–9 of this part, and wood packing material used in the consignment must meet the requirements of § 319.40–3(b) and (c) of this part.

(5) Consignments may be shipped as cargo, by mail or air freight, or hand-carried, as specified in the conditions of the CIP.

(6) The plant material must be offered for importation at the port of entry or plant inspection station as specified in the conditions of the CIP.

(7) A copy of the CIP must accompany each consignment, and all consignments must be labeled in accordance with instructions in the CIP.

(8) Each consignment must be accompanied by an invoice or packing list indicating its contents.

(e) *Post-importation conditions.* (1) At the approved facility where the plant material will be maintained following its importation, plant material imported under a CIP must be identified and labeled as quarantined material to be used only in accordance with a valid CIP.

(2) Plant material must be stored in a secure place or in the manner indicated in the CIP and be under the supervision and control of the permit holder. During regular business hours, properly identified officials, either Federal or State, must be allowed to inspect the plant material and the facilities in which the plant material is maintained.

(3) The permit holder must keep the permit valid for the duration of the authorized experimental, therapeutic, or developmental purpose. The PPQ Permit Unit must be informed of a change in contact information for the permit holder within 10 business days of such change.

(4) Plant material imported under a CIP must not be moved or distributed to another person without prior written permission from the PPQ Permit Unit.

(5) Should the permit holder leave the institution in which the plant material

imported under a CIP is kept, the plant material must be destroyed unless, prior to the departure of the original permit holder, another person assumes responsibility for the continued maintenance of the plant material and such person obtains a new CIP for the plant material.

(f) Failure to comply with all of the conditions specified in the CIP or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of future permits, and civil or criminal penalties for the permit holder.

(g) *Denial and revocation of a CIP.* (1) The Administrator will deny an application for a CIP permit, orally or in writing, when the Administrator determines that:

(i) No safeguards adequate or appropriate to prevent the dissemination of a plant pest or plant disease can be implemented;

(ii) The applicant, as a previous permittee, failed to maintain the safeguards or otherwise comply with all the conditions prescribed in a previous permit and failed to demonstrate the ability or intent to observe them in the future;

(iii) The application for a permit is found to be false or deceptive in any material particular;

(iv) Such an importation would involve the potential dissemination of a plant pest or plant disease which outweighs the probable benefit that could be derived from the proposed importation and use of the regulated plant material;

(v) The importation is adverse to the conduct of an APHIS eradication, suppression, control, or regulatory program; or

(vi) The government of the State or Territory into which the plant material would be imported objects to the proposed importation and provides a written explanation of its concerns based on plant pest risks.

(2) The Administrator will revoke any outstanding CIP, orally or in writing, when the Administrator determines that:

(i) Information is received subsequent to the issuance of the CIP of circumstances that would constitute cause for the denial of an application under paragraph (g)(1) of this section; or

(ii) The permittee has failed to maintain the safeguards or otherwise observe the conditions specified in the CIP or in any applicable regulations or administrative instructions.

(3) Upon revocation of a permit, the permittee must either:

(i) Surrender all regulated plant material covered by the revoked CIP to an APHIS inspector;

(ii) Destroy all regulated plant material covered by the revoked CIP under the supervision of an APHIS inspector; or

(iii) Remove all regulated plant material covered by the revoked CIP from the United States.

(4) All denials of an application for a permit, or revocation of an existing permit, will be forwarded to the applicant or permittee in writing. The reasons for the denial or revocation will be stated in writing as promptly as circumstances permit.

(5) Any person whose application for a permit has been denied or permit has been revoked may appeal the decision in writing to the Administrator within 10 days after receiving written notification of the denial or revocation. The appeal should state all facts and reasons upon which the person relies to show that the denial or revocation was wrongfully denied or revoked.

(i) The Administrator will grant or deny the appeal, in writing, as promptly as circumstances permit, and will state in writing the reason for the decision. If there is a conflict as to any material fact, a hearing will be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator. The permit denial or revocation will remain in effect during the resolution of the appeal.

(ii) [Reserved]

3. Section 319.8 is revised to read as follows:

§ 319.8 Notice of quarantine.

Pursuant to sections 411–414 and 434 of the Plant Protection Act (7 U.S.C. 7711–7714 and 7754), the Administrator of the Animal and Plant Health Inspection Service has determined that the unrestricted importation into the United States from all foreign countries and localities of any parts or products of plants of the genus *Gossypium,* including seed cotton; cottonseed; cotton lint, linters, and other forms of cotton fiber (not including yarn, thread, and cloth); cottonseed hulls, cake, meal, and other cottonseed products, except oil; cotton waste, including gin waste and thread waste; any other unmanufactured parts of cotton plants; second-hand burlap and other fabrics, shredded or otherwise, that have been used or are of the kinds ordinarily used, for containing cotton, grains (including grain products), field seeds, agricultural roots, rhizomes, tubers, or other underground crops, may result in the entry into the United States of the pink bollworm (*Pectinophora gossypiella* (Saund.)), the golden nematode of potatoes (*Heterodera rostochiensis* Wr.), the flag smut disease (*Urocystis tritici* Koern.), and other injurious plant diseases and insect pests. Accordingly, to prevent the introduction into the United States of plant pests, the importation of those articles into the United States is prohibited unless they are imported in accordance with the regulations in this subpart or their importation has been authorized for experimental, therapeutic, or developmental purposes by a controlled import permit issued in accordance with § 319.6 of this part.

4. Section 319.8–1 is amended by removing the definition of *Deputy Administrator, Plant Protection and Quarantine Programs,* revising the definitions of *approved; approved areas of Mexico; authorized; north, northern; treatment;* and *utilization,* including removing footnote 1, and adding, in alphabetical order, a definition for *Administrator* to read as follows:

§ 319.8–1 Definitions.

* * * * *

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

* * * * *

Approved. Approved by the Administrator.

Approved areas of Mexico. Any areas of Mexico, other than Northwest Mexico and the west coast of Mexico, which are designated by the Administrator as areas in which cotton and cotton products are produced and handled under conditions comparable to those under which like cotton and cotton products are produced and handled in the generally infested pink bollworm regulated area in the United States.

* * * * *

Authorized. Authorized by the Administrator.

* * * * *

North, northern. When used to designate ports of arrival, these terms mean the port of Norfolk, VA, and all Atlantic Coast ports north thereof, ports along the Canadian border, and Pacific Coast ports in the States of Washington and Oregon. When used in a geographic sense to designate areas or locations, these terms mean any State in which cotton is not grown commercially. However, when cotton is grown commercially in certain portions of a State, as is the case in Illinois, Kansas, and Missouri, these terms include those portions of such State as may be

determined by the Administrator as remote from the main area of cotton production.

* * * * *

Treatment. Procedures administratively approved by the Administrator for destroying infestations or infections of insect pests or plant diseases, such as fumigation, application of chemicals or dry or moist heat, or processing, utilization, or storage.

* * * * *

Utilization. Processing or manufacture, in lieu of fumigation at time of entry, at a mill or plant authorized by APHIS through a compliance agreement for foreign cotton processing or manufacturing.

* * * * *

§§ 319.8–2, 319.8–8, 319.8–11, and 319.8–17 [Amended]

5. Sections 319.8–2, 319.8–8, 319.8–11, and 319.8–17 are amended by redesignating footnotes 2 through 6 as footnotes 1 through 5, respectively.

§ 319.8–3 [Amended]

6. In § 319.8–3, paragraphs (a) and (b) are amended by removing the word ''Deputy'' each it appears.

§ 319.8–8 [Amended]

7. In § 319.8–8, paragraphs (a)(2)(v) and (a)(4) are amended by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' each time they appear and adding the word ''Administrator'' in their place.

§ 319.8–12 [Amended]

8. In § 319.8–12, paragraphs (d) and (f) are amended by removing the word ''Deputy'' each time it appears.

§§ 319.8–19 and 319.8–20 [Removed and Reserved]

9. Sections 319.8–19 and 319.8–20 are removed and reserved.

10. In § 319.15, paragraph (a) is revised to read as follows:

§ 319.15 Notice of quarantine.

(a) The importation into the United States of sugarcane and its related products, including cuttings, canes, leaves and bagasse, from all foreign countries and localities is prohibited, except for importations for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6 of this part.

* * * * *

11. In § 319.19, paragraph (b) is revised to read as follows:

§ 319.19 Notice of quarantine.

* * * * *

(b) Plants or plant parts of all genera, species, and varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae may be imported into the United States for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6 of this part.

* * * * *

12. In § 319.24, paragraph (b) is amended by removing the second and third sentences and adding a new sentence in their place to read as follows:

§ 319.24 Notice of quarantine.

* * * * *

(b) * * * However, this prohibition does not apply to importations of such items for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6 of this part.

* * * * *

§ 319.24–1 [Amended]

13. Section 319.24–1 is amended by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' and adding the words ''Administrator, Animal and Plant Health Inspection Service'' in their place.

14. Section 319.28 is amended as follows:

a. By revising paragraph (d) as set forth below.

b. In paragraphs (i) and (j), by removing the word ''Deputy'' each time it occurs.

§ 319.28 Notice of quarantine.

* * * * *

(d) This prohibition shall not apply to importations for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6 of this part.

* * * * *

15. Section 319.37–1 is amended by removing the definition of *Deputy Administrator,* and by adding, in alphabetical order, definitions for *Administrator* and *controlled import permit* to read as follows:

§ 319.37–1 Definitions.

* * * * *

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

* * * * *

Controlled import permit. A written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6 of this part.

* * * * *

16. Section 319.37–2 is amended as follows:

a. By revising paragraph (c)(1) to read as set forth below.

b. In paragraphs (c)(3), (c)(4), and (c)(5), by removing the word ''Departmental'' each time it appears and adding the words ''controlled import'' in its place.

c. In paragraph (c)(4), by removing the word ''Deputy''.

§ 319.37–2 Prohibited articles.

* * * * *

(c) * * *

(1) Imported for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6 of this part;

* * * * *

17. Section 319.37–3 is amended by revising paragraph (d) and adding new paragraphs (g) and (h) to read as follows:

§ 319.37–3 Permits.

* * * * *

(d) Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines that the holder of the permit has not complied with any condition for the use of the document. The reasons for the withdrawal will be confirmed in writing as promptly as circumstances permit. Any person whose permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Administrator will grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing will be held to resolve such conflict.

* * * * *

(g) Persons wishing to import restricted articles into the United States for experimental, therapeutic, or

developmental purposes must apply for a controlled import permit in accordance with § 319.6 of this part.

(h) The importation of restricted articles required to be grown under the postentry quarantine provisions of § 319.37–7 must be authorized by a controlled import permit obtained in accordance with § 319.6 of this part.

* * * * *

§ 319.37–7 [Amended]

18. Section 319.37–7 is amended as follows:

a. In paragraph (a)(2), in the second sentence, by removing the word ''written'' and adding the words ''controlled import'' in its place, and by removing the citation ''§ 319.37–3'' and adding the words ''§ 319.6 of this part'' in its place.

b. In paragraph (d) introductory text, in the first sentence, by removing the word ''written'' and adding the words ''controlled import'' in its place, and by removing the citation ''§ 319.37–3'' and adding the words ''§ 319.6 of this part'' in its place.

19. Section 319.40–1 is amended by removing the definition of *departmental permit* and by adding, in alphabetical order, a definition for *controlled import permit* to read as follows:

§ 319.40–1 Definitions.

* * * * *

Controlled import permit. A written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6 of this part.

* * * * *

20. Section 319.40–2 is amended as follows:

a. By revising paragraph (d)(1) to read as set forth below.

b. In paragraphs (d)(2) and (d)(3) by removing the word ''Departmental'' each time it appears and adding the words ''controlled import'' in its place.

§ 319.40–2 General prohibitions and restrictions; relation to other regulations.

* * * * *

(d) * * *

(1) Imported for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6 of this part.

* * * * *

21. In § 319.41, paragraph (c) is revised to read as follows:

§ 319.41 Notice of quarantine.

* * * * *

(c) The Administrator may authorize the importation of articles otherwise prohibited under paragraph (b) of this section under conditions specified in a controlled import permit issued in accordance with § 319.6 of this part.

* * * * *

§ 319.41–3 [Amended]

22. In § 319.41–3, paragraphs (a) and (b) are amended by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' each time they appear and adding the word ''Administrator'' in their place.

23. In § 319.55, paragraph (c) is revised to read as follows:

§ 319.55 Notice of quarantine.

* * * * *

(c) The Administrator may authorize the importation of articles otherwise prohibited by this subpart under conditions specified in a controlled import permit issued in accordance with § 319.6 of this part.

* * * * *

24. Section 319.59–1 is amended by adding, in alphabetical order, a definition for *controlled import permit* to read as follows:

§ 319.59–1 Definitions.

* * * * *

Controlled import permit. A written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6 of this part.

* * * * *

§ 319.59–2 [Amended]

25. Section 319.59–2 is amended as follows:

a. In paragraph (b) introductory text, by removing the words ''by the U.S. Department of Agriculture for experimental or scientific purposes'' and adding the words ''for experimental, therapeutic, or developmental purposes'' in their place.

b. In paragraphs (b)(2), (b)(3), and (b)(4), by removing the word ''departmental'' each time it appears and adding the words ''controlled import'' in its place.

26. Section 319.69 is amended as follows:

a. In paragraph (b) introductory text, by removing the words ''supplemental to this quarantine'' and adding the words ''in this subpart'' in their place.

b. By revising paragraph (c) to read as set forth below.

§ 319.69 Notice of quarantine.

* * * * *

(c) The importation of plants and plant products that are prohibited or restricted under paragraphs (a) and (b) of this section may be authorized for experimental, therapeutic, or developmental purposes under conditions specified in a controlled import permit issued in accordance with § 319.6 of this part.

* * * * *

27. Section 319.74–1 is amended by adding, in alphabetical order, a definition for *controlled import permit* to read as follows:

§ 319.74–1 Definitions.

* * * * *

Controlled import permit. A written or electronically transmitted authorization issued by APHIS for the importation into the United States of otherwise prohibited or restricted plant material for experimental, therapeutic, or developmental purposes, under controlled conditions as prescribed by the Administrator in accordance with § 319.6 of this part.

* * * * *

28. Section 319.74–3 is revised to read as follows:

§ 319.74–3 Importations for experimental or similar purposes.

Cut flowers may be imported for experimental, therapeutic, or developmental purposes under such conditions as specified in a controlled import permit issued in accordance with § 319.6 of this part.

29. In § 319.75, paragraph (c) is revised to read as follows:

§ 319.75 Restrictions on importation of restricted articles; disposal of articles refused importation.

* * * * *

(c) A restricted article may be imported without complying with other restrictions under this subpart if:

(1) Imported for experimental, therapeutic, or developmental purposes under the conditions specified in a controlled import permit issued in accordance with § 319.6 of this part.

(2) Imported at the National Plant Germplasm Inspection Station, Building 580, Beltsville Agricultural Research Center East, Beltsville, MD 20705, or through any USDA plant inspection station listed in § 319.37–14 of this part; and

(3) Imported with a controlled import tag or label securely attached to the outside of the container containing the

article or securely attached to the article itself if not in a container, and with such tag or label bearing a controlled import permit number corresponding to the number of the controlled import permit issued for such article.

30. Section 319.75–1 is amended as follows:

a. By removing the definition of *Deputy Administrator.*

b. In the definition of *inspector,* by removing the word ''Deputy''.

c. By adding, in alphabetical order, a definition for *Administrator* to read as set forth below.

§ 319.75–1 Definitions.

* * * * *

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

* * * * *

§ 319.75–3 [Amended]

31. In § 319.75–3, paragraph (d) is amended by removing the word ''Deputy'' each time it appears.

§ 319.75–8 [Amended]

32. Section 319.75–8 is amended by removing the word ''Deputy''.

Done in Washington, DC, this 19th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27580 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0116]

RIN 0579–AD51

Importation of Litchi and Longan Fruit From Vietnam Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of litchi and longan fruit from Vietnam into the continental United States. As a condition of entry, litchi and longan fruit from Vietnam would be subject to a systems approach that would include requirements for treatment and inspection and restrictions on the distribution of the fruit. This action would allow for the importation of litchi and longan fruit from Vietnam into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before December 27, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2010-0116-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0116, 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-2010-0116* 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. Claudia Ferguson, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 734–0754.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–52, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

The national plant protection organization (NPPO) of Vietnam has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh litchi (*Litchi chinensis* Sonn.) and longan (*Dimocarpus longan* Lour.) to be imported from Vietnam into the continental United States. The NPPO of Vietnam also proposed that the litchi and longan fruit be treated with irradiation at the 400 Gy dose approved to neutralize most insect pests, except pupae and adults of the order Lepidoptera.

As part of our evaluation of that request, we prepared a pest risk assessment identifying all quarantine pests of litchi and longan in Vietnam and a risk management document (RMD) that recommends risk mitigation measures to prevent the quarantine pests associated with these commodities from being introduced into the United States. Copies of the pest risk assessment and the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The pest risk assessment identified 16 pests of quarantine significance present in Vietnam that could be introduced into the United States through the importation of fresh litchi:

Lepidopteran Pests:
Conopomorpha sinensis.
Conogethes punctiferalis.
Cryptophlebia ombrodelta.
Non-Lepidopteran Insect Pests:
Bactrocera cucurbitae.
Bactrocera dorsalis.
Ceroplastes rubens.
Coccus viridis.
Dysmicoccus neobrevipes.
Nipaecoccus viridis.
Paracoccus interceptus.
Planococcus lilacinus.
Planococcus litchi.
Planococcus minor.
Pseudococcus cryptus.
Mite Pest:
Aceria litchii.
Fungi Pest:
Phytophthora litchii.

The pest risk assessment also identified 17 pests of quarantine significance present in Vietnam that could be introduced into the United States through the importation of fresh longan:

Lepidopteran Pests:
Conopomorpha sinensis.
Conogethes punctiferalis.
Cryptophlebia ombrodelta.
Non-Lepidopteran Insect Pests:
Bactrocera dorsalis.
Ceroplastes rubens.
Coccus viridis.
Drepanococcus chiton.
Dysmicoccus neobrevipes.
Exallomochlus hispidus.
Maconellicoccus hirsutus.
Nipaecoccus viridis.
Paracoccus interceptus.
Planococcus lilacinus.
Planococcus litchi.
Planococcus minor.
Pseudococcus cryptus.
Mite Pest:

Aceria litchii.

APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of litchi and longan fruit from Vietnam into the continental United States only if they are produced in accordance with a systems approach to mitigate pest risk as outlined below. We are proposing to add the systems approach to the regulations in a new § 319.56–54 governing the importation of litchi and longan fruit from Vietnam.

Proposed Systems Approach

Paragraph (a) of proposed § 319.56–54 would require that the litchi fruit be grown in orchards registered with and monitored by the NPPO of Vietnam. Requiring the NPPO of Vietnam to monitor fields where litchi is produced for export will ensure application of disease control measures and that the litchi are produced free of disease caused by *P. litchii.*

Paragraph (b) of proposed § 319.56–54 would set out treatment requirements for litchi and longan fruit exported to the United States. Fourteen of the pests of litchi and 16 of the pests of longan are insect pests. A minimum absorbed dose of 400 Gy is approved to neutralize all these insect pests, except pupae and adults of the order Lepidoptera.

Three of the insect pests associated with litchi and longan belong to the order Lepidoptera. Although the generic irradiation treatment is not approved for Lepidopteran pupae and adults, those life stages are unlikely to be associated with litchi and longan. Due to their mobility, Lepidopteran adults either feed externally, where they would be easily detected, or do not attack mature fruit. In most of the genera of concern, the pupae are either associated with plant parts other than fruit or they occur externally on their host's plant parts, where they would be easily detected. If the pupae do occur inside the fruit or seed of their host plants, they would be associated with premature fruit drop or obvious damage and symptoms and would be culled at the packinghouse or detected through inspection.

Also, except for two interceptions of *Conopomorpha* spp. in permit cargo with litchi fruit, inspectors at U.S. ports of entry have never intercepted pupae of the other quarantine Lepidoptera genera with commercial shipments of any type of fruit. This lack of interceptions is evidence of the low likelihood of any of the Lepidoptera pupae following the pathway of commercial fruit.

Therefore, irradiation treatment, along with standard post-harvest processes, would mitigate the risks from all the insect pests.

The litchi rust mite, *A. litchii,* is another pest of litchi and longan. The mite is primarily a pest of foliage and flower parts but is also sometimes associated with the fruit. Mites are external pests on the fruit, and because of the damage they cause on fruit, inspection and culling of the damaged fruit are considered effective in mitigating risk from such pests.

Although it is unlikely that commercially produced fruit is a pathway for the litchi rust mite, the pest's small size prevents its detection during inspection. Therefore, we would prohibit shipments of litchi and longan from Vietnam from being imported into or distributed to Florida, where litchi and longan fruit are grown, to protect that State's commercial litchi and longan production from litchi rust mite. Paragraph (c) of proposed § 319.56–54 would require the cartons containing the litchi or longan fruit to be stamped ''Not for importation into or distribution in Florida.'' This is consistent with other import programs where shipments of litchi or longan fruit are prohibited into Florida for the same pest.

Paragraph (d) of proposed § 319.56–54 would state that only commercial consignments of litchi and longan fruit would be allowed to be imported. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control.

The last pest of litchi is the fungus *P. litchii.* Requiring the NPPO of Vietnam to monitor fields where litchi is produced for export as in paragraph (a) of proposed § 319.56–54 will ensure application of disease control measures for this fungus. Most infected litchi fruit will be culled because trained harvesters, packinghouse personnel, and plant quarantine inspectors can easily detect the distinctive signs of the disease on fruit.

Infected, nonsymptomatic fruit may go undetected, but the likelihood of introduction via the few fruit that may escape detection is very low. It is highly unlikely that commercial fruit will be in a situation to introduce the disease because free water is required for the spores to infect a host. Additionally, there is no record of interception of this disease on litchi imported into the United States from other countries in regions where this pathogen is present. Therefore, no measures are necessary to mitigate the risk posed by this pathogen beyond certification of freedom based on inspection.

Accordingly, proposed paragraph (e) of § 319.56–54 would require each consignment of litchi or longan fruit to be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country certifying that the provisions of the proposed regulations have been met. In addition, the phytosanitary certificate accompanying each consignment of litchi would also have to include an additional declaration stating that the consignment was inspected in Vietnam and found free of *P. litchii.*

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

This proposed rule is in response to a request from the NPPO of Vietnam to export fresh litchi and longan to the continental United States. In the United States, these two fruits are commercially produced in Florida and, to a lesser

extent, in Hawaii. Production in California is still largely in the developmental stage. Annual U.S. production volumes in 2008 were about 535 metric tons (MT) for litchi and 776 MT for longan. Virtually all U.S. farms that grow litchi and longan are believed to be small entities based on the Small Business Administration (SBA) standard of annual receipts of not more than $750,000.

Our review of available information suggests that the proposed rule may have a negative economic impact on longan growers and, to a lesser extent, on litchi growers, particularly when the fruit is sold in Asian and Hispanic markets where the demand for produce tends to be more price-sensitive. The annual quantities of litchi and longan that Vietnam expects to export to the United States, namely, 600 MT and 1,200 MT, would be equivalent to about 18 percent and more than 100 percent, respectively, of U.S. import levels for these two fruits in 2010. Negative impacts for U.S. producers would be moderated to the extent that imports from Vietnam displace imports from other foreign sources.

For the proposed rule, APHIS does not have an alternative to the proposed systems approach for allowing the importation of fresh litchi and longan fruit from Vietnam. Widely ranging prices for litchi and longan among U.S. markets and consumers' varying purchasing criteria in regard to price, quality, and sustainability may indicate opportunities for domestic growers to alleviate negative effects of increased foreign competition through alternative marketing arrangements or marketing channels.

Executive Order 12988

This proposed rule would allow litchi and longan fruit to be imported into the United States from Vietnam. If this proposed rule is adopted, State and local laws and regulations regarding litchi and longan fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2010–0116. Please send a copy of your comments to: (1) Docket No. APHIS–2010–0116, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the fruits and vegetables regulations to allow the importation of litchi and longan fruit from Vietnam into the continental United States. As a condition of entry, litchi and longan fruit from Vietnam would be subject to a systems approach that would include requirements from treatment and inspection and restrictions on the distribution of the fruit. This action would allow for the importation of litchi and longan fruit from Vietnam into the United States while continuing to provide protection against the introduction of quarantine pests.

Allowing the importation of litchi and longan fruit from Vietnam into the continental United States will require the completion of a phytosanitary certificate with a declaration, orchard registration, and labeling of boxes.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2554 hours per response.

Respondents: NPPO of Vietnam and importers of litchi and longan fruit from Vietnam.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 334.

Estimated annual number of responses: 1,002.

Estimated total annual burden on respondents: 256 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56–54 is added to read as follows:

§ 319.56–54 Fresh litchi and longan from Vietnam.

Litchi (*Litchi chinensis* Sonn.) and longan (*Dimocarpus longan* Lour.) fruit

may be imported from into the continental United States from Vietnam only under the following conditions:

(a) *Growing conditions.* Litchi fruit must be grown in orchards registered with and monitored by the national plant protection organization (NPPO) of Vietnam to ensure that the fruit are free of disease caused by *Phytophthora litchii.*

(b) *Treatment.* Litchi and longan fruit must be treated with irradiation for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, in accordance with part 305 of this chapter.

(c) *Labeling.* In addition to meeting the labeling requirements in part 305 of this chapter, cartons containing litchi or longan must be stamped ''Not for importation into or distribution in FL.''

(d) *Commercial consignments.* The litchi and longan fruit may be imported in commercial consignments only.

(e) *Phytosanitary certificates.* (1) Each consignment of litchi fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Vietnam attesting that the conditions of this section have been met and that the consignment was inspected in Vietnam and found free of *Phytophthora litchii.*

(2) Each consignment of longan fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Vietnam attesting that the conditions of this section have been met.

Done in Washington, DC, this 19th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27574 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2011–0040]

RIN 0579–AD52

Importation of Mangoes From Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh mangoes from Australia into the continental United States. As a condition of entry, the mangoes would have to be produced in accordance with a systems approach employing a combination of mitigation measures for the fungus *Cytosphaera mangiferae* and would have to be inspected prior to exportation from Australia and found free of this disease. The mangoes would have to be imported in commercial consignments only and would have to be treated by irradiation to mitigate the risk of insect pests. The mangoes would also have to be accompanied by a phytosanitary certificate with an additional declaration that the conditions for importation have been met. This action would allow the importation of mangoes from Australia while continuing to protect against the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive on or before December 27, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0040-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0040, 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-2011-0040* 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. Donna West, Senior Import Specialist, PPQ, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–52, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Australia has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh mangoes from Australia to be imported into the continental United States.

As part of our evaluation of Australia's request, we prepared a pest risk assessment (PRA), titled ''Importation of Fresh Fruit of Mango, *Mangifera indica* L., from Australia into the Continental United States, A Pathway-Initiated Risk Analysis'' (June 2011). The PRA evaluated the risks associated with the importation of mangoes into the continental United States from Australia.

The PRA identified 21 pests of quarantine significance present in Australia that could be introduced into the United States through the importation of mangoes:

Fruit Flies

- *Bactrocera aquilonis*
- *B. cucumis*
- *B. frauenfeldi*
- *B. jarvisi*
- *B. kraussi*
- *B. murrayi*
- *B. neohumeralis*
- *B. opiliae*
- *B. tryoni*
- *Ceratitis capitata*

Scales

- Red wax scale (*Ceroplastes rubens*)
- Green scale (*Coccus viridis*)

Weevil

- Mango seed weevil (*Sternochetus mangiferae*)

Fungi

- *Cytosphaera mangiferae*
- *Fusarium* spp. complex (associated with mango malformation disease)
- *Lasioddiplodia pseudotheobraomae*
- *Neofusicoccum mangiferae*
- *Neoscytalidium novaehollandiae*
- *Phomopsis mangiferae*
- *Pseudofusicoccum adansoniae*

Bacterium

- *Xanthomonas campestris* pv. *mangiferaeindicae*

According to our PRA, for pests rated high risk (*C. rubens, C. capitata,* and the nine *Bactrocera* spp. fruit flies), specific phytosanitary measures beyond standard port-of-entry inspection are strongly recommended. For pests rated medium risk (*C. viridis, C. mangiferae, L. pseudotheobraomae, N. mangiferae, N. novaehollandiae, P. adansoniae, S. mangiferae,* and *X. campestris* pv. *mangiferaeindicae*), specific phytosanitary measures beyond

standard port-of-entry inspection may be necessary. For pests rated as low risk (the *Fusarium* spp. complex and *P. mangiferae*), specific phytosanitary measures beyond standard port-of-entry inspection are not required. To recommend specific measures to mitigate the risk posed by the pests identified in the PRA, we prepared a risk management document (RMD). Copies of the PRA and RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the recommendations of the RMD, we are proposing to allow the importation of mangoes from Australia into the continental United States only if they are produced in accordance with a systems approach. The systems approach we are proposing would require that mangoes be imported only under the conditions described below. These conditions would be added to the regulations in a new § 319.56–54.

Mangoes would have to be imported in commercial consignments. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

The mangoes would have to be treated for insect pests, except pupae and adults of the order Lepidoptera, with irradiation in accordance with 7 CFR part 305, which contains the phytosanitary treatments regulations. The Plant Protection and Quarantine Treatment Manuel, which lists minimum absorbed irradiation doses for plant pests and classes of plant pests, includes a 400-gray dose for such pests. None of the pests associated with mangoes from Australia belong to the order Lepidoptera; therefore, this treatment would successfully mitigate the risk of all 13 insect pests associated with mangoes from Australia.

Within part 305, § 305.9 contains a number of other requirements for irradiation treatment, including monitoring by APHIS inspectors and safeguarding of the fruit. Treatment could be conducted at an approved facility in Australia or in the United States.

The required irradiation treatment would not mitigate the risks posed by the fungus *C. mangiferae.* In order to mitigate the risks posed by *C. mangiferae,* which we consider to be of medium risk of introduction and dissemination within the continental United States, we are proposing three options: (1) The mangoes be treated with a broad-spectrum post-harvest fungicidal dip, (2) the mangoes originate from an orchard that was inspected prior to the beginning of harvest during the growing season and the orchard was found free of *C. mangiferae,* or (3) the mangoes originate from an orchard that was treated with a broad-spectrum fungicide during the growing season and was inspected prior to harvest and the fruit was found free of *C. mangiferae.*

Symptoms of *C. mangiferae* can be easily seen and detected in the field on mango leaves and fruit during pre-harvest inspection. Post-harvest diseases do not occur without the presence of fungal symptoms on leaves in the field. Orchard application of broad-spectrum fungicide sprays protects fruit from infection by aerial spores produced on leaves or stems. In Australia, spraying of mango plants with broad-spectrum fungicides during the growing season is a common practice to control fungal diseases.

Prior to export from Australia, the fruit would have to be inspected by the NPPO of Australia and found free of *C. mangiferae, L. pseudotheobraomae, N. mangiferae, N. novaehollandiae, P. adansoniae, P. mangiferae, Fusarium* spp., and *X. campestris* pv. *mangiferaeindicae.* Symptoms of these pathogens are easily discernible with the naked eye and would most likely be detected during visual inspection of the fruit at the packinghouse. These practices would effectively remove these pathogens of concern from the pathway.

Each consignment of fruit would have to be accompanied by a phytosanitary certificate (PC) issued by the NPPO of Australia with additional declarations that would confirm that: (1) The mangoes were subjected to one of the pre- and post-harvest mitigation options for *C. mangiferae* described earlier and (2) the mangoes were inspected prior to export and found free of *C. mangiferae, L. pseudotheobraomae, N. mangiferae, N. novaehollandiae, P. adansoniae, P. mangiferae, Fusarium* spp., and *X. campestris* pv. *mangiferaeindicae.*

In addition, if the fruit is treated with irradiation outside the United States, each consignment of fruit would have to be inspected jointly by APHIS and the NPPO of Australia, and the PC would have to include an additional declaration that the fruit received the irradiation treatment.

Mangoes imported from Australia into the United States would also be subject to inspection at the port of entry.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and an analysis of the potential economic effects of this action on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The United States produces approximately 3,000 metric tons of mangoes per year, about one-hundredth of 1 percent of world production. While U.S. mango production is limited, the United States is the world's leading importer of fresh mangoes, receiving 33 percent of imports worldwide. Currently, Australia produces 60,000 metric tons of mangoes during the mid-September to mid-April season. Mango imports from Australia are expected to total about 1,200 metric tons per year. This represents approximately 0.5 percent of total U.S. mango imports. U.S. consumers will benefit from increased access to another variety of fresh mangoes. In addition, because the Australian mango season is opposite that of the United States, fresh mango imports would not compete with domestic production and U.S. consumers can have access to mangoes the entire year.

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

Executive Order 12988

This proposed rule would allow mangoes to be imported into the United States from Australia. If this proposed

rule is adopted, State and local laws and regulations regarding mangoes imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2011–0040. Please send a copy of your comments to: (1) Docket No. APHIS–2011–0040, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the fruits and vegetables regulations to allow, under certain conditions, the importation into the United States of commercial consignments of fresh mangoes from Australia. The conditions for the importation of fresh mangoes from Australia include requirements for pest exclusion at the production site, irradiation treatment, pest-excluding packinghouse procedures and port-of-entry inspections. The mangoes would also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Australia with an additional declaration confirming that the mangoes had been produced in accordance with the proposed requirements. This action would allow for the importation of fresh mangoes from Australia while continuing to provide protection against the introduction of injurious plant pests into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency s functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Foreign business.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 50 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56–54 is added to read as follows:

§ 319.56–54 Mangoes from Australia.

Mangoes (*Mangifera indica*) may be imported into the continental United States from Australia only under the following conditions:

(a) The mangoes may be imported in commercial consignments only.

(b) The mangoes must be treated by irradiation for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, in accordance with part 305 of this chapter.

(c) The risks presented by *Cytosphaera mangiferae* must be addressed in one of the following ways:

(1) The mangoes are treated with a broad-spectrum post-harvest fungicidal dip;

(2) The mangoes originate from an orchard that was inspected prior to the beginning of harvest during the growing season and the orchard was found free of *C. mangiferae;* or

(3) The mangoes originate from an orchard that were treated with a broad-spectrum fungicide during the growing season and was inspected prior to harvest and the mangoes are found free of *C. mangiferae.*

(d) Prior to export from Australia, the mangoes must be inspected by the national plant protection organization (NPPO) of Australia and found free of *C. mangiferae, L. pseudotheobraomae, N. mangiferae, N. novaehollandiae, P. adansoniae, P. mangiferae, Fusarium* spp. complex associated with mango malformation disease, and *X. campestris* pv. *mangiferaeindicae.*

(e) (1) Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Australia with additional declarations that:

(i) The mangoes were subjected to one of the pre- or post-harvest mitigation options described in § 319.56–54(c), and

(ii) The mangoes were inspected prior to export from Australia and found free of *C. mangiferae, L. pseudotheobraomae, N. mangiferae, N. novaehollandiae, P. adansoniae, P. mangiferae, Fusarium* spp. complex

associated with mango malformation disease, and *X. campestris* pv. *mangiferaeindicae.*

(2) If the fruit is treated with irradiation outside the United States, each consignment of fruit must be inspected jointly by APHIS and the NPPO of Australia, and the phytosanitary certificate must include an additional declaration that the fruit was treated with irradiation in accordance with part 305 of this chapter.

Done in Washington, DC this 19th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27564 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1093; Directorate Identifier 2010–NM–149–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require repetitive detailed inspections for discrepancies of the horizontal stabilizer ballscrew assembly; repetitive lubrication of the horizontal stabilizer trim control system; repetitive measurements for discrepancies of the ballscrew to ballnut freeplay; and corrective actions if necessary. This proposed AD was prompted by a report of extensive corrosion of the ballscrew of the drive mechanism of the horizontal stabilizer trim actuator. We are proposing this AD to prevent undetected failure of the primary and secondary load paths for the ballscrew in the horizontal stabilizer, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by December 9, 2011.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Airplane Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

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–2011–1093; Directorate Identifier 2010–NM–149–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received a report of extensive corrosion of the ballscrew of the drive mechanism of the horizontal stabilizer trim actuator (HSTA). Boeing previously initiated a design review and safety analysis of the ballscrews used on all Model 757 airplanes as a result of an MD–80 airplane accident which occurred in January 2000. The cause of that accident was attributed to an in-flight failure of the horizontal stabilizer jackscrew assembly caused by inadequate maintenance. Jackscrews and ballscrews are similar in function and have similar airplane level failure modes. During this review a Model 757 airplane operator reported the subject corrosion. This condition, if not corrected, could result in undetected failure of the primary and secondary load paths for the ballscrew in the horizontal stabilizer, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 757–27A0144 (for Model 757–200, –200CB, and 200PF series airplanes) and 757–27A0145 (for Model 757–300 series airplanes), both Revision 1, both dated January 20, 2010. These service bulletins describe procedures for repetitive detailed inspections for discrepancies of the horizontal stabilizer ballscrew assembly (including but not limited to, damage, cracking, corrosion, or wear); repetitive lubrication of the horizontal stabilizer trim control system; and repetitive measurements of the ballscrew to ballnut freeplay for discrepancies.

We have also reviewed Subject 27–41–10, ''Stabilizer Trim Ballscrew Freeplay,'' of Chapter 27, ''Flight Controls,'' of the Boeing 757 Airplane Maintenance Manual (AMM), Revision 101, dated May 20, 2011, which describes procedures for accomplishing the subject inspections and freeplay measurements, and applicable corrective actions.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Boeing Alert Service Bulletins 757–27A0144 and 757–27A0145, both Revision 1, both dated January 20, 2010, do not specify corrective actions for airplanes on which the measured freeplay is less than .004 inch and the freeplay check was done correctly. However, this proposed AD requires corrective action that includes replacement of the HSTA before further flight with a new or overhauled HSTA, if the freeplay measurement is less then 0.002 inch. No action is required for freeplay measurements greater then or equal to 0.002 inch but less then 0.004 inch after verifying the measurement was performed correctly.

Boeing Alert Service Bulletins 757–27A0144 and 757–27A0145, both Revision 1, both dated January 20, 2010, do not specify conditions for replacing the HSTA if that replacement is necessary as corrective action. This proposed AD requires any replacement HSTA be new or overhauled if replaced as corrective action. Any replacement HSTA that is not new or overhauled must be inspected before further flight in accordance with the requirements of this proposed AD.

Boeing Alert Service Bulletins 757–27A0144 and 757–27A0145, both Revision 1, both dated January 20, 2010, do not give credit for airplanes on which the HSTA ballscrews were overhauled after removing the HSTA from the airplane as part of a ''hard-time'' replacement program. The proposed AD includes credit for airplanes on which any HSTA is overhauled before the effective date of this AD, or within the compliance time specified in paragraph (g), (h), or (i) of this AD, as applicable, as part of a ''hard-time'' replacement program that includes removal of the HSTA from the airplane and overhaul of the stabilizer ballscrew using original equipment manufacturer instructions. Therefore, any such HSTA is considered acceptable for compliance with the initial accomplishment of the actions specified in paragraphs (g), (h), and (i) of this AD, as applicable, and the repeat interval for those actions may be determined from the performance date of that overhaul.

Boeing Alert Service Bulletins 757–27A0144 and 757–27A0145, both Revision 1, both dated January 20, 2010, do not specify the initial compliance times for airplanes on which the detailed inspection or lubrication tasks have not been performed; however, this proposed AD provides those compliance times.

Boeing Alert Service Bulletins 757–27A0144 and 757–27A0145, both Revision 1, both dated January 20, 2010, specify the initial compliance time for the stabilizer ballscrew to ballnut freeplay check for Group 1, Configuration 1, and Group 1, Configuration 3 airplanes based on total flight hours, within 18 months from the date of Boeing Alert Service Bulletins 757–27A0144 and 757–27A0145, both Revision 1, both dated January 20, 2010. This proposed AD requires the initial freeplay check before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

We have coordinated the differences discussed above with Boeing.

Costs of Compliance

We estimate that this proposed AD would affect 730 airplanes of U.S. registry. We also estimate that it would take about 13 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $806,650, or $1,105 per product.

We estimate that it would take about 26 work-hours to do any HSTA replacement that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed replacement to the U.S. operators to be $2,210 per product; excluding parts cost, which varies depending on airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–1093; Directorate Identifier 2010–NM–149–AD.

Comments Due Date

(a) We must receive comments by December 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 27: Flight Controls.

Unsafe Condition

(e) This AD was prompted by a report of extensive corrosion of the ballscrew of the drive mechanism of the horizontal stabilizer trim actuator (HSTA). We are issuing this AD to prevent undetected failure of the primary and secondary load paths for the ballscrew in the horizontal stabilizer, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Compliance

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

Group 1, Configuration 1 Airplanes—Repetitive Inspections, Lubrications, Freeplay Checks

(g) For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 757–27A0144 (for Model 757–200, -200CB, and 200PF series airplanes) or 757–27A0145 (for Model 757–300 series airplanes), Revision 1, dated January 20, 2010, that have accumulated 15,000 total flight cycles or fewer as of the effective date of this AD: Do the actions required by paragraph (g)(1) or (g)(2) of this AD, as applicable, and do the actions required by paragraph (g)(3) or (g)(4) of this AD, as applicable, and do the actions required by paragraph (g)(5) of this AD, at the times specified in those paragraphs, and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0144 (for Model 757–200, -200CB, and -200PF series airplanes) or 757–27A0145 (for Model 757–300 series airplanes), Revision 1, dated January 20, 2010.

(1) For airplanes on which a detailed inspection of the horizontal stabilizer ballscrew assembly specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has been done as of the effective date of this AD: Do a detailed inspection for discrepancies of the horizontal stabilizer ballscrew assembly at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,500 flight hours or 2 years, whichever occurs first.

(i) Within 3,500 flight hours or 2 years after doing the most recent detailed inspection of the horizontal stabilizer ballscrew assembly, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(2) For airplanes on which a detailed inspection of the horizontal stabilizer ballscrew assembly specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has not been done as of the effective date of this AD: Do a detailed inspection for discrepancies of the horizontal stabilizer ballscrew assembly within 3,500 flight hours or 2 years after the effective date of this AD, whichever occurs first. Repeat the inspection thereafter at intervals not to exceed 3,500 flight hours or 2 years, whichever occurs first.

(3) For airplanes on which the lubrication of the horizontal stabilizer trim control system specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has been done as of the effective date of this AD: Lubricate the horizontal stabilizer trim control system at the later of the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD. Repeat the lubrication thereafter at intervals not to exceed 2,000 flight hours or 1 year, whichever occurs first.

(i) Within 2,000 flight hours or 1 year after doing the most recent lubrication of the horizontal stabilizer trim control system, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(4) For airplanes on which the lubrication of the horizontal stabilizer trim control system specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has not been done as of the effective date of this AD: Lubricate the horizontal stabilizer trim control system within 2,000 flight hours or 1 year after the effective date of this AD, whichever occurs first. Repeat the lubrication thereafter at intervals not to exceed 2,000 flight hours or 1 year, whichever occurs first.

(5) Do the stabilizer ballscrew to ballnut freeplay check for discrepancies at the later of the times specified in paragraphs (g)(5)(i) and (g)(5)(ii) of this AD. Repeat the freeplay check thereafter at intervals not to exceed 18,000 flight hours or 5 years, whichever occurs first.

(i) Before the accumulation of 15,000 total flight hours.

(ii) Within 18 months after the effective date of this AD.

Group 1, Configuration 2 Airplanes—Repetitive Inspections, Lubrications, Freeplay Checks

(h) For Group 1, Configuration 2 airplanes identified in Boeing Alert Service Bulletin 757–27A0144 (for Model 757–200, –200CB, and 200PF series airplanes) or 757–27A0145 (for Model 757–300 series airplanes), Revision 1, dated January 20, 2010, that have accumulated more than 15,000 total flight cycles as of the effective date of this AD: Do the actions required by paragraph (h)(1) or (h)(2) of this AD, as applicable, and do the actions required by paragraph (h)(3) or (h)(4) of this AD, as applicable, and do the actions required by paragraph (h)(5) of this AD, at the times specified in those paragraphs, and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0144 (for Model 757–200, –200CB, and 200PF series airplanes) or 757–27A0145 (for Model 757–300 series airplanes), Revision 1, dated January 20, 2010.

(1) For airplanes on which a detailed inspection of the horizontal stabilizer ballscrew assembly specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has been done as of the effective date of this AD: Do a detailed inspection for discrepancies of the horizontal stabilizer ballscrew assembly at the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD. Do the inspection thereafter at intervals not to exceed 3,500 flight hours or 2 years, whichever occurs first.

(i) Within 3,500 flight hours or 18 months after doing the most recent detailed inspection of the stabilizer ballscrew assembly, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(2) For airplanes on which a detailed inspection of the horizontal stabilizer ballscrew assembly specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has not been done as of the effective date of this AD: Do a detailed inspection for discrepancies of the horizontal stabilizer ballscrew assembly within 3,500 flight hours or 18 months after the effective date of this AD, whichever occurs first. Do the inspection thereafter at intervals not to exceed 3,500 flight hours or 2 years, whichever occurs first.

(3) For airplanes on which the lubrication of the horizontal stabilizer trim control system specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has been done as of the effective date of this AD: Lubricate the horizontal stabilizer trim control system at the later of the times specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD. Do the lubrication thereafter at intervals not to exceed 2,000 flight hours or 1 year, whichever occurs first.

(i) Within 2,000 flight hours or 1 year after doing the most recent lubrication of the horizontal stabilizer trim control system, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(4) For airplanes on which the lubrication of the horizontal stabilizer trim control system specified in Boeing Alert Service Bulletins 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has not been done as of the effective date of this AD: Lubricate the horizontal stabilizer trim control system within 2,000 flight hours or 1 year after the effective date of this AD, whichever occurs first. Do the lubrication thereafter at intervals not to exceed 2,000 flight hours or 1 year, whichever occurs first.

(5) Do the stabilizer ballscrew to ballnut freeplay check for discrepancies within 18 months after the effective date of this AD.

Repeat the freeplay check thereafter at intervals not to exceed 18,000 flight hours or 5 years, whichever occurs first.

Group 1, Configuration 3 Airplanes—Repetitive Inspections, Lubrications, Freeplay Checks

(i) For Group 1, Configuration 3 airplanes identified in Boeing Alert Service Bulletin 757–27A0144 (for Model 757–200, –200CB, and 200PF series airplanes) or 757–27A0145 (for Model 757–300 series airplanes), Revision 1, dated January 20, 2010: Do the actions required by paragraph (i)(1) or (i)(2) of this AD, as applicable, and do the actions required by paragraph (i)(3) or (i)(4) of this AD, as applicable, and do the actions required by paragraph (i)(5) of this AD, at the time specified in those paragraphs, and in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0144 (for Model 757–200, –200CB, and 200PF series airplanes) or 757–27A0145 (for Model 757–300 series airplanes), Revision 1, dated January 20, 2010.

(1) For airplanes on which a detailed inspection of the horizontal stabilizer ballscrew assembly specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has been done as of the effective date of this AD: Do a detailed inspection for discrepancies of the stabilizer ballscrew assembly at the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD. Do the inspection thereafter at intervals not to exceed 3,500 flight hours or 2 years, whichever occurs first.

(i) Within 3,500 flight hours or 2 years after doing the most recent detailed inspection of the stabilizer ballscrew assembly, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(2) For airplanes on which a detailed inspection of the horizontal stabilizer ballscrew assembly specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has not been done as of the effective date of this AD: Do a detailed inspection for discrepancies of the stabilizer ballscrew assembly at the later of the times in paragraph (i)(2)(i) or (i)(2)(ii) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,500 flight hours or 2 years, whichever occurs first.

(i) Within 3,500 flight hours or 2 years, whichever occurs first, after accomplishing an overhaul specified in Boeing Alert Service Bulletin 757–27A0142, Revision 2, dated October 23, 2003; or Boeing Alert Service Bulletin 757–27A0143, Revision 1, dated October 23, 2003.

(ii) Within 6 months after the effective date of this AD.

(3) For airplanes on which the lubrication of the horizontal stabilizer trim control system specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has been done as of the effective date of this AD: Lubricate the horizontal stabilizer trim control system at the later of the times specified in paragraphs (i)(3)(i) and (i)(3)(ii) of this AD. Do the lubrication thereafter at intervals not to exceed 2,000 flight hours or 1 year, whichever occurs first.

(i) Within 2,000 flight hours or 1 year after doing the most recent lubrication of the horizontal stabilizer trim control system, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(4) For airplanes on which the lubrication of the horizontal stabilizer trim control system specified in Boeing Alert Service Bulletin 757–27A0144 or 757–27A0145, dated August 7, 2003; or Revision 1, dated January 20, 2010; has not been done as of the effective date of this AD: Lubricate the horizontal stabilizer trim control system at the later of the times specified in paragraphs (i)(4)(i) and (i)(4)(ii) of this AD. Do the lubrication thereafter at intervals not to exceed 2,000 flight hours or 1 year, whichever occurs first.

(i) Within 2,000 flight hours or 1 year, whichever occurs first, after accomplishing an overhaul specified in Boeing Alert Service Bulletin 757–27A0142, Revision 2, dated October 23, 2003; or Boeing Alert Service Bulletin 757–27A0143, Revision 1, dated October 23, 2003.

(ii) Within 6 months after the effective date of this AD.

(5) Do the stabilizer ballscrew to ballnut freeplay check for discrepancies at the later of the times specified in paragraph (i)(5)(i) or (i)(5)(ii) of this AD. Repeat the freeplay check thereafter at intervals not to exceed 18,000 flight hours or 5 years, whichever occurs first.

(i) Before the accumulation of 15,000 total flight hours after accomplishing an overhaul specified in Boeing Alert Service Bulletin 757–27A0142, Revision 2, dated October 23, 2003; or Boeing Alert Service Bulletin 757–27A0143, Revision 1, dated October 23, 2003.

(ii) Within 18 months after the effective date of this AD.

Corrective Actions

(j) If any discrepancy is found during any action required by paragraph (g), (h), or (i) of this AD: Before further flight, do the replacement specified in paragraph (j)(1) or (j)(2) of this AD, in accordance with Subject 27–41–10, ''Stabilizer Trim Ballscrew Freeplay,'' of Chapter 27, ''Flight Controls,'' of the Boeing 757 Airplane Maintenance Manual (AMM), Revision 101, dated May 20, 2011; except as provided by paragraph (k) of this AD.

(1) Replace the HSTA with a new or overhauled HSTA.

(2) Replace the HSTA with a HSTA that is not new or overhauled on which a detailed inspection, freeplay measurement, and lubrication of that actuator are performed in accordance with paragraph (g), (h), or (i) of this AD, as applicable, and no discrepancies are found during the inspection and freeplay measurement.

(k) No action is required if a freeplay measurement greater then or equal to 0.002 inch but less than 0.004 inch is found and the measurement is verified that it was performed correctly. This AD requires HSTA replacement, as specified in paragraph (j) of this AD, if a freeplay measurement less then 0.002 inch is found.

Note 1: Additional guidance for the verification of the measurement can be found in Subject 27–41–10, ''Stabilizer Trim Ballscrew Freeplay,'' of Chapter 27, ''Flight Controls,'' of the Boeing 757 Airplane Maintenance Manual (AMM), Revision 101, dated May 20, 2011.

Credit for Hard-Time Replacement of HSTA

(l) Any HSTA overhauled before the effective date of this AD, or within the compliance time specified in paragraph (g), (h), or (i) of this AD, as applicable—as part of a ''hard-time'' replacement program that includes removal of the HSTA from the airplane and overhaul of the stabilizer ballscrew in accordance with original equipment manufacturer component maintenance manual instructions—meets the intent of one detailed inspection, one freeplay inspection, and one lubrication of the HSTA as specified in paragraph (g), (h), or (i) of this AD; and therefore, is considered acceptable for compliance with the initial accomplishment of the actions specified in paragraphs (g), (h), and (i) of this AD, as applicable, and the repeat interval for those actions may be determined from the performance date of that overhaul.

Parts Installation

(m) As of the effective date of this AD, no person may install, on any airplane, a horizontal stabilizer trim actuator that is not new or overhauled; unless a detailed inspection, freeplay measurement, and lubrication of that actuator are performed in accordance with paragraph (g), (h), or (i) of this AD, as applicable, and no discrepancies are found during the inspection and freeplay measurement.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(o) For more information about this AD, contact Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590; e-mail: *kelly.mcguckin@faa.gov.*

(p) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services

Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 13, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27484 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1091; Directorate Identifier 2011–NM–037–AD]

RIN 2120–AA64

Airworthiness Directives; EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model CN–235–100, CN–235–200, and CN–235–300 airplanes. 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:

EADS–CASA received reports of engine condition control cable * * * failures that, in one of the cases, occurred during the starting phase of one engine which led to an engine shut down following the procedures described within the Aircraft Operation Manual.

The investigation revealed that the cable failure is due to a fracture in the area of the pulley * * *. The root cause of the fracture is an unsuitable ratio between the diameter of the pulley and the cable type and diameter.

This condition, if not detected and corrected, could lead to the engine condition control cable failure and consequent runway excursion if it occurs during take-off or reduced control of the aeroplane if it occurs during flight.

* * * * *

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 December 9, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; e-mail *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.* 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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–2011–1091; Directorate Identifier 2011–NM–037–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 2011–0010, dated January 20, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

EADS–CASA received reports of engine condition control cable (Part Number (P/N) 35–56382–0003) failures that, in one of the cases, occurred during the starting phase of one engine which led to an engine shut down following the procedures described within the Aircraft Operation Manual.

The investigation revealed that the cable failure is due to a fracture in the area of the pulley MS 20219–1. The root cause of the fracture is an unsuitable ratio between the diameter of the pulley and the cable type and diameter.

This condition, if not detected and corrected, could lead to the engine condition control cable failure and consequent runway excursion if it occurs during take-off or reduced control of the aeroplane if it occurs during flight.

To address this condition, EADS–CASA has developed an engine condition control cable P/N 35–56382–0005 with improved characteristics.

For the reason described above, this [EASA] AD requires, at first, [an inspection to determine the part number of the engine condition control cable] [repetitive detailed] inspections for [excessive wear] of the [affected] engine condition control cable, and its replacement (scheduled or depending of the inspection findings) with engine condition control cable P/N 35–56382–0005.

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

Relevant Service Information

Airbus Military has issued Section 76–10–00, ''Power and Condition Control,'' Block 601 (Configuration 1), ''Inspection/Check,'' Paragraph 1.B.; and Section 76–10–12, ''Power and Control Cables,'' Block 401 (Configuration 1),

''Removal/Installation,'' Paragraph 3.; of the CN–235 Aircraft Maintenance Manual, Revision 57, dated July 15, 2010. The actions described in this aircraft maintenance manual 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 7 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,190, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 12 work-hours and require parts costing $1,087, for a cost of $2,107 per product. We have no way of determining the number of products that may need these actions.

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:

EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.): Docket No. FAA–2011–1091; Directorate Identifier 2011–NM–037–AD.

Comments Due Date

(a) We must receive comments by December 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EADS CASA (Type Certificate previously held by Construcciones Aeronauticas, S.A.) Model CN–235–100, CN–235–200, and CN–235–300 airplanes; certificated in any category; serial numbers C–030 through C–149 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 76: Engine controls.

Reason

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

EADS–CASA received reports of engine condition control cable * * * failures that, in one of the cases, occurred during the starting phase of one engine which led to an engine shut down following the procedures described within the Aircraft Operation Manual.

The investigation revealed that the cable failure is due to a fracture in the area of the pulley * * *. The root cause of the fracture is an unsuitable ratio between the diameter of the pulley and the cable type and diameter.

This condition, if not detected and corrected, could lead to the engine condition control cable failure and consequent runway excursion if it occurs during take-off or reduced control of the aeroplane if it occurs during flight.

* * * * *

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 9 months or 300 flight hours, whichever occurs first after the effective date of this AD, inspect to determine whether the engine condition control cable has part number (P/N) 35–56382–0003. If an engine condition control cable having P/N 35–56382–0003 is installed, within 9 months or 300 flight hours, whichever occurs first after the effective date of this AD, do a detailed inspection for excessive wear of the engine condition control cable (including control rods, levers and pulleys near the flight compartment center console having incorrect freedom and range of movement, incorrect assembly and locking, distortion, damage, corrosion, incorrect security of attachment; and control rod end fittings having excessive wear, i.e., kinks or distortion, corrosion, reduced diameter of cable, and broken wires); in accordance with Section 76–10–00, ''Power and Condition Control,'' Block 601

(Configuration 1), ''Inspection/Check,'' Paragraph 1.B., of the Airbus Military CN–235 Aircraft Maintenance Manual, Revision 57, dated July 15, 2010.

(h) For airplanes with engine condition control cable having P/N 35–56382–0003: Within 9 months or 300 flight hours after doing the detailed inspection required by paragraph (g) of this AD, whichever occurs first, repeat the detailed inspection specified in paragraph (g) of this AD.

(i) If, during any inspection required by paragraph (g) or (h) of this AD, excessive wear of the engine condition control cable is found: Before further flight, replace the engine condition control cable with P/N 35–56382–0005, in accordance with Section 76–10–12, ''Power and Condition Control Cables,'' Block 401 (Configuration 1), ''Removal/Installation,'' Paragraph 3., of the Airbus Military CN–235 Aircraft Maintenance Manual, Revision 57, dated July 15, 2010.

(j) Within 27 months or 900 flight hours, whichever occurs first after the effective date of this AD: Unless the engine condition control cable has already been replaced in accordance with paragraph (i) of this AD, replace the engine condition control cable having P/N 35–56382–0003 with an engine condition control cable having P/N 35–56382–0005, in accordance with Section 76–10–12, ''Power and Condition Control Cables,'' Block 401 (Configuration 1), ''Removal/Installation,'' Paragraph 3., of the Airbus Military CN–235 Aircraft Maintenance Manual, Revision 57, dated July 15, 2010.

(k) As of the effective date of this AD, no person may install an engine condition control cable having P/N 35–56382–0003, on any airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences

Other FAA AD Provisions

(l) 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:* Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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

(m) Refer to MCAI EASA Airworthiness Directive 2011–0010, dated January 20, 2011; and Section 76–10–00, ''Power and Condition Control,'' Block 601 (Configuration 1), ''Inspection/Check,'' Paragraph 1.B., and Section 76–10–12, ''Power and Condition Control Cables,'' Block 401 (Configuration 1), ''Removal/Installation,'' Paragraph 3., of the Airbus Military CN–235 Aircraft Maintenance Manual, Revision 57, dated July 15, 2010; for related information.

Issued in Renton, Washington, on October 13, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27485 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0994; Directorate Identifier 2009–NE–39–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–535 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all RR RB211–535E4–37, –535E4–B–37, –535E4–B–75, and –535E4–C–37 turbofan engines. The existing AD currently requires performing initial and repetitive visual and fluorescent penetrant inspections (FPI) of the low-pressure (LP) turbine stage 1, 2, and 3 discs to detect cracks in the discs. Since we issued that AD, we determined that the definition of shop visit is too restrictive in the existing AD. This proposed AD would continue to require those inspections and would change the definition of a shop visit to be less restrictive. We are proposing this AD to correct the definition of shop visit, and to detect cracks in the LP turbine stage 1, 2, and 3 discs, which could result in an uncontained release of LP turbine blades and damage to the airplane.

DATES: We must receive comments on this proposed AD by December 27, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; *phone:* 011 44 1332 242424, fax: 011 44 1332 249936; or *e-mail: http://www.rolls-royce.com/contact/civil_team.jsp,* or download the publication from *https://www.aeromanager.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7143; *fax:* 781–238–7199; *e-mail: alan.strom@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No.

FAA–2009–0994; Directorate Identifier 2009–NE–39–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On May 20, 2011, we issued AD 2011–11–08, Amendment 39–16707 (76 FR 30529, May 26, 2011), for all RR RB211–535E4–37, –535E4–B–37, –535E4–B–75, and –535E4–C–37 turbofan engines. That AD requires performing an initial FPI on the LP turbine stage 1, 2, and 3 discs at the next engine shop inspection after the effective date of that AD. That AD also requires repetitive inspections at each engine shop visit after accumulating 1,500 cycles since last inspection of the LP turbine stage 1, 2, and 3 discs. That AD resulted from several findings of cracking at the firtrees of LP turbine discs. We issued that AD to detect cracks in the LP turbine stage 1, 2, and 3 discs, which could result in an uncontained release of LP turbine blades and damage to the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2011–11–08, Amendment 39–16707 (76 FR 30529, May 26, 2011), we found that the definition of ''shop visit'' in the AD is too restrictive, in that it would require operators to inspect more often than required to ensure safety.

Costs of Compliance

We estimate that this proposed AD would affect about 588 RB211–535 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 30 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. No parts are required. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,499,400.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined that the definition of shop visit is too restrictive, and to correct the unsafe condition described previously. This condition is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This AD requires accomplishing the same requirements as AD 2011–11–08 (76 FR 30529, May 26, 2011), except the definition of shop visit has been redefined.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–11–08, Amendment 39–16707 (76 FR 30529, May 26, 2011), and adding the following new AD:

Rolls-Royce plc: Docket No. FAA–2009–0994; Directorate Identifier 2009–NE–39–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by December 27, 2011.

(b) Affected ADs

This AD supersedes AD 2011–11–08, Amendment 39–16707 (76 FR 30529, May 26, 2011).

(c) Applicability

This AD applies to Rolls-Royce plc RB211–535E4–37, –535E4–B–37, –535E4–B–75, and –535E4–C–37 turbofan engines.

(d) Unsafe Condition

This AD was prompted by our determination that the definition of ''shop visit'' in the existing AD is too restrictive, in that it would require operators to inspect more often than required to ensure safety. We are issuing this AD to correct the definition of shop visit, and to detect cracks in the low-pressure (LP) turbine stage 1, 2, and 3 discs, which could result in an uncontained release of LP turbine blades and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Initial Inspection Requirements

At the next engine shop visit after the effective date of this AD, perform a visual and a fluorescent penetrant inspection (FPI) of the LP turbine stage 1, 2, and 3 discs.

(2) Repeat Inspection Requirements

At each engine shop visit after accumulating 1,500 cycles since the last inspection of the LP turbine stage 1, 2 and 3 discs, repeat the inspections specified in paragraph (e)(1) of this AD.

(3) Remove Cracked Discs

If you find cracks, remove the disc from service.

(f) Definitions

For the purpose of this AD, an ''engine shop visit'' is induction of an engine into the shop for any purpose where:

(1) All the blades are removed from the high-pressure (HP) compressor discs and the HP turbine disc, or

(2) All the blades are removed from the intermediate pressure turbine disc.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

(1) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7143; *fax:* 781–238–7199; *e-mail: alan.strom@faa.gov,* for more information about this AD.

(2) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0244, dated November 9, 2009, and Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AG272 for related information. Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; *phone:* 011 44 1332 242424, fax: 011 44 1332 249936; or *e-mail: http://www.rollsroyce.com/contact/civil_team.jsp,* for a copy of this service information or download the publication from *https://www.aeromanager.com.*

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

Peter A White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–27512 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter 1

Effective Date for Swap Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed amendment.

SUMMARY: On July 14, 2011, the Commodity Futures Trading Commission (''CFTC'' or the ''Commission'') issued a final order (''July 14 Order'') that grants temporary exemptive relief from certain provisions of the Commodity Exchange Act (''CEA'') that otherwise would have taken effect on the general effective date of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''the Dodd-Frank Act'')—July 16, 2011. The July 14 Order grants temporary relief in two parts. The first part addresses those CEA provisions added or amended by title VII of the Dodd-Frank Act that reference one or more terms regarding entities or instruments that title VII requires be ''further defined'' to the extent that requirements or portions of such provisions specifically relate to such referenced terms and do not require a rulemaking. The second part, which is based on part 35 of the Commission's regulations, addresses certain provisions of the CEA that may apply to certain agreements, contracts, and transactions in exempt or excluded commodities as a result of the repeal of various CEA exemptions and exclusions as of the general effective date of July 16, 2011. This is a notice of a proposed amendment to that July 14 Order, 76 FR 42508 (July 19, 2011), that would modify the temporary exemptive relief provided therein by extending the potential latest expiration date of the July 14 Order; and adding provisions to account for the repeal and replacement (as of December 31, 2011) of part 35 of the Commission's regulations. Only comments pertaining to these proposed amendments to the July 14 Order will be considered as part of this notice of proposed amendment.

DATES: Submit comments on or before November 25, 2011.

ADDRESSES: Comments may be submitted, referenced as ''Effective Date Amendments,'' by any of the following methods:

- Agency Web site, via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Terry Arbit, Deputy General Counsel, 202–418–5357, *tarbit@cftc.gov*, or Mark D. Higgins, Counsel, 202–418–5864, *mhiggins@cftc.gov*, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

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

Section 754 of the Dodd-Frank Act states that, unless otherwise provided, the provisions of subtitle A of title VII of the Dodd-Frank Act [4] ''shall take

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] Title VII also includes amendments to the federal securities laws to establish a similar regulatory framework for security-based swaps under the authority of the Securities and Exchange Commission (''SEC'').

[4] All of the amendments to the CEA in title VII are contained in subtitle A. Accordingly, for convenience, references to ''title VII'' in this notice of proposed amendment shall refer only to subtitle A of title VII.

effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle.'' Thus, the general effective date for provisions of title VII that do not require a rulemaking was July 16, 2011. This includes the provisions that repealed several provisions of the CEA as in effect prior to the Dodd-Frank Act that excluded or exempted, in whole or in part, certain transactions from Commission oversight.[5]

Section 712(d)(1) of the Dodd-Frank Act requires the Commission and the SEC to undertake a joint rulemaking to ''further define'' certain terms used in title VII, including the terms ''swap,'' ''swap dealer,'' ''major swap participant,'' and ''eligible contract participant.''[6] Section 721(c) requires the Commission to adopt a rule to ''further define'' the terms ''swap,'' ''swap dealer,'' ''major swap participant,'' and ''eligible contract participant'' to prevent evasion of statutory and regulatory obligations.[7] The Commission has issued two notices of proposed rulemaking that address these further definitions.[8]

The Commission's final rulemakings further defining the terms in sections 712(d) and 721(c) were not expected to be in effect as of July 16, 2011 (*i.e.,* the general effective date set forth in section 754 of the Dodd-Frank Act). Accordingly, the Commission on July 14, 2011 exercised its exemptive authority under CEA section 4(c)[9] and its authority under section 712(f) of the Dodd-Frank Act by issuing the July 14 Order.[10] In so doing, the Commission sought to address concerns that had been raised about the applicability of various regulatory requirements to certain agreements, contracts, and transactions after July 16, 2011, and thereby ensure that current practices will not be unduly disrupted during the transition to the new regulatory regime.[11]

Description of Existing Relief

The July 14 Order groups the relevant provisions of the Dodd-Frank Act into four categories and provides temporary exemptive relief, set to expire no later than December 31, 2011, with respect to Categories 2 and 3. A summary of the four categories of provisions follows.

Category 1 covers statutory provisions which by their express terms require rulemaking to implement. Because, under section 754 of the Dodd-Frank Act, these provisions do not become effective until at least 60 days after the final rule is published, no exemptive relief from the general effective date is necessary. Category 1 provisions include, among others, the further definitions of terms regarding swap entities or instruments as required by the Dodd-Frank Act (such as the terms ''swap,'' ''swap dealer,'' ''major swap participant,'' or ''eligible contract participant''). Category 1 also includes, among others: (1) Registration, capital and margin requirements, and business conduct standards for swap dealers and major swap participants; (2) provisions prohibiting agricultural swaps except pursuant to CFTC rules; (3) rules regarding swap execution facilities; and (4) various swap data recordkeeping and reporting requirements. A complete list of the Category 1 provisions is included in the appendix to the July 14 Order.

The first part of the relief provided for in the July 14 Order reaches those Dodd-Frank Act provisions (''Category 2 provisions'') that are self-effectuating (*i.e.,* do not require a rulemaking) and that reference one or more of the terms for which the Commission and SEC are required to provide further definition, including ''swap,'' ''swap dealer,'' ''major swap participant,'' ''eligible contract participant,'' and ''security-based swap agreement'' (collectively, the ''referenced terms''). These Category 2 provisions include, for example, the trade execution requirement of CEA section 2(h)(8), as amended by Dodd-Frank Act section 723. A complete list of the Category 2 provisions is included in the appendix to the July 14 Order. Because the Category 2 provisions would have taken effect on July 16, 2011 pursuant to section 754, the Commission granted temporary relief from those provisions, but only to the extent that the requirements in such provisions specifically relate to a referenced term that is not yet further defined. Thus, if a Category 2 provision also applies to futures or options on futures, the provision took effect on July 16 with respect to futures or options on futures. The exemption for Category 2 provisions expires on the earlier of: (1) The effective date of the applicable final rule further defining the relevant term; or (2) December 31, 2011.

In part two of the July 14 Order, the Commission provides temporary exemptive relief from the provisions of the CEA that may apply to certain agreements, contracts, and transactions in exempt or excluded commodities (generally, financial, energy and metals commodities) as a result of the repeal of the CEA exemptions and exclusions in former CEA sections 2(d), 2(e), 2(g), 2(h), and 5d as of July 16, 2011 pursuant to sections 723(a)(1) and 734(a) of the Dodd-Frank Act (the ''Category 3 provisions''). As explained in the July 14 Order, this relief is based on the Commission's existing ''part 35'' exemptive rules.[12]

Part 35 originally was promulgated in 1993 pursuant to, among others, the Commission's general exemptive authority in CEA section 4(c) and its plenary options authority under section 4c(b),[13] and provides a broad-based exemption from the CEA for ''swap

[5] These exclusions and exemptions were contained in former CEA sections 2(d), 2(e), 2(g), 2(h), and 5d, 7 U.S.C. 2(d), 2(e), 2(g), 2(h), and 7a–3.

[6] Section 712(d)(1) provides: ''Notwithstanding any other provision of this title and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors [of the Federal Reserve System], shall further define the terms 'swap', 'security-based swap', 'swap dealer', 'security-based swap dealer', 'major swap participant', 'major security-based swap participant', and 'security-based swap agreement' in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).''

[7] Section 721(c) provides: ''To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms 'swap', 'swap dealer', 'major swap participant', and 'eligible contract participant'.''

[8] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 75 FR 80174, Dec. 21, 2010 and Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 FR 29818, May 23, 2011.

[9] 7 U.S.C. 6(c).

[10] Effective Date for Swap Regulation, 76 FR 42508 (issued and made effective by the Commission on July 14, 2011; published in the **Federal Register** on July 19, 2011).

[11] Concurrent with the July 14 Order, the Commission's Division of Clearing and Intermediary Oversight and the Division of Market Oversight (together ''the Divisions'') identified certain provisions of the Dodd-Frank Act and CEA as amended that would take effect on July 16, 2011, but that may not be eligible for the exemptive relief provided by the Commission in its July 14 Order—specifically, the amendments made to the CEA by Dodd-Frank Act sections 724(c), 725(a), and 731. On July 14, 2011, the Divisions issued Staff No-Action Relief addressing the application of these provisions after July 16, 2011. Available at: *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/noactionletter071411.pdf* (last visited Sept. 26, 2011). The Commission anticipates that the Divisions will extend and conform this no-action relief to any final amendment to the July 14 Order that may result from this proposal.

[12] 76 FR at 42514. The July 14 Order did not extend to agreements, contracts, or transactions that fully met the conditions of part 35, since in such circumstances further relief was unnecessary.

[13] 7 U.S.C. 6c(b).

agreements'' in any commodity. Specifically, part 35 exempts ''swap agreements,'' as defined therein, from most of the provisions of the CEA if: (1) They are entered into by ''eligible swap participants'' (''ESPs''); [14] (2) they are not part of a fungible class of agreements standardized as to their material economic terms; (3) the creditworthiness of any party having an actual or potential obligation under the swap agreement would be a material consideration in entering into or determining the terms of the swap agreement, including pricing, cost, or credit enhancement terms; and (4) they are not entered into or traded on a multilateral transaction execution facility.

Under part two of the relief provided for in the July 14 Order, the Commission stated that transactions in exempt or excluded commodities (and persons offering, entering into, or rendering advice or rendering other services with respect to such transactions) are temporarily exempt from provisions of the CEA that may apply to such transactions if such transactions comply with part 35, notwithstanding that: (1) The transaction may be executed on a multilateral transaction execution facility; (2) the transaction may be cleared; (3) persons offering or entering into the transaction may be eligible contract participants as defined in the CEA (prior to the enactment of the Dodd-Frank Act); (4) the transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or (5) no more than one of the parties to the transaction is entering into the transaction in conjunction with its line of business, but is neither an eligible contract participant nor an ESP, and the transaction was not and is not marketed to the public.[15]

Thus, for certain transactions, the July 14 Order provides relief notwithstanding that the transaction may not satisfy certain part 35 requirements (*e.g.,* cleared, executed on a multilateral trade execution facility, entered into by certain persons that are not eligible contract participants, *etc.*). The Commission stated in the July 14 Order that this relief is limited to transactions in exempt and excluded commodities, and does not extend to transactions in agricultural commodities, because transactions in agricultural commodities were not covered by the applicable statutory exclusions and exemptions in effect prior to July 16, 2011.[16] The exemption in part two of the July 14 Order expires on the earlier of: (1) The repeal, withdrawal or replacement of part 35; or (2) December 31, 2011.

Category 4 contains those Dodd-Frank Act provisions for which the Commission determined not to issue relief, and which therefore went into effect on July 16, 2011. A complete list of the Category 4 provisions is included in the appendix to the July 14 Order.

The temporary exemptions issued in the July 14 Order are subject to several conditions. These conditions provide that the July 14 Order shall not: (1) Limit in any way the Commission's anti-fraud or anti-manipulation authority under the CEA; (2) apply to any provision of the Dodd-Frank Act or the CEA that became effective prior to July 16, 2011; (3) affect any effective date or compliance date set forth in any rulemaking issued by the Commission to implement provisions of the Dodd-Frank Act; (4) limit the Commission's authority under Dodd-Frank Act section 712(f) to issue rules, orders, or exemptions prior to the effective date of any provision of the Dodd-Frank Act and the CEA, in order to prepare for such effective date; and (5) affect the applicability of any provision of the CEA to futures contracts or options on futures contracts, or to cash markets.[17]

II. Discussion of the Proposed Amendments to the July 14 Order

The Commission is proposing to amend the July 14 Order in two ways. First, the Commission is proposing to amend the July 14 Order to extend the potential latest expiry dates. With respect to provisions covered in the first part of the relief in the July 14 Order, the Commission is proposing that the temporary exemptive relief expire upon the earlier of: (1) The effective date of the applicable final rule further defining the relevant referenced term; or (2) July 16, 2012.[18] This amendment addresses the potential that, as of December 31, 2011, the CFTC–SEC joint rulemakings ''further defining'' the referenced terms will not yet be effective. The Commission also is proposing to amend the July 14 Order to extend the expiry date of the second part of the relief in the July 14 Order until the earlier of: (1) July 16, 2012; or (2) such other compliance date as may be determined by the Commission. For the same reason stated by the Commission with respect to the second part of the relief provided in the July 14 Order, the proposed extension of this exemptive relief ''will allow markets and market participants to continue to operate under the regulatory regime as in effect prior to July 16, 2011, but subject to various implementing regulations that the Commission promulgates and applies to the subject transactions, market participants, or markets.'' [19]

Second, the Commission is proposing to include within the second part of the relief any agreement, contract or transaction that fully meets the conditions in part 35 as in effect on December 31, 2011. This amendment addresses the fact that such transactions, which were not included within the scope of the July 14 Order because the exemptive rules in part 35 covered them at that time, now require temporary relief because part 35 will no longer be available after December 31, 2011.[20] Accordingly, to ensure that the

[14] As noted in the July 14 Order, the parties covered under the ESP definition, while very broad, are not coextensive with those covered by the terms ''eligible commercial entity'' or ''eligible contract participant.'' Therefore, it is possible that a small segment of persons or entities that are currently relying on one or more of the CEA exclusions or exemptions cited above might not qualify as an ESP and consequently would not be eligible for part 35. 76 FR at 42511, n. 40.

[15] 76 FR at 42514. With respect to commodity options, the Commission made clear that options identified in the swap agreement definition in paragraph (b)(1)(i) of § 35.1 of the Commission's regulations and any options captured by the concluding catch-all language in that paragraph, as well as any options described in paragraphs (b)(1)(ii) and/or (iii) of § 35.1, involving excluded or exempt commodities are within the scope of the July 14 Order. 76 FR at 42514–15.

[16] The Commission also stated, though, that because part 35 remained in effect at the time of the July 14 Order, market participants could continue to rely on part 35 with respect to swaps (other than commodity options) on enumerated agricultural commodities as defined in CEA section 1a(4) or § 32.2 of the Commission's regulations, as well as swaps and commodity options on non-enumerated agricultural commodities, to the extent these transactions fully comply with part 35. Under the July 14 Order, market participants also may continue to rely on part 32 for options on enumerated agricultural commodities to the extent these transactions are conducted in accordance with § 32.13(g) of the Commission's regulations. Rule 32.13(g) permits off-exchange options between producers, processors, commercial users or merchants of the commodity or its products or by-products that have a net worth of at least $10 million.

[17] 76 FR at 42522.

[18] The date of July 16, 2012, is consistent with the potential transitional period provided in section 723(c) of the Dodd-Frank Act regarding former CEA section 2(h) and section 734(c) of the Dodd-Frank Act regarding former CEA section 5d (*i.e.,* for ''not longer than a 1-year period'' following the general effective date of title VII) .

[19] 76 FR at 42513.

[20] The Commission recently promulgated a rule pursuant to section 723(c)(3) of the Dodd-Frank Act that, effective December 31, 2011, will repeal the existing part 35 relief and replace it with new § 35.1 of the Commission's regulations. *See* Agricultural Swaps, 76 FR 49291 (Aug. 10, 2011). Rule 35.1 provides, in pertinent part, that ''agricultural swaps may be transacted subject to all provisions of the CEA, and any Commission rule, regulation or order thereunder, that is otherwise applicable to swaps.

Continued

exemptive relief currently available for these transactions continues to be available after December 31, 2011, the Commission proposes to amend the July 14 Order to incorporate by reference the part 35 relief available as of December 31, 2011. Whereas the relief provided in part two of the July 14 Order was (and would remain) limited to transactions in excluded or exempt commodities, this proposed amendment also would include, beginning on January 1, 2012, transactions in agricultural commodities that fully meet the conditions in part 35 as in effect on December 31, 2011.[21] The Commission proposes that this further amendment to the July 14 Order is necessary to ensure that the same scope of the exemptive relief available before December 31, 2011 is available to all swaps and extends through July 16, 2012, at the latest.

In proposing these amendments, the Commission continues to strive to ensure that current practices will not be unduly disrupted during the transition to the new regulatory regime. As stated above, the proposed July 16, 2012 date coincides with the potential transitional period provided in sections 723(c) and 734(c) of the Dodd-Frank Act.[22] Further, should the Commission deem it appropriate to terminate or extend any exemptive relief under part two of the July 14 Order, the Commission will be in a better position to comprehensively evaluate and consider any tailored exemption at that time.

The Commission believes it is in the interest of the public and market participants to continue to provide regulatory certainty regarding the applicability of the Dodd-Frank Act. There have been no disruptions to the market resulting from the July 14 Order, nor has the Commission received any request for additional relief beyond that provided for in the July 14 Order. Accordingly, the Commission believes the scope of the existing relief is appropriate and is proposing here only to amend that relief in the aforementioned ways. The Commission notes, for example, that Category 1 provisions—*i.e.,* those for which a rulemaking is required—will continue to be addressed outside the scope of the July 14 Order. Further, where appropriate, the Commission expects to phase-in compliance with its final rules over a period of time as part of the Commission's ongoing commitment to ensuring an orderly transition to the new regulatory regime.

III. Request for Comment

The Commission requests and will only consider comments on the amendments to the July 14 Order that are proposed in this notice of proposed amendment.

IV. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'')[23] imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA. These proposed amendments, if approved, would not require a new collection of information from any persons or entities that would be subject to the proposed amendments.

b. Cost-Benefit Considerations

Section 15(a) of the CEA[24] requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. CEA section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

This notice of proposed amendment proposes to amend the existing July 14 Order by extending the currently available temporary relief to no later than July 16, 2012, and by accounting for the repeal of part 35 of the Commission's regulations. As such, and because this proposal does not change the nature or limit the scope of relief granted in the July 14 Order, the costs and benefits set forth in the July 14 Order may be incorporated by reference in this proposal.[25] Nevertheless, the Commission seeks comment on whether these proposed amendments would impose any costs or confer any benefits beyond the July 14 Order.

V. Proposed Amendments to the July 14 Order

The Commission proposes the following amendments to the July 14 Order:

The Commission, to provide for the orderly implementation of the requirements of Title VII of the Dodd-Frank Act, pursuant to sections 4(c) and 4c(b) of the CEA and section 712(f) of the Dodd-Frank Act, hereby issues this Order consistent with the determinations set forth above, which are incorporated in this Final Order, as amended, by reference, and:

(1) Exempts, subject to the conditions set forth in paragraph (3), all agreements, contracts, and transactions, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, as added or amended by the Dodd-Frank Act, that reference one or more of the terms regarding entities or instruments subject to further definition under sections 712(d) and 721(c) of the Dodd-Frank Act, which provisions are listed in Category 2 of the Appendix to this Order; *provided, however,* that the foregoing exemption:

a. Applies only with respect to those requirements or portions of such provisions that specifically relate to such referenced terms; and

b. With respect to any such provision of the CEA, shall expire upon the earlier of: (i) The effective date of the applicable final rule further defining the relevant term referenced in the provision; or (ii) July 16, 2012.

(2) Exempts, subject to the conditions set forth in paragraph (3), all agreements, contracts, and transactions, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA, if the agreement, contract, or transaction complies with part 35 of the Commission's regulations as in effect as of December 31, 2011, including any

[It] also clarifies that by issuing a rule allowing agricultural swaps to transact subject to the laws and rules applicable to all other swaps, the Commission is allowing agricultural swaps to transact on [designated contract markets (''DCMs''), swap execution facilities (''SEFs'')], or otherwise to the same extent that all other swaps are allowed to trade on DCMs, SEFs, or otherwise.'' *Id.* at 49296.

[21] The Commission also is clarifying that, by operation of new § 35.1 of the Commission's regulations, the Commission's statement in adopting the July 14 Order that a DCM may list and trade swaps ''under the DCM's rules related to futures contracts, without exemptive relief,'' 76 FR at 42518, would apply, as of January 1, 2012, to swaps in agricultural commodities.

[22] *See* Order Regarding the Treatment of Petitions Seeking Grandfather Relief for Exempt Commercial Markets and Exempt Boards of Trade, 75 FR 56513, Sept. 16, 2010.

[23] 44 U.S.C. 3507(d).

[24] 7 U.S.C. 19(a).

[25] 76 FR 42521.

agreement, contract, or transaction in an exempt or excluded (but not agricultural) commodity that complies with such provisions then in effect notwithstanding that:

a. The agreement, contract, or transaction may be executed on a multilateral transaction execution facility;

b. The agreement, contract, or transaction may be cleared;

c. Persons offering or entering into the agreement, contract or transaction may not be eligible swap participants, provided that all parties are eligible contract participants as defined in the CEA prior to the date of enactment of the Dodd-Frank Act;

d. The agreement, contract, or transaction may be part of a fungible class of agreements that are standardized as to their material economic terms; and/or

e. No more than one of the parties to the agreement, contract, or transaction is entering into the agreement, contract, or transaction in conjunction with its line of business, but is neither an eligible contract participant nor an eligible swap participant, and the agreement, contract, or transaction was not and is not marketed to the public;

Provided, however, that: (i) Such agreements, contracts, and transactions (and persons offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction) fall within the scope of any of the existing CEA sections 2(d), 2(e), 2(g), 2(h), and 5d provisions or the line of business provision as in effect prior to July 16, 2011; and (ii) the foregoing exemption shall expire upon the earlier of: (I) July 16, 2012; or (II) such other compliance date as may be determined by the Commission.

(3) Provides that the foregoing exemptions in paragraphs (1) and (2) above shall not:

a. Limit in any way the Commission's authority with respect to any person, entity, or transaction pursuant to CEA sections 2(a)(1)(B), 4b, 4o, 6(c), 6(d), 6c, 8(a), 9(a)(2), or 13, or the regulations of the Commission promulgated pursuant to such authorities, including regulations pursuant to CEA section 4c(b) proscribing fraud;

b. Apply to any provision of the Dodd-Frank Act or the CEA that became effective prior to July 16, 2011;

c. Affect any effective or compliance date set forth in any rulemaking issued by the Commission to implement provisions of the Dodd-Frank Act;

d. Limit in any way the Commission's authority under section 712(f) of the Dodd-Frank Act to issue rules, orders, or exemptions prior to the effective date of any provision of the Dodd-Frank Act and the CEA, in order to prepare for the effective date of such provision, provided that such rule, order, or exemption shall not become effective prior to the effective date of the provision; and

e. Affect the applicability of any provision of the CEA to futures contracts or options on futures contracts, or to cash markets.

In its discretion, the Commission may condition, suspend, terminate, or otherwise modify this Order, as appropriate, on its own motion. This Final Order, as amended, shall be effective immediately.

Issued in Washington, DC, on October 18, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

Note:

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

Appendices to Notice of Proposed Amendment to Effective Date for Swap Regulation—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed amendment to the July 14th Exemptive Order regarding the effective dates of certain Dodd-Frank Act provisions.

The July 14th order provided relief until December 31, 2011, or when the definitional rulemakings become effective, whichever is sooner, from certain provisions that would otherwise apply to swaps or swap dealers on July 16. This includes provisions that do not directly rely on a rule to be promulgated, but do refer to terms that must be further defined by the CFTC and SEC, such as ''swap'' and ''swap dealer.''

Commission staff is working very closely with Securities and Exchange Commission (SEC) staff on rules relating to entity and product definitions. Staff is making great progress, and we anticipate taking up the further definition of entities in the near term and product definitions shortly thereafter.

As these definitional rulemakings have yet to be finalized or become effective, today's proposed amendment would provide relief through July 16, 2012, or when the definitional rulemakings become effective—whichever is sooner.

The order also provided relief through no later than December 31, 2011, from certain CEA requirements that may apply as the result of the repeal, effective on July 16, 2011, of CEA sections 2(d), 2(e), 2(g), 2(h) and 5d. The proposed amendment also extends this relief to July 16, 2012, or until a date the Commission may otherwise determine with respect to a particular requirement under the CEA.

In addition, today's proposed amendment also tailors the July 14th relief in light of the Commission's actions finalizing the agricultural swap rules.

Appendix 2—Statement of Commissioner Scott O'Malia

As Yogi Berra famously proclaimed: ''It is déjà vu all over again.'' Yogi perfectly encapsulates my feelings today. We find ourselves again voting on a proposed order aimed at providing legal certainty in the form ''temporary exemptive relief'' for swap market participants that extends the soon to expire relief found in the Commission's July 14, 2011 exemptive order (''July 14 Order''). This temporary relief is necessary because: (1) The Commission has not yet put forth final rules defining such key terms such as ''swap'' and ''swap dealer''; and (2) certain exemptions and exclusions for transactions in exempt and excluded commodities currently relied upon by market participants will be repealed effective December 31, 2011. The proposal states: ''[t]he Commission proposes that this further amendment to the July 14 Order is necessary to ensure that the same scope of the exemptive relief available before December 31, 2011 is available to all swaps and extends through July 16, 2012, at the latest.''

Unfortunately, we are once again facing an exemptive order that suffers the same faults that the July 14 Order suffered, namely: (1) It again includes an arbitrary sunset provision that will cut the transition period short and so will likely not provide necessary ''relief'' to market participants, and (2) it demonstrates the lack of ordering of rulemakings combined with the failure to put forth an implementation schedule. We now need to broaden the scope of the July 14 Order because the exemptive rules contained in part 35 will no longer be available to market participants after December 31, 2011 even though the replacement regulatory regime is not in place yet.[26] Part 35 is more commonly known as the swap exemption and is relied upon primarily by entities engaging in agricultural swaps. The Commission repealed part 35 in order to ensure that it is not used by individuals and entities who had relied on Sections 2(d), (g) and (h) of the Commodity Exchange Act (''CEA'') as an end run around the new statutory and regulatory requirements.

I support the proposal, as I did last time, because it is important for the Commission to provide market participants and the public with the form of relief the exemptive order is contemplating, but I would have preferred

[26] The Commission recently promulgated a rule pursuant to section 723(c)(3) of the Dodd-Frank Act that, effective December 31, 2011, will repeal the existing part 35 relief and replace it with new § 35.1 of the Commission's regulations. *See* Agricultural Swaps, 76 FR 49291 (Aug. 10, 2011).

that this rule, like its predecessor, would not select an arbitrary end date.

Mr. Chairman, I again renew my call for a comprehensive rulemaking schedule and implementation plan, that provides greater insight on reporting requirements to swap data repositories as well as separate rulemaking on real time and block rules. The Commission must also provide some certainty on the clearing and trading mandate including clarification of ''made available for trading'' and guidance on swap clearing.

[FR Doc. 2011–27535 Filed 10–24–11; 8:45 am]

BILLING CODE 6351–01–P

INTERNATIONAL TRADE COMMISSION

19 CFR Chapter II

Preliminary Plan for Retrospective Analysis of Existing Rules

AGENCY: International Trade Commission.

ACTION: Notice of Availability; Request for Comments.

SUMMARY: The United States International Trade Commission (Commission) is developing a plan for the retrospective analysis of its existing regulations. The Commission is seeking public comment on a preliminary version of such a plan.

DATES: *Comment Date:* To be assured of consideration, written comments must be received by 5:15 p.m. on November 25, 2011.

ADDRESSES: You may submit comments, identified by docket number MISC–038 by any of the following methods:

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

Agency Web Site: http://www.usitc.gov. Follow the instructions for submitting comments. See *http://www.usitc.gov/secretary/edis.htm.*

Mail: For paper submission. U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

Hand Delivery/Courier: U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. From the hours of 8:45 a.m. to 5:15 p.m.

For detailed instructions on submitting comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Office of the General Counsel, United States International Trade Commission, telephone 202–205–3094, e-mail *Peter.Sultan@usitc.gov.* Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Executive Order 13579 of July 11, 2011, calls on each independent regulatory agency to develop and release to the public, within 120 days of the date of the Executive Order, a plan under which the agency will periodically review its significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. The following is the Commission's Preliminary Plan for Retrospective Analysis of Existing Rules. The Commission welcomes comments from the public concerning this plan.

Public Participation

Instructions: All submissions received must include the agency name and the docket number (MISC–038) for this proceeding. All comments received will be posted without change to *http://www.usitc.gov,* including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to James Holbein, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. Comments, along with a cover letter, may be submitted electronically to the extent provided by Sec. 201.8 of the Commission's rules. This rule may refer commenters to the Handbook for Electronic Filing Procedures (see *http://www.usitc.gov/secretary/edis.htm*). For those submitting comments by mail, it is advisable to mail comments in advance of the due date since Commission mail will be delayed due to necessary security screening.

Docket: For access to the docket to read comments received, go to *http://www.usitc.gov* or U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

United States International Trade Commission

Preliminary Plan for Retrospective Analysis of Existing Rules

October 18, 2011

I. Executive Summary of Plan

Executive Orders 13579 and 13563 recognize the importance of maintaining a consistent culture of retrospective review and analysis throughout the Federal government. Executive Order 13579 calls on each independent regulatory agency to develop and release to the public a plan, consistent with law and reflecting the agency's resources and regulatory priorities and processes, under which the agency will periodically review its significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Pursuant to Executive Order 13579, the U.S. International Trade Commission developed this preliminary plan for retrospective analysis of its regulations. The plan is designed to create a defined method and schedule for identifying and reconsidering certain significant rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. Its review processes are intended to facilitate the identification of rules that warrant repeal or modification, or the strengthening, complementing, or modernizing of rules where necessary or appropriate.

II. Background

The Commission is an independent, quasi-judicial Federal agency with broad investigative responsibilities on matters of trade. It investigates the effects of dumped and subsidized imports on domestic industries, conducts global safeguard investigations, and adjudicates cases involving imports that allegedly infringe intellectual property rights. The Commission also serves as a Federal resource where trade data and other trade policy-related information are gathered and analyzed. The information and analysis are provided to the President, the Office of the United States Trade Representative (USTR), and Congress to facilitate the development of sound and informed U.S. trade policy. The Commission makes most of its information and analysis available to the public to promote understanding of international trade issues. The Commission also maintains the

Harmonized Tariff Schedule of the United States (HTS).

Thus, the Commission is not primarily a regulatory agency, and its regulations generally serve to govern the process of its statutory investigative responsibilities. In carrying out its mission, the Commission issues rules of practice and procedure relating to the conduct of its investigations. The Commission's rules are codified in Title 19 of the Code of Federal Regulations.

- Part 201 of the Commission's rules are rules of general application relating to the functions and activities of the Commission.
- Part 202 sets out rules pertaining to investigations of costs of production under section 336 of the Tariff Act of 1930, as amended (19 U.S.C. 1336).
- Part 204 contains rules pertaining to investigations of effects of imports on agricultural programs under section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624).
- Part 205 covers rules pertaining to investigations to determine the probable economic effect on the economy of the United States of proposed modifications of duties or any other barrier to (or other distortion of) international trade or of taking retaliatory actions to obtain the elimination of unjustifiable or unreasonable foreign acts or policies which restrict U.S. commerce.
- Part 206 pertains to investigations relating to global and bilateral safeguard actions, market disruption, trade diversion, and review of relief actions.
- Part 207 sets out rules for the conduct of antidumping and countervailing duty investigations conducted under title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671 *et seq.*).
- Part 208 contains rules pertaining to investigations with respect to the commercial availability of textile fabric and yarn in Sub-Saharan African countries.
- Part 210 sets out rules for the conduct of investigations of unfair practices in import trade under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 337).
- Part 212 establishes rules for the implementation of the Equal Access to Justice Act (5 U.S.C. 504).

In the course of its investigations, the Commission also generally issues questionnaires seeking business and financial information from domestic and foreign firms. These questionnaires are frequently revised and adapted, with the input of affected parties wherever possible.

The Commission also maintains several documents that provide guidance to parties involved in its investigations, including its ''Antidumping and Countervailing Duty Handbook,'' ''An Introduction to Administrative Protective Order Practice in Import Injury Investigations,'' and the ''Handbook on Electronic Filing Procedures.'' The documents are maintained in electronic form on the Commission's Web site and are reviewed and updated periodically.

III. Scope of Plan

This Plan covers existing regulations, existing information collections, and significant guidance documents.

IV. Elements of the Plan

Fostering a Culture of Retrospective Analysis. The Commission intends to strengthen its culture of retrospective analysis by informing all of its employees of the Plan and periodically seeking input from them.

Prioritization. The Commission has identified selection criteria for the rules it will review retrospectively. It will endeavor to review rules that:

- Have been affected by subsequent legal developments;
- Overlap, duplicate, or conflict with other Federal rules;
- Are the subject of public comments, from individuals and entities that appear before the Commission, and from Congressional and other Executive Branch sources;
- Require outdated reporting practices; or
- Have been in place for a long time, so that updating may be appropriate.

Structure and Staffing. The following Commission official will be responsible for overseeing the retrospective review of existing rules: James R. Holbein, Secretary, e-mail: *secretary@usitc.gov.*

Process for Retrospective Review. Every two years, the Commission's General Counsel will send a memorandum to the Commission's Secretary, office directors, and administrative law judges asking them for input on rules suitable for modification or elimination. The Commission will also seek input from the public at that time. Based on responses to this memorandum and comments from the public, and in consultation with Commissioners, staff of the General Counsel's office will make recommendations to the Commission regarding the possible modification or elimination of existing regulations. Once an appropriate rule change has been identified, the Commission will publish a notice of proposed rulemaking and solicit public comment on the proposed change.

V. Public Access and Participation

On October 18, 2011, the Commission issued a notice to be published in the **Federal Register** and posted on the homepage of its Web site *http://www.usitc.gov/,* seeking public comment on the design of this Plan and the identification of specific rules to be included in the Plan. *See http://www.usitc.gov/.*

[This section will discuss public comments that the Commission receives.]

VI. Current Agency Efforts Already Underway Independent of Executive Order 13579

Even before the issuance of Executive Order 13579, Commission staff periodically review existing regulations with a view to updating and improving them, and eliminating redundant or unnecessary regulations. For example, this year the Commission undertook to revise its rules to provide that most documents filed with the agency will be filed by electronic means. *See* 76 FR 61937 (Oct. 6, 2011). In addition, the Commission staff constantly adapts the questionnaires that it issues in its investigations to reflect the specific circumstances of each investigation. Wherever possible, the staff seek preliminary input from firms that will be asked to complete these questionnaires. In light of these efforts, the Commission is well-positioned to implement a more systematic plan for retrospective review of its regulations.

VII. Examples of Rules for Retrospective Review

The Commission has preliminarily identified the following aspects of its existing rules for review over the next two years:

1. General review of existing regulations in 19 CFR parts 201, 207, and 210. The Commission will seek to determine whether any such regulations shall be modified, streamlined, expanded or repealed so as to make the agency's regulations more effective or less burdensome.

2. Employee Responsibilities and Conduct, 19 CFR part 200. The Commission intends to review its regulations addressing employee responsibilities and conduct, to assess whether these regulations can be modified or repealed, in light of the issuance of similar regulations by the Office of Government Ethics.

3. National Security Information, 19 CFR part 201, subpart F. The Commission intends to review its regulations addressing national security information, to assess whether these

regulations should be modified, in light of Executive Order 13526 (Dec. 29, 2009).

4. Investigations With Respect to Commercial Availability of Textile Fabric and Yarn in Sub-Saharan African Countries, 19 CFR part 208. The Commission intends to review its regulations addressing investigations with respect to the commercial availability of textile fabric and yarn in Sub-Saharan African countries, to assess whether these regulations can be repealed, in light of the repeal of section 112(c)(2) of the African Growth and Opportunity Act (AGOA), which required the Commission to make determinations with respect to the commercial availability and use of regional textile fabric or yarn in lesser developed beneficiary sub-Saharan African countries in the production of apparel articles receiving U.S. preferential treatment under AGOA (see section 3(a)(2)(B) of Public Law 110–436, October 16, 2008, 122 Stat. 4980).

This list is non-exhaustive and the Commission will consider whether other parts of its regulations should also be subject to review within the next two years.

VIII. Publishing the Plan Online

The Commission will publish this plan in the **Federal Register** and on the agency's Web site, at *http://www.usitc.gov.* The Web site includes a page on the Commission's Rules of Practice and Procedure, at *http://www.usitc.gov/secretary/fed_reg_notices/rules/.* This Rules page will include a link to the plan. Members of the public will be able to post comments about the plan via a link on the page. Commenters may also choose to file comments in paper form to the Secretary to the Commission, room 112, 500 E Street, SW., Washington, DC 20436.

By Order of the Commission.

Issued: October 18, 2011.

James Holbein,

Secretary to the Commission.

[FR Doc. 2011–27363 Filed 10–24–11; 8:45 am]

BILLING CODE 7020–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2009–0039]

RIN 0960–AH04

Revised Medical Criteria for Evaluating Congenital Disorders That Affect Multiple Body Systems

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise the criteria in the Listing of Impairments (listings) that we use to evaluate cases involving impairments that affect multiple body systems in adults and children under titles II and XVI of the Social Security Act (Act). The proposed revisions reflect our program experience and address adjudicator questions we have received since we last comprehensively revised this body system in 2005. We do not expect any decisional differences due the revisions in this body system.

DATES: To ensure that your comments are considered, we must receive them by no later than December 27, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0039 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2009–0039. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Why are we proposing to revise the listings for this body system?

We last published final rules making comprehensive revisions to the multiple body systems listings on August 30, 2005.[1] These listings are scheduled to expire on October 31, 2013. However, we decided to propose these revisions now to reflect our program experience and to address adjudicator questions we have received since 2005.[2]

What revisions are we proposing?

Most of the proposed rules are substantively the same as the current ones. We propose to clarify and reorganize them. We also propose to revise some rules to simplify them and to revise the listings to include different methods for establishing the existence of non-mosaic Down syndrome and other congenital disorders that affect multiple body systems under the listings. We do not expect any decisional differences due the revisions in this body sytem.

We propose to:

- Revise the name of the body system from ''Impairments That Affect Multiple Body Systems'' to ''Congenital Disorders That Affect Multiple Body Systems'';
- Reorganize and revise the introductory text for the adult listings (section 10.00) and the childhood listings (section 110.00);
- Revise adult listing 10.06 and childhood listing 110.06 for non-mosaic Down syndrome; and
- Make editorial changes in childhood listing 110.08 for catastrophic congenital disorders.

Why are we proposing to change the name of this body system?

We are proposing to change the name of this body system from ''Impairments That Affect Multiple Body Systems'' to ''Congenital Disorders That Affect

[1] 70 FR 51252.

[2] We published an advance notice of proposed rulemaking (ANPRM) on November 10, 2009. 74 FR 57971. In the ANPRM, we invited interested people and organizations to send us written comments and suggestions about whether and how we should revise these listings. We received two comment letters. We said in the ANPRM that we would not respond to the comment letters, and this NPRM does not reflect the commenters' suggestions. You may read the comment letters at *http://www.regulations.gov* by searching under docket number SSA–2009–0039.

Multiple Body Systems'' to clarify that we consider only certain congenital disorders in this body system. We evaluate other disorders that affect more than one body system under the listings that address their specific effects. We evaluate congenital disorders with single effects under other body systems.

What changes are we proposing to the introductory text of the multiple body systems adult listings?

The following chart provides a comparison of the current introductory text for adults and the proposed introductory text:

Current introductory text	Proposed introductory text
10.00A *What Impairment Do We Evaluate Under This Body System?*	10.00A *Which disorder do we evaluate under this body system?*
10.00A1 *General.*	Revised and included in 10.00A.
10.00A2 *What is Down syndrome?*	Revised and included in 10.00B.
10.00A3 *What is non-mosaic Down syndrome?*	10.00B *What is non-mosaic Down syndrome?*
10.00A4 *What is mosaic Down syndrome?*	Revised and included in 10.00B and 10.00D.
10.00B *What Documentation Do We Need To Establish That You Have Non-Mosaic Down Syndrome?*	10.00C *What evidence do we need to document non-mosaic Down syndrome under 10.06?*
10.00B1 *General.*	Revised and included in 10.00C.
10.00B2 *Definitive chromosomal analysis.*	Revised and included in 10.00C.
10.00B3 *What if we do not have the results of definitive chromosomal analysis?*	Revised and included in 10.00C.
10.00C *How Do We Evaluate Other Impairments That Affect Multiple Body Systems?*	10.00D *How do we evaluate mosaic Down syndrome and other congenital disorders that affect multiple body systems?*
	10.00D1 *Mosaic Down syndrome.*
	10.00D2 *Other congenital disorders that affect multiple body systems.*
	10.00D3 *Evaluating the effects of mosaic Down syndrome or another congenital disorder under the listing.*
	10.00E *What if your disorder does not meet a listing?*

As the chart illustrates, we are proposing to make minor revisions to terms in the introductory text (for example, changing the word ''impairment'' to ''disorder'') and to reorganize the information in the text. We are also proposing to make other changes that we discuss below.

In proposed section 10.00A, we explain that, although there are two forms of Down syndrome, we evaluate only the non-mosaic form under the listing. Non-mosaic Down syndrome occurs when a person has three copies of chromosome 21 in all of their cells or an extra copy of chromosome 21 attached to a different chromosome in all of their cells. Mosaic Down syndrome occurs when some cells have an extra copy of chromosome 21 and other cells are normal, with only two copies of the chromosome. The mosaic form is much less common than the non-mosaic form, and its effects are less likely to be of listing-level severity. In section 10.00D of the proposed rules, we clarify our guidance in current 10.00A4b that we will evaluate impairment(s) caused by mosaic Down syndrome in the appropriate body system, or if the disorder does not meet a listing, consider whether the impairment(s) medically equals the listings.

In proposed section 10.00B, we describe non-mosaic Down syndrome and its effects. We propose to replace the term ''mental retardation'' with the term ''intellectual disability'' to conform with recent legislation that revised certain Federal statutes that referred to ''mental retardation'' to use the term ''intellectual disability'' instead.[3]

In proposed section 10.00C1, we explain that we need a copy of a laboratory report of karyotype analysis to establish that a claimant's non-mosaic Down syndrome meets proposed listing 10.06A. Karyotype analysis clarifies whether the Down syndrome is the non-mosaic or mosaic form. The report must either be signed by a physician or, if unsigned, accompanied by a statement from a physician indicating that the person has Down syndrome.

In proposed section 10.00C1, we explain that:

- We will not purchase karyotype analysis, consistent with our longstanding policy that we will not purchase genetic testing, and
- We will not accept the fluorescence in situ hybridization (FISH) test—a screening test—and that it is not equivalent to the requirement for karyotype analysis.

Our rules require evidence from an ''acceptable medical source'' to establish the existence of a medically determinable impairment, and a physician is the only acceptable source for establishing that a person has Down syndrome.[4] The physician does not need to provide any additional information to establish the existence of the disorder, as we explain in proposed section 10.00C1c.

Proposed section 10.00C2 corresponds in part to current section 10.00B3 and explains the evidence we need to establish that a claimant's non-mosaic Down syndrome meets the criteria of proposed listing 10.06B or 10.06C.

- In proposed section 10.00C2a, we explain how we would establish that non-mosaic Down syndrome meets proposed listing 10.06B. This proposed listing covers claimants who have had definitive laboratory testing, but who have not provided us with a copy of their laboratory reports. Our current rules require detailed evidence describing a person's physical appearance and other evidence that is ''persuasive'' that the claimant has non-mosaic Down syndrome. Since the great majority of people with Down syndrome have the non-mosaic form, we will no longer require the physician to describe the person's physical features. Instead, to meet proposed listing 10.06B, a physician must report that (1) The claimant has Down syndrome that is consistent with prior karyotype analysis and (2) the claimant has the distinctive physical features of the disorder.
- In proposed section 10.00C2b, we explain a new method for establishing disability based on non-mosaic Down syndrome under proposed listing 10.06C. The proposed listing, which is also based on our adjudicative

[3] Rosa's Law, Pub. L. 111–256 (Oct. 5, 2010). It also revised references from ''a mentally retarded individual'' to ''an individual with an intellectual disability.''

[4] We define the terms ''medically determinable impairment'' and ''acceptable medical source'' in 20 CFR 404.1508, 404.1513, 416.908, and 416.913.

experience, allows for a finding of disability when the claimant has not had definitive laboratory testing or we have no information about karyotype analysis results even if the person did have a test. Because we do not have definitive test results, we would require a more detailed description of the clinical features of the disorder and evidence that the claimant's functioning is consistent with a diagnosis of non-mosaic Down syndrome. The proposed provision would allow us to find that a claimant does not have non-mosaic Down syndrome if we have other evidence that is inconsistent with a diagnosis of the disorder. This provision is similar to current 10.00B3 that provides ''the report must be consistent with other evidence in your case record.'' While we do not need to obtain additional evidence, we must consider any other evidence in the case record to ensure that it is consistent with the diagnosis.

What changes are we proposing to the multiple body systems listings for adults?

We propose to revise current listing 10.06, *Non-mosaic Down syndrome,* to make it more specific. A claimant can demonstrate that he or she meets proposed listing 10.06 in one of three ways.

- Under proposed listing 10.06A, a claimant can demonstrate that he or she meets the listing based solely on a laboratory report of karyotype analysis that a physician signed or on a laboratory report of karyotype analysis that is not signed by a physician but is accompanied by a physician's statement that the person has Down syndrome;
- Under proposed listing 10.06B, a claimant can demonstrate that he or she meets the listing based on a physician's statement that the claimant has Down syndrome that is consistent with prior karyotype analysis demonstrating chromosome 21 trisomy or chromosome 21 translocation and that the person has the distinctive physical features of Down syndrome; and
- Under proposed listing 10.06C, a person can meet the listing when we do not have a copy of, or information about, laboratory testing, but we have a physician's report that the person has Down syndrome with distinctive physical features and evidence that the person functions at a level consistent with non-mosaic Down syndrome.

What changes are we proposing to the introductory text of the congenital disorders listings for children?

The following chart provides a comparison of the current introductory text for children and the proposed introductory text:

Current introductory text	Proposed introductory text
110.00A *What Kinds of Impairments Do We Evaluate Under This Body System?*	110.00A *Which disorders do we evaluate under this body system?*
110.00A1 *General.*	Revised and included in 110.00A.
110.00A2 *What is Down syndrome?*	Revised and included in 110.00B.
110.00A3 *What is non-mosaic Down syndrome?*	110.00B *What is non-mosaic Down syndrome?*
110.00A4 *What is mosaic Down syndrome?*	Revised and included in 110.00F.
110.00A5 *What are catastrophic congenital abnormalities or diseases?*	Revised and included in 110.00D.
110.00B *What Documentation Do We Need To Establish That You Have an Impairment That Affects Multiple Body Systems?*	110.00C *What evidence do we need to document non-mosaic Down syndrome under 110.06?*
110.00B1 *General.*	Revised and included in 110.00C.
110.00B2 *Non-mosaic Down syndrome (110.06)*	Revised and included in 110.00C.
110.00B3 *Catastrophic congenital abnormalities or diseases (110.08)*	Revised and included in 110.00D and 110.00E.
	110.00D *What are catastrophic congenital disorders?*
	110.00E *What evidence do we need under 110.08?*
110.00C *How Do We Evaluate Other Impairments That Affect Multiple Body Systems and That Do Not Meet the Criteria of the Listings in This Body System?*	110.00F *How do we evaluate mosaic Down syndrome and other congenital disorders that affect multiple body systems?*
	110.00F1 *Mosaic Down syndrome.*
	110.00F2 *Other congenital disorders that affect multiple body systems.*
	110.00F3 *Evaluating the effects of mosaic Down syndrome or another congenital disorder under the listings.*
	110.00G *What if your disorder does not meet a listing?*

We propose to reorganize and revise the introductory text as in the adult rules. Since we are proposing the same changes in the childhood rules that correspond to the adult rules, we do not summarize them here. Proposed section 110.00C is identical to proposed section 10.00C and includes a reference to a child's ''work history.'' We included this phrase in the child rules because the listings in part B are for people up to the age of 18, and some older adolescents have worked.

As under the current listings, the proposed childhood listings include a listing that we do not include in the adult rules—proposed listing 110.08 for ''catastrophic'' congenital disorders. We propose to reorganize and clarify the introductory text that explains listing 110.08 as follows:

- In proposed section 110.00D, we briefly explain the kinds of disorders we would evaluate under proposed listing 110.08 and provide some examples of these disorders. In the current rules, we include these examples in listing 110.08. We propose to move them to the introductory text so there is no implication that the examples in current listings 110.08A and B are the sole disorders covered by these listings.
- Proposed section 110.00E corresponds to current section 110.00B3. We propose changes in this section to make it similar to proposed sections 10.00C and 110.00C for non-mosaic Down syndrome. For example, the current rule requires both a clinical description of the diagnostic physical features of the disorder and the report of the definitive laboratory study establishing the diagnosis. Since the second requirement is for a *definitive* laboratory study, we do not believe that we also need a description of the diagnostic clinical features in such cases. We believe that we can simplify the rule and make some favorable determinations more quickly.

What changes are we proposing to the congenital disorders listings for children?

We propose to revise current listing 110.06, *Non-mosaic Down syndrome,* in the same way as proposed adult listing 10.06. We would revise listings 110.08A and B by moving the examples from these current listings to proposed section 110.00D in the introductory text. We would also replace the phrase ''profoundly impaired'' in listing 110.08A with the phrase ''very serious interference'' the same phrase we use in proposed listing 110.08B. Both listings should have the same severity criterion. The criterion we propose is based on current listing 110.08B, which uses the phrase ''interferes very seriously'' and is a term we use in other rules. We would also clarify in proposed section 110.00D that ''very seriously'' has the same meaning as our definition of the term ''extreme'' in our rules for determining functional equivalence for children.[5]

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them. Sections 205(a), 702(a)(5), and 1631(d)(1).

How long would these proposed rules be effective?

If we publish these proposed rules as final rules, they will remain in effect for 5 years after the date they become effective, unless we extend them, or revise and issue them again.

Clarity of These Proposed Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, *e.g.,* grouping and order of sections, use of headings, paragraphing?

When will we start to use these rules?

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rules.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Regulatory Flexibility Act

We certify that this NPRM will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections, and therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income).

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR part 404 subpart P as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend appendix 1 to subpart P of part 404 by revising item 11 of the introductory text before part A of appendix 1 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

11. Congenital Disorders That Affect Multiple Body Systems (10.00 and 110.00): [Insert date 5 years from the effective date of the final rules].

* * * * *

3. Amend part A of appendix 1 to subpart P of part 404 by revising the body system name for section 10.00 in the table of contents to read as follows:

* * * * *

10.00 Congenital Disorders That Affect Multiple Body Systems.

* * * * *

4. Revise section 10.00 in part A of appendix 1 to subpart P of part 404 to read as follows:

* * * * *

Part A

* * * * *

10.00 Congenital Disorders That Affect Multiple Body Systems

A. *Which disorder do we evaluate under this body system?* Although Down syndrome exists in non-mosaic and mosaic forms, we evaluate only non-mosaic Down syndrome under this body system.

B. *What is non-mosaic Down syndrome?* Non-mosaic Down syndrome is a genetic disorder. Most people with non-mosaic Down syndrome have three copies of chromosome 21 in all of their cells (chromosome 21 trisomy); some have an extra copy of chromosome 21 attached to a different chromosome in all of their cells (chromosome 21 translocation). Virtually all people with non-mosaic Down syndrome have characteristic facial or other physical features, delayed physical development, and intellectual disability. People with non-mosaic Down syndrome may also have congenital heart disease, impaired vision, hearing problems, and other disorders. We evaluate non-mosaic Down syndrome under 10.06. If you have non-mosaic Down syndrome documented as described in 10.00C, we consider you disabled from birth.

[5] See 20 CFR 416.926a(e)(3).

C. *What evidence do we need to document non-mosaic Down syndrome under 10.06?*

1. Under 10.06A, we will find you disabled based on laboratory findings.

a. To find that your disorder meets 10.06A, we need a copy of the laboratory report of karyotype analysis, which is the definitive test to establish non-mosaic Down syndrome. We will not purchase karyotype analysis. We will not accept a fluorescence in situ hybridization (FISH) test because it does not distinguish between the mosaic and non-mosaic forms of Down syndrome.

b. If a physician (see §§ 404.1513(a)(1) and 416.913(a)(1) of this chapter) has not signed the laboratory report of karyotype analysis, the evidence must also include a physician's statement that you have Down syndrome.

c. For purposes of 10.06A, we do not require additional evidence stating that you have the distinctive facial or other physical features of Down syndrome.

2. If we do not have a laboratory report of karyotype analysis showing that you have non-mosaic Down syndrome, we may find you disabled under 10.06B or 10.06C.

a. Under 10.06B, we need a physician's report stating: (i) your karyotype diagnosis or evidence that documents your type of Down syndrome is consistent with prior karyotype analysis (for example, reference to a diagnosis of ''trisomy 21''), and (ii) that you have the distinctive facial or other physical features of Down syndrome. We do not require a detailed description of the facial or other physical features of the disorder. However, we will not find that your disorder meets 10.06B if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

b. If we do not have evidence of prior karyotype analysis (you did not have testing, or you had testing but we do not have information from a physician about the test results), we will find that your disorder meets 10.06C if we have: (i) a physician's report stating that you have the distinctive facial or other physical features of Down syndrome, and (ii) evidence that your functioning is consistent with a diagnosis of non-mosaic Down syndrome. This evidence may include medical or nonmedical information about your physical and mental abilities, including information about your education, work history, or the results of psychological testing. However, we will not find that your disorder meets 10.06C if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

D. *How do we evaluate mosaic down syndrome and other congenital disorders that affect multiple body systems?*

1. *Mosaic Down syndrome.* Approximately 2 percent of people with Down syndrome have the mosaic form. In mosaic Down syndrome, there are some cells with an extra copy of chromosome 21 and other cells with the normal two copies of chromosome 21. Mosaic Down syndrome can be so slight as to be undetected clinically, but it can also be profound and disabling, affecting various body systems.

2. *Other congenital disorders that affect multiple body systems.* Other congenital disorders, such as congenital anomalies, chromosomal disorders, dysmorphic syndromes, inborn metabolic syndromes, and perinatal infectious diseases, can cause deviation from, or interruption of, the normal function of the body or can interfere with development. Examples of these disorders include both the juvenile and late-onset forms of Tay-Sachs disease, trisomy X syndrome (XXX syndrome), fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. For these disorders and other disorders like them, the degree of deviation, interruption, or interference, as well as the resulting functional limitations and their progression, may vary widely from person to person and may affect different body systems.

3. *Evaluating the effects of mosaic Down syndrome or another congenital disorder under the listings.* When the effects of mosaic Down syndrome or another congenital disorder that affects multiple body systems are sufficiently severe we evaluate the disorder under the appropriate affected body system(s), such as musculoskeletal, special senses and speech, neurological, or mental disorders. Otherwise, we evaluate the specific functional limitations that result from the disorder under our other rules described in 10.00E.

E. *What if your disorder does not meet a listing?* If you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. See §§ 404.1526 and 416.926 of this chapter. If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. We proceed to the fourth, and if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter. We use the rules in §§ 404.1594 and 416.994 of this chapter, as appropriate, when we decide whether you continue to be disabled.

10.01 Category of Impairments, Congenital Disorders That Affect Multiple Body Systems

10.06 *Non-mosaic Down syndrome* (chromosome 21 trisomy or chromosome 21 translocation), documented by:

A. A laboratory report of karyotype analysis signed by a physician, or both a laboratory report of karyotype analysis not signed by a physician *and* a statement by a physician that you have Down syndrome (see 10.00C1).

Or

B. A physician's report stating that you have chromosome 21 trisomy or chromosome 21 translocation consistent with prior karyotype analysis with the distinctive facial or other physical features of Down syndrome (see 10.00C2a).

OR

C. A physician's report stating that you have Down syndrome with the distinctive facial or other physical features *and* evidence demonstrating that you function at a level consistent with non-mosaic Down syndrome (see 10.00C2b).

* * * * *

5. Amend part B of appendix 1 to subpart P of part 404 by revising the body system name in section 110.00 in the table of contents to read as follows:

* * * * *

110.00 Congenital Disorders That Affect Multiple Body Systems

* * * * *

6. Revise section 110.00 in part B of appendix 1 to subpart P of part 404 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

Part B

* * * * *

110.00 Congenital Disorders That Affect Multiple Body Systems

A. *Which disorders do we evaluate under this body system?* We evaluate non-mosaic Down syndrome and catastrophic congenital disorders under this body system.

B. *What is non-mosaic Down syndrome?* Non-mosaic Down syndrome is a genetic disorder. Most children with non-mosaic Down syndrome have three copies of chromosome 21 in all of their cells (chromosome 21 trisomy); some have an extra copy of chromosome 21 attached to a different chromosome in all of their cells (chromosome 21 translocation). Virtually all children with non-mosaic Down syndrome have characteristic facial or other physical features, delayed physical development, and intellectual disability. Children with non-mosaic Down syndrome may also have congenital heart disease, impaired vision, hearing problems, and other disorders. We evaluate non-mosaic Down syndrome under 110.06. If you have non-mosaic Down syndrome documented as described in 110.00C, we consider you disabled from birth.

C. *What evidence do we need to document non-mosaic Down syndrome under 110.06?*

1. Under 110.06A, we will find you disabled based on laboratory findings.

a. To find that your disorder meets 110.06A, we need a copy of the laboratory report of karyotype analysis, which is the definitive test to establish non-mosaic Down syndrome. We will not purchase karyotype analysis. We will not accept a fluorescence in situ hybridization (FISH) test because it does not distinguish between the mosaic and non-mosaic forms of Down syndrome.

b. If a physician (see §§ 404.1513(a)(1) and 416.913(a)(1) of this chapter) has not signed the laboratory report of karyotype analysis, the evidence must also include a physician's statement that you have Down syndrome.

c. For purposes of 110.06A, we do not require evidence stating that you have the distinctive facial or other physical features of Down syndrome.

2. If we do not have a laboratory report of karyotype analysis documenting that you have non-mosaic Down syndrome, we may find you disabled under 110.06B or 110.06C.

a. Under 110.06B, we need a physician's report stating: (i) Your karyotype diagnosis or

evidence that documents your type of Down syndrome that is consistent with prior karyotype analysis (for example, reference to a diagnosis of ''trisomy 21'') and (ii) that you have the distinctive facial or other physical features of Down syndrome. We do not require a detailed description of the facial or other physical features of the disorder. However, we will not find that your disorder meets 110.06B if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

b. If we do not have evidence of prior karyotype analysis (you did not have testing, or you had testing but we do not have information from a physician about the test results), we will find that your disorder meets 110.06C if we have: (i) a physician's report stating that you have the distinctive facial or other physical features of Down syndrome and (ii) evidence that your functioning is consistent with a diagnosis of non-mosaic Down syndrome. This evidence may include medical or nonmedical information about your physical and mental abilities, including information about your development, education, work history, or the results of psychological testing. However, we will not find that your disorder meets 110.06C if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

D. *What are catastrophic congenital disorders?* Some catastrophic congenital disorders, such as anencephaly, cyclopia, chromosome 13 trisomy (Patau syndrome or trisomy D), and chromosome 18 trisomy (Edwards' syndrome or trisomy E) are usually expected to result in early death. Others such as cri du chat syndrome (chromosome 5p deletion syndrome) and the infantile onset form of Tay-Sachs disease interfere very seriously with development. We evaluate catastrophic congenital disorders under 110.08. The term ''very seriously'' in 110.08 has the same meaning as in the term ''extreme'' in § 416.926a(e)(3) of this chapter.

E. *What evidence do we need under 110.08?*

We need one of the following to determine if your disorder meets 110.08A or B:

1. A laboratory report of the definitive test that documents your disorder (for example, genetic analysis or evidence of biochemical abnormalities) signed by a physician.

2. A laboratory report of the definitive test that documents your disorder that is not signed by a physician *and* a report from a physician stating that you have the disorder.

3. A report from a physician stating that you have the disorder with the typical clinical features of the disorder and that you had definitive testing that documented your disorder. In this case, we will find that your disorder meets 110.08A or B unless we have evidence that indicates that you do not have the disorder.

4. If we do not have the definitive laboratory evidence we need under E1, E2, or E3, we will find that your disorder meets 110.08A or B if we have: (i) a report from a physician stating that you have the disorder and that you have the typical clinical features of the disorder, *and* (ii) other evidence that supports the diagnosis. This evidence may include medical or nonmedical information about your development and functioning.

5. For obvious catastrophic congenital anomalies that are expected to result in early death, such as anencephaly and cyclopia, we need evidence from a physician that demonstrates that the infant has the characteristic physical features of the disorder. In these rare cases, we do not need laboratory testing or any other evidence that confirms the disorder.

F. *How do we evaluate mosaic Down syndrome and other congenital disorders that affect multiple body systems?*

1. *Mosaic Down syndrome.* Approximately 2 percent of children with Down syndrome have the mosaic form. In mosaic Down syndrome, there are some cells with an extra copy of chromosome 21 and other cells with the normal two copies of chromosome 21. Mosaic Down syndrome can be so slight as to be undetected clinically, but it can also be profound and disabling, affecting various body systems.

2. *Other congenital disorders that affect multiple body systems.* Other congenital disorders, such as congenital anomalies, chromosomal disorders, dysmorphic syndromes, inborn metabolic syndromes, and perinatal infectious diseases, can cause deviation from, or interruption of, the normal function of the body or can interfere with development. Examples of these disorders include both the juvenile and late-onset forms of Tay-Sachs disease, trisomy X syndrome (XXX syndrome), fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. For these disorders and other disorders like them, the degree of deviation, interruption, or interference, as well as the resulting functional limitations and their progression, may vary widely from child to child and may affect different body systems.

3. *Evaluating the effects of mosaic Down syndrome or another congenital disorder under the listings.* When the effects of mosaic Down syndrome or another congenital disorder that affects multiple body systems are sufficiently severe we evaluate the disorder under the appropriate affected body system(s), such as musculoskeletal, special senses and speech, neurological, or mental disorders. Otherwise, we evaluate the specific functional limitations that result from the disorder under our other rules described in 110.00G.

G. *What if your disorder does not meet a listing?* If you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. See § 416.926 of this chapter. If your impairment(s) does not meet or medically equal a listing, we will consider whether it functionally equals the listings. See §§ 416.924a and 416.926a of this chapter. We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

110.01 Category of Impairments, Congenital Disorders That Affect Multiple Body Systems

110.06 *Non-mosaic Down syndrome* (chromosome 21 trisomy or chromosome 21 translocation), documented by:

A. A laboratory report of karyotype analysis signed by a physician, or both a laboratory report of karyotype analysis not signed by a physician *and* a statement by a physician that the child has Down syndrome (see 110.00C1).

OR

B. A physician's report stating that the child has chromosome 21 trisomy or chromosome 21 translocation consistent with karyotype analysis with the distinctive facial or other physical features of Down syndrome (see 110.00C2a).

OR

C. A physician's report stating that the child has Down syndrome with the distinctive facial or other physical features *and* evidence demonstrating that the child is functioning at the level of a child with non-mosaic Down syndrome (see 110.00C2b).

110.08 *A catastrophic congenital disorder* (see 110.00D and 110.00E) with:

A. Death usually expected within the first months of life.

OR

B. Very serious interference with development or functioning.

* * * * *

[FR Doc. 2011–27357 Filed 10–24–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109006–11]

RIN 1545–BK13

Modifications of Certain Derivative Contracts; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on notice of proposed rulemaking by cross-reference to temporary regulations relating to whether an exchange for purposes of § 1.1001–1(a) occurs for the nonassigning counterparty when there is an assignment of certain derivative contracts.

DATES: The public hearing, originally scheduled for October 27, 2011 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and

Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and a notice of public hearing that appeared in the **Federal Register** on Friday, July 22, 2011 (76 FR 43957), announced that a public hearing was scheduled for October 27, 2011, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 1001 of the Internal Revenue Code.

The public comment period for a notice of proposed rulemaking by cross-reference to temporary regulations expired on October 20, 2011. Outlines of topics to be discussed at the hearing were due on October 20, 2011. A notice of propose rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Friday, October 21, 2011, no one has requested to speak. Therefore, the public hearing scheduled for October 27, 2011 is cancelled.

LaNita Van Dyke,

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

[FR Doc. 2011–27573 Filed 10–24–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109564–10]

RIN 1545–BJ37

Partner's Distributive Share

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations removing § 1.704–1(b)(2)(iii)(e) (the de minimis partner rule) because the rule may have resulted in unintended tax consequences. The proposed regulations affect partnerships and their partners.

DATES: Written or electronic comments and requests for a public hearing must be received by January 23, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–109564–10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–109564–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC; or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–109564–10).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michala Irons, at (202) 622–3050; concerning submission of comments, or requests for a public hearing, Richard Hurst, at (202) 622–2949 (TDD Telephone) (not toll free numbers) and his e-mail address is *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Subchapter K is intended to permit taxpayers to conduct joint business activities through a flexible economic arrangement without incurring an entity-level tax. To achieve this goal of a flexible economic arrangement, partners are generally permitted to decide among themselves how a partnership's items will be allocated. Section 704(a) of the Internal Revenue Code provides that a partner's distributive share of income, gain, loss, deduction, or credit shall, except as otherwise provided, be determined by the partnership agreement.

Section 704(b) places a significant limitation on the general flexibility of section 704(a). Specifically, section 704(b) provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances) if the allocation to a partner under the partnership agreement of income, gain, loss, deduction, or credit (or item thereof) does not have substantial economic effect. Thus, the statute provides that partnership allocations either must have substantial economic effect or must be in accordance with the partners' interests in the partnership.

Section 1.704–1(b)(2)(i) provides that the determination of whether an allocation of income, gain, loss, or deduction to a partner has substantial economic effect involves a two-part analysis that is made as of the end of the partnership taxable year to which the allocation relates. First, the allocation must have economic effect within the meaning of § 1.704–1(b)(2)(ii). Second, the economic effect of the allocation must be substantial within the meaning of § 1.704–1(b)(2)(iii).

For an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. This means that, in the event that there is an economic benefit or burden that corresponds to the allocation, the partner to whom the allocation is made must receive such economic benefit or bear such economic burden. See § 1.704–1(b)(2)(ii). Generally, an allocation of income, gain, loss, or deduction (or item thereof) to a partner will have economic effect if, and only if, throughout the full term of the partnership, the partnership agreement provides: (1) for the determination and maintenance of the partners' capital accounts in accordance with § 1.704–1(b)(2)(iv); (2) for liquidating distributions to the partners to be made in accordance with the positive capital account balances of the partners; and (3) for each partner to be unconditionally obligated to restore the deficit balance in the partner's capital account following the liquidation of the partner's partnership interest. In lieu of satisfying the third criterion, the partnership may satisfy the qualified income offset rules set forth in § 1.704–1(b)(2)(ii)(d).

Section 1.704–1(b)(2)(iii)(a) provides as a general rule that the economic effect of an allocation (or allocations) is substantial if there is a reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received by the partners from the partnership, independent of tax consequences. This section further provides that, even if the allocation affects substantially the dollar amounts, the economic effect of the allocation (or allocations) is not substantial if, at the time the allocation (or allocations) becomes part of the partnership agreement: (1) The after-tax economic consequences of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement, and (2) there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement.

Explanation of Provisions

Removal of De Minimis Partner Rule in § 1.704–1(b)(2)(iii)(e)

The de minimis partner rule in § 1.704–1(b)(2)(iii)(e) (TD 9398, 73 FR 28699–01) was promulgated on May 19, 2008, as part of final regulations with respect to partners that are look-through entities. The de minimis partner rule provides that for purposes of applying the substantiality rules, the tax attributes of de minimis partners need not be taken into account and defines a de minimis partner as any partner, including a look-through entity that owns, directly or indirectly, less than 10 percent of the capital and profits of a partnership, and who is allocated less than 10 percent of each partnership item of income, gain, loss, deduction, and credit. The intent of the de minimis partner rule was to allow partnerships to avoid the complexity of testing the substantiality of insignificant allocations to partners owning very small interests in the partnership. It was not intended to allow partnerships to entirely avoid the application of the substantiality regulations if the partnership is owned by partners each of whom owns less than 10 percent of the capital or profits, and who are allocated less than 10 percent of each partnership item of income, gain, loss, deduction, and credit. The IRS and the Treasury Department have determined that the de minimis partner rule should be removed in order to prevent unintended tax consequences. The IRS and the Treasury Department request comments on how to reduce the burden of complying with the substantial economic effect rules, with respect to look-through partners, without diminishing the safeguards the rules provide.

Proposed Effective Date

These regulations are proposed to be effective the date final regulations are published in the **Federal Register**.

Special Analyses

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

Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Michala Irons, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.704–1 paragraph (b)(2)(iii)(e) is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–27575 Filed 10–24–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0859; FRL–9482–8]

Approval and Promulgation of Air Quality Implementation Plans; Missouri; Reasonably Available Control Technology (RACT) for the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of Missouri to EPA on January 17, 2007, with a supplemental revision submitted to EPA on June 1, 2011. The purpose of these SIP revisions is to satisfy the RACT requirements for volatile organic compounds (VOCs) set forth by the Clean Air Act (CAA or Act) with respect to the 8-hour ozone NAAQS. In addition to proposing approval on the 2007 submission, EPA is also proposing to approve several VOC rules adopted by Missouri and submitted to EPA in a letter dated August 16, 2011 for approval into its SIP. We are approving these revisions because they enhance the Missouri SIP by improving VOC emission controls in Missouri. EPA's proposal to conditionally approve the SIP submittal is consistent with section 110(k)(4) of the CAA. As part of the conditional approval, Missouri would have up to twelve months from the date of EPA's final conditional approval of the SIP revisions in which to revise its rules to be consistent with the CAA.

DATES: Comments must be received on or before November 25, 2011.

ADDRESSES: Submit your comments identified by Docket ID No. EPA–R07–OAR–2011–0589, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: kemp.lachala@epa.gov.*
3. *Mail or Hand Delivery or Courier:* Lachala Kemp, Air Planning and Development Branch, Environmental Protection Agency Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2011–0859. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency Region 7, 901 North 5th Street, Kansas City, Kansas 66101, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; telephone number (913) 551–7214; *e-mail address: kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following questions:

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I. What action is EPA proposing?

EPA is proposing to conditionally approve a SIP revision submitted by the State of Missouri to EPA on January 17, 2007, and June 1, 2011. The purpose of these revisions is to control the emissions of VOCs, consistent with Control Techniques Guidelines (CTGs) issued by EPA. EPA is also proposing to approve several VOC rules approved by Missouri and submitted to EPA in a letter dated August 16, 2011 for approval into its SIP. The purpose of these rules is to satisfy the RACT requirements of the CAA for the Missouri portion of the St. Louis metropolitan 8-hour ozone nonattainment area. As explained further below, at this time, EPA is unable to fully approve the State's RACT SIP revision because the current submittal does not yet meet all RACT requirements. Specifically, at this time, Missouri has not submitted a RACT rule for inclusion into the Missouri SIP to address one CTG: Solvent Cleanup Operations. However, based on Missouri's commitment to do so by December 31, 2012,[1] pursuant to section 110(k)(4) of the CAA, EPA is proposing to conditionally approve Missouri's proposed SIP revision at this time. Under that section, EPA may approve a SIP revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the SIP. This conditional approval would be treated as a disapproval if Missouri fails to comply with this commitment.

We are proposing to conditionally approve these revisions because they represent RACT under the 8-hour ozone NAAQS. These requirements are based on (1) Missouri's RACT analysis and certification that previously adopted RACT controls in Missouri's SIP that were previously approved by EPA under the 1-hour ozone NAAQS continue to represent RACT; (2) the adoption by Missouri of new or more stringent regulations that represent RACT control levels for CTGs issued by EPA after 2006; and (3) a negative declaration that certain categories of sources that do not exist in Missouri.

II. Statutory and Regulatory Background

CAA section 172(c)(1) requires that SIPs for nonattainment areas ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' The St. Louis metropolitan area—which includes the counties of Franklin, Jefferson, St. Charles and St. Louis and the city of St. Louis in Missouri—is currently designated as a moderate nonattainment area under the 8-hour ozone standard. For areas in moderate nonattainment with the ozone NAAQS, section 182(b)(2) requires states to submit SIP revisions to EPA that require sources of VOCs that are subject to a CTG issued by EPA, and all other major stationary sources,[2] in the nonattainment area to implement RACT.

EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. 44 FR 53761 (Sept. 17, 1979). EPA provides states with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of a CTG. *See* 71 FR 58745, 58747 (Oct. 5, 2006).

Section 182(f) of the CAA requires that all SIP provisions required for major stationary sources of VOCs shall also apply to major stationary sources of Nitrogen Oxides (NO_X). With respect to NO_X, section 182(f) authorizes EPA to exempt the sources in an area from the NO_X RACT requirements through a ''waiver,'' if EPA finds that additional reductions of NO_X would not contribute to attainment of the NAAQS for ozone in that area. On June 9, 2011, EPA published a final determination that the St. Louis Metropolitan area has attained the 8-hour ozone standard based on three years of complete, quality assured ambient air quality monitoring data. *See* 76 FR 33647. On July 21, 2011, EPA approved Missouri's request for such a

[1] *See* letter from MDNR to EPA, dated September 30, 2011.

[2] For a moderate nonattainment area, a major stationary source is one which emits, or has the potential to emit, one hundred tons per year or more of VOCs. *See* CAA section 302(j).

''NO_X waiver,'' effective September 19, 2011. 76 FR 43598. Based on this rule, on September 9, 2011, Missouri withdrew the portion of its 2007 submission relating to NO_X RACT. Therefore, today's action only addresses Missouri's RACT obligations for VOCs.

III. Summary of Missouri's SIP Revision

On January 17, 2007, Missouri Department of Natural Resources (MDNR) submitted to EPA proposed SIP revisions demonstrating compliance with the RACT requirements set forth by the CAA under the 8-hour ozone NAAQS. This submittal addressed all source categories for which a CTG had been issued by EPA at the time, and addressed the controls in place for all other major stationary sources in the nonattainment area. Since the initial submittal, EPA has issued a number of new CTGs in 2006, 2007, and 2008.[3]

On October 5, 2006, EPA issued four CTGs which states were required to address by October 5, 2007 (71 FR 58745): Lithographic Printing and Letterpress Printing Materials; Flexible Packaging Printing Materials; Flat Wood Paneling Coatings; and Industrial Cleaning Solvents. Also, on October 9, 2007, EPA issued three CTGs which states were required to address by October 9, 2008 (72 FR 57215): Paper, Film, and Foil Coatings; Metal Furniture Coatings; and Large Appliance Coatings. Furthermore, on October 7, 2008, EPA issued four CTGs which states were required to address by October 7, 2009 (73 FR 58481): Miscellaneous Metal and Plastic Parts Coatings; Auto and Light-Duty Truck Assembly Coatings; Fiberglass Boat Manufacturing Materials; and Miscellaneous Industrial Adhesives. As a result of these new CTGs, Missouri submitted an amendment to its prior RACT demonstration on June 1, 2011. In addition, on August 16, 2011, Missouri submitted proposed revisions to its SIP to EPA. These revisions will ensure that the requirements of the new CTGs will be incorporated into the VOC RACT rules for the St. Louis moderate ozone nonattainment area.

IV. Missouri's VOC RACT Rules

Missouri's SIP submittals dated January 17, 2007, and June 1, 2011, include an analysis of its VOC rules for the Missouri portion of the St. Louis metropolitan 8-hour ozone NAAQS nonattainment area. Table 1 summarizes the CTGs issued by EPA both prior to 2006 and after 2006, and the corresponding Missouri VOC rules which address these CTGs.

TABLE 1—CTG SOURCE CATEGORIES AND APPLICABLE MISSOURI VOC RACT RULES

Missouri State rule	CTG Source category
10 CSR 10–5.295 Control of Emissions From Aerospace Manufacture and Rework Facilities.	Aerospace Manufacturing and Rework Operations & Coating Operations.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Automobile and Light-Duty Truck Assembly Coatings.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Bulk Gasoline Plants.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Can Coatings.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Coil Coatings.
10 CSR 10–5.310 Liquefied Cutback Asphalt Paving Restricted	Cutback Asphalt.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Fabric Coatings.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Flat Wood Paneling Coatings.
10 CSR 10–5.340 Control of Emissions From Rotogravure and Flexographic Printing Facilities.	Flexible Package Printing.
10 CSR 10–5.340 Control of Emissions From Rotogravure and Flexographic Printing Facilities.	Flexographic and Rotogravure Printing.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Gasoline Dispensing Stage II Vapor Recovery.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Gasoline Service Stations.
10 CSR 10–5.390 Control of Emissions From Manufacture of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Operations.	Ink and Paint Manufacturing.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Large Appliance Coatings.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Magnet Wire, Surface Coating.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Metal Furniture Coatings.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Miscellaneous Industrial Adhesives.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Miscellaneous Metal and Plastic Parts Coatings.
10 CSR 10–5.442 Control of Emissions From Lithographic and Letterpress Printing Operations.	Offset Lithographic Printing and Letterpress Printing.
10 CSR 10–5.330 Control of Emissions From Industrial Surface Coating Operations.	Paper, Film, and Foil Coatings.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Petroleum Liquid Storage in External Floating Roof Tanks.

[3] Under section 183(b), EPA is required to periodically review and, as necessary, update CTGs.

TABLE 1—CTG SOURCE CATEGORIES AND APPLICABLE MISSOURI VOC RACT RULES—Continued

Missouri State rule	CTG Source category
10 CSR 10–5.350 Control of Emissions From Manufacture of Synthesized Pharmaceutical Products.	Pharmaceutical Products.
10 CSR 10–5.410 Control of Emissions From Manufacture of Polystyrene Resin.	Polyester Resin.
10 CSR 10–5.455 Control of Emissions From Industrial Solvent Cleaning Operations.	Solvent Cleanup Operations.[4]
10 CSR 10–5.300 Control of Emissions From Solvent Metal Cleaning	Solvent Metal Cleaning.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Storage of Petroleum Liquids in Fixed Roof Tanks.
10 CSR 10–5.420 Control of Equipment Leaks From Synthetic Organic Chemical and Polymer Manufacturing Plants.	Synthetic Organic Chemical Manufacturing.
10 CSR 10–5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.	Synthetic Organic Chemical and Polymer Manufacturing Equipment, Equipments Leaks from.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Tank Truck Gasoline Loading Terminals.
10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer.	Tank Trucks, Gasoline, and Vapor Collection Systems.
10 CSR 10–5.500 Control of Emissions From Volatile Organic Liquid Storage.	Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks.
10 CSR 10–5.530 Control of Emissions From Wood Furniture Manufacturing Operations.	Wood Furniture Manufacturing.

A. CTGs Issued Prior to 2006

With respect[4] to Missouri's VOC RACT rules that address CTGs issued by EPA prior to 2006, EPA has previously approved these rules into the Missouri SIP as RACT for the 1-hour ozone standard. In its June 1, 2011, submittal to EPA, MDNR reviewed all of the St. Louis area VOC rules and certified that they still satisfy RACT requirements for the 8-hour ozone standard by the application of control technology that is reasonably available considering technological and economic feasibility. EPA is proposing to approve this certification in today's rulemaking.

B. CTGs Issued After 2006

With respect to addressing CTGs issued by EPA after 2006, Missouri submitted three revised rules to EPA for inclusion into the Missouri SIP. EPA has reviewed these new VOC rule revisions with respect to the RACT requirements and the recommendations in the new CTGs and proposes to find that these revisions meet RACT. A brief description of the VOC rules that are proposed for approval in this action is provided below.

1. 10 CSR 10–5.330 Industrial Surface Coating Operations

This rule amendment exempts facilities that are regulated under other rules that limit emissions of VOCs and incorporates changes in RACT for surface coating operations in the St. Louis ozone nonattainment area to be consistent with the current federal RACT CTGs. Compliance with these rules is required by March 1, 2012.

These revised requirements are based on and consistent with the following CTG documents issued by EPA since 2006:

- Flat Wood Paneling Coatings
- Paper, Film, and Foil Coatings
- Miscellaneous Industrial Adhesives
- Large Appliance Coatings
- Metal Furniture Coatings
- Miscellaneous Metal and Plastic Parts Coatings
- Automobile and Light-Duty Truck Assembly Coatings

The revisions to this rule either create new source categories that are subject to VOC limits (the first three CTG source categories on this list) or strengthen limits that are already existing for other source categories (the last four CTG source categories on this list). The rule revisions also specify work practices for sources that are subject to this rule.

2. 10 CSR 10–5.340 Rotogravure and Flexographic Printing

This rule amendment adds specific limits of VOCs for flexible package printing operations in the St. Louis ozone nonattainment area. The rule amendment will add stricter emission limits and lower applicability limits, as well as add flexible package printing presses as a source subcategory. These changes are intended to make the limits consistent with the current federal RACT CTGs. Compliance with these rules is required by March 1, 2012.

These revised requirements are based on and consistent with the following CTG document issued by EPA since 2006:

- Flexible Packaging Printing Materials

3. 10 CSR 10–5.442 Lithographic Printing Operations

This rule amendment adds specific emission limits of VOCs for both offset lithographic and letterpress printing operations in the St. Louis ozone nonattainment area. The rule also lowers the applicability limit and adds letterpress printing as a new category. These changes are intended to make the limits consistent with the current Federal RACT CTGs. Compliance with these rules is required by March 1, 2012.

These revised requirements are based on and consistent with the following CTG document issued by EPA since 2006:

- Lithographic Printing and Letterpress Printing Materials

4. 10 CSR 10–5.455 Solvent Cleanup Operations

At this time, Missouri has not submitted this proposed rule revision to EPA for approval into the Missouri SIP. However, in a letter dated September 30, 2011, Missouri has committed to submit this rule to EPA by December 31, 2012 for inclusion into the SIP. The intent of this rule is to reduce the VOC emissions from industrial cleaning operations that use organic solvents. The rule amendment will lower the allowable emissions threshold for VOCs released per day from the use, storage and disposal of industrial cleaning

[4] At this time, Missouri has not submitted this rule revision to EPA for inclusion into the SIP. However, as discussed previously, Missouri has committed to doing so by December 31, 2012.

solvents. It will also add requirements for facilities that have VOC emission levels that exceed the threshold, including placing limitations on the VOC content of the cleaning materials.

C. Non-CTG Major Stationary Sources

Major sources not subject to a specific CTG, but for which RACT is required, are referred to as non-CTG sources. Table 2 summarizes the Missouri's VOC rules that address non-CTG sources. All of these rules have previously been approved by EPA into the Missouri SIP.

TABLE 2—SUMMARY OF ST. LOUIS AREA NON-CTG VOC RACT RULES

Missouri State rule
10 CSR 10–5.360 Control of Emissions From Polyethylene Bag Sealing Operations.
10 CSR 10–5.370 Control of Emissions From the Application of Deadeners and Adhesives.
10 CSR 10–5.450 Control of VOC Emissions From Traffic Coatings.
10 CSR 10–5.451 Control of Emissions From Aluminum Foil Rolling.
10 CSR 10–5.490 Municipal Solid Waste Landfills.
10 CSR 10–5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources.
10 CSR 10–5.540 Control of Emissions From Batch Process Operations.

In particular, Missouri promulgated 10 CSR 10–5.520 (Control of Volatile Organic Compound Emissions from Existing Major Sources). This generic rule applies to all major sources of VOC located in the St. Louis ozone nonattainment area that are not subject to individual RACT rules and have the potential to emit greater than 100 tons per year of VOCs. Sources subject to this rule must submit a detailed engineering RACT proposal to MDNR for each VOC emission unit at the facility. In its submittal to EPA, MDNR noted that in the St. Louis ozone nonattainment area, no sources have been identified that are subject to this generic RACT rule. Therefore, the State believes that the requirements of section 182(b)(2)(C) have been met.[5]

D. Negative Declarations

In addition, the June 1, 2011, submittal from MDNR also states that Missouri has made a negative declaration that there are no applicable sources of VOC located in the St. Louis portion of the ozone nonattainment area for the following CTG categories identified by EPA in CTG documents:

1. Fiberglass Boat Manufacturing Materials (EPA–453/R–08–004).
2. Shipbuilding and Ship Repair Operations (*See* 61 FR 44050).
3. Petroleum Refinery Equipment (EPA–450/2–78–036).
4. Application of Agriculture Pesticides (EPA–453/R–92–011).
5. Pneumatic Rubber Tires (EPA–450/2–78–030).
6. Natural Gas/Gasoline Processing Plants (EPA–450/3–83–007).
7. Plywood Veneer Dryers (EPA–450/3–83–012).

E. Summary

The purpose of Missouri's RACT rules in the St. Louis area is to establish reasonable controls on the emissions of ozone precursors. As new RACT rules have been added and other RACT rules have been expanded with new source categories or stricter limits, Missouri has continuously reviewed and updated its VOC rules in order satisfy all RACT requirements. Based on EPA's review of Missouri's submittal, EPA is proposing to find that for the CTG and non-CTG source categories included in this rulemaking, Missouri has RACT-level controls.

V. Proposed Action

In today's rulemaking, EPA is proposing several actions. First, with respect to Missouri's VOC RACT rules that EPA previously approved into Missouri's SIP under the 1-hour ozone standard, EPA is proposing to approve Missouri's certification that these RACT controls continue to represent RACT under the 8-hour ozone standard. Second, EPA is proposing to approve revisions to three of Missouri's VOC rules (10 CSR 10–5.330; 10 CSR 10–5.340; 10 CSR 10–5.442) into Missouri's SIP, as these rules satisfy RACT for the Missouri portion of the St. Louis nonattainment area. Third, pursuant to CAA section 110(k)(4), EPA is proposing to conditionally approve the Missouri SIP revisions that addresses the requirements of RACT under the 8-hour ozone NAAQS. Missouri would have up to twelve months from the date of EPA's final conditional approval of the SIP revisions in which to revise its rules to be consistent with the CAA. This conditional approval shall be treated as a disapproval if Missouri fails to comply with this commitment.

VI. Statutory and Executive Order Reviews

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

[5] We note that other regulatory mechanisms within the CAA affect sources in the St. Louis ozone nonattainment area, such as Maximum Achievable Control Technology (MACT), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAPS). Because these standards are generally more stringent than RACT, emission sources subject to these standards were determined to also fulfill RACT requirements.

List of Subjects in 40 CFR Part 52

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

Dated: October 17, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–27601 Filed 10–24–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2011–0084; 92220–1113–0000; ABC Code: C6]

RIN 1018–AH53

Endangered and Threatened Wildlife and Plants; Delisting of the Plant *Frankenia johnstonii* (Johnston's frankenia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public that we are reopening the comment period on the May 22, 2003, proposed rule to remove the plant *Frankenia johnstonii* (Johnston's frankenia) from the List of Endangered and Threatened Plants (List) under the Endangered Species Act of 1973, as amended (Act). Comments submitted during the 2003 comment period will be considered and do not need to be resubmitted now. However, we invite comments on the new information presented in this announcement relevant to our consideration of the status of *F. johnstonii.* We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information. We are also making available for public review the Draft Post-Delisting Monitoring Plan for *F. johnstonii.*

DATES: To ensure that we are able to consider your comments and information, we request that we receive them no later than December 27, 2011. Please note that, if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date. We may not be able to address or incorporate information that we receive after the above requested date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 9, 2011.

ADDRESSES: Electronic copies of the 2003 proposed delisting of the plant *Frankenia johnstonii* (Johnston's frankenia), comments received on that proposal, and the Draft Post-Delisting Monitoring Plan for *Frankenia johnstonii* can be obtained from the Web sites *http://www.regulations.gov* or *http://www.fws.gov/southwest/es/Library/.* Also, you may submit comments and information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads ''Enter Keyword or ID,'' enter the Docket number for this finding, which is FWS–R2–ES–2011–0084 . Choose the Action that reads ''Submit a Comment.'' Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R2–ES–2011–0084; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments and information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more details).

FOR FURTHER INFORMATION CONTACT: Michelle Shaughnessy, Assistant Regional Director, Ecological Services, Southwest Regional Office, P.O. Box 1306, Albuquerque, NM 87103, by telephone (505–248–6671), or by facsimile (505–248–6788). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

Frankenia johnstonii was listed August 7, 1984 (49 FR 31418), as an endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). At the time *F. johnstonii* was listed, we determined that designation of critical habitat was not prudent because if localities were published in the **Federal Register,** the species might be additionally threatened by taking and vandalism. A recovery plan was completed for *F. johnstonii* in 1988 (*http://ecos.fws.gov/docs/recovery_plan/880524.pdf*), but it did not quantify criteria for downlisting or delisting due to a lack of knowledge about the species (Service 1988, p. 14). Threats identified in the recovery plan were the small number of individuals, the restricted distribution, the low reproductive potential, and the impacts of heavy grazing and land management practices, such as road construction or maintenance and bulldozing of woody vegetation (Service 1988, p. 11).

Since the recovery plan was completed, our knowledge of *F. johnstonii* has greatly increased. Based on what we learned about the species' known range, the number of newly discovered populations, the life history requirements of this species, clarification of the degrees of threats, and the protection offered by several landowners who control those populations, we proposed delisting the *F. johnstonii* on May 22, 2003 (68 FR 27961), due to recovery. Please see the May 22, 2003 (68 FR 27961), proposed delisting rule (also posted on our Web sites) for a detailed analysis of factors affecting the species. Because of the amount of time that has lapsed since the 2003 delisting proposal, we are reopening the public comment period for that proposal, and inviting comment on new information presented in this announcement as well as on the draft post-delisting monitoring plan for Johnston's frankenia (*Frankenia johnstonii*).

Background

In this document, we will only discuss new information pertinent to the proposed delisting of *Frankenia johnstonii.* For a more detailed description of *F. johnstonii,* its current status and its threats, please refer to the May 23, 2003, proposed rule to delist the species (68 FR 27961 and posted on our Web sites with this docket; see **ADDRESSES** above) and the recovery plan (*http://ecos.fws.gov/docs/recovery_plan/880524.pdf*).

At the time of listing *F. johnstonii,* 5 populations were known, 4 in Texas and 1 in Mexico, and the total number of individual plants was estimated to be approximately 1,500. Threats to the species at the time of listing were considered to be small number of plants, their restricted distribution, the impacts of grazing on them, and low reproductive potential (49 FR 31418).

The May 22, 2003 (68 FR 27961), proposal to remove *Frankenia johnstonii* from the List of Endangered and Threatened Plants was based on results of field work conducted between 1993 and 1999 that included extensive population surveys, landowner

outreach, and biological and ecological research. The culmination of these efforts showed *F. johnstonii* to be much more widespread and abundant than was known at the time of listing (Janssen 1999, pp. 5–160). Research results also helped to alleviate concerns about threats associated with the species' low reproductive potential and competition from nonnative, invasive grasses (Janssen 1999, pp. 161–166, 208–212). In addition, the Texas Parks and Wildlife Department had already negotiated signed, voluntary conservation agreements with private landowners that helped to ensure habitat integrity for a number of the populations into the future. Since 2003 several other landowners have signed agreements as well.

Frankenia johnstonii is endemic to Webb, Zapata, and Starr Counties in southern Texas and an adjacent area in northeastern Mexico. The range of *F. johnstonii* in Texas is currently estimated at approximately 2,031 square miles (5,260 square kilometers), extending from northwestern Webb County on the north, to central Starr County at the species' most southern distribution point (Janssen 1999, p. 4; Price *et al.* 2006, pp. 2–3). The results of status surveys have dramatically increased the known numbers of individual plants, from approximately 1,500 at the time of listing in 1984 to greater than 4 million in 1999 (Janssen 1999, pp. 5–160). Based on earlier reviews of Janssen's 1999 data, we initially estimated the number of individuals around 9 million and stated this in the 2003 proposed rule (68 FR 27961). However, after more thorough review of Janssen's 1999 data, we estimate the number of individual plants to have been greater than 4 million at that time (Janssen 1999, pp. 5–160). In addition, 58 U.S. populations were reported in 1999 (Janssen 1999, p. 8). Additional populations have been discovered subsequently.

For a summary of factors affecting the species, please refer to the May 23, 2003, proposed rule to delist the species (68 FR 27961). We conclude that new data have clarified the significance of threats to the species, and several large populations are now covered under signed voluntary conservation agreements with Texas Parks and Wildlife Department or under conservation management agreements between the landowner and the Nature Conservancy of Texas. Taken together this information leads to the conclusion that the potential impacts due to destruction or modification of habitat are significantly reduced. After reviewing the status of the species, we determine that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

During the comment period following the May 23, 2003, proposed rule to delist the species (68 FR 27961), we received comments from four independent biologists with expertise in the ecology of *Frankenia johnstonii.* The comments from those peer reviewers will be considered and incorporated as appropriate into our final determination on the status of the species. In addition, we will also request peer review of the draft post-delisting monitoring plan.

New Information

The majority of relevant information that has become available since our 2003 proposal to delist *Frankenia johnstonii* has resulted from additional surveys that documented new populations (Price *et al.* 2006, pp. 1–3; Janssen 2007, pers. comm.). From 2003 to 2006, Price *et al.* (2006, pp. 1–3) surveyed for several rare south Texas plants, including *F. johnstonii.* Additional *F. johnstonii* populations were located in Webb, Zapata, and Starr Counties, Texas, although measurements of these populations, including areal extent and numbers of plants, were not collected (Price *et al.* 2006, p. 10 in Attachment B and pp. 2–5 in Attachment C). Subsequently, G. Janssen conducted a 2007 survey on a ranch in southern Starr County, north of Escobares, where new populations of *F. johnstonii* were documented (Janssen 2007, pers. comm.). Also, The Nature Conservancy (TNC) conducted surveys on a Webb County ranch (adjacent to the most northern known population) in 2007, where new populations of *F. johnstonii* were also found (Janssen 2010, pp. 5–6). Adding these newly documented populations to those described in Janssen's 1999 report brings the total number of known populations in Texas to approximately 84, depending on whether some occurrences constitute separate populations or are instead scattered subpopulations of one or more metapopulations.

Beyond documenting new populations, climate change was not analyzed in the 2003 proposal to delist. Although climate change may be a concern for many sensitive species, we do not believe it will have much of an impact on *Frankenia johnstonii* either now or into the foreseeable future. According to the Intergovernmental Panel on Climate Change (IPCC 2007, p. 5), ''Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.'' The average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50-year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 5). It is very likely that over the past 50 years, cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent (IPCC 2007, p. 8). Data suggest that heat waves are occurring more often over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, pp. 8, 15). The IPCC (2007, pp. 12, 13) predicts that changes in the global climate system during the 21st century will very likely be larger than those observed during the 20th century. For the next 2 decades a warming of about 0.2 °C (0.4 °F) per decade is projected (IPCC 2007, p. 12).

In addition, Seager *et al.* (2007, p. 1181) showed that there is a broad consensus among climate models that southwestern North America will get drier in the 21st century and that the transition to a more arid climate is already under way. Only 1 of 19 models has a trend toward a wetter climate in the Southwest (Seager *et al.* 2007, p. 1181). A total of 49 projections were created using the 19 models, and all but 3 predicted a shift to increasing aridity (dryness) in the Southwest as early as 2021 to 2040 (Seager *et al.* 2007, p. 1181). These research results indicate that southwestern North America can be expected to be hotter and drier in the future.

Nevertheless, we believe that increasing global temperatures and drought conditions will likely have little impact on *Frankenia johnstonii* because this species is well adapted to the warm, arid landscape of south Texas. In fact, it may be reasonable to assume that climate change may actually benefit *F. johnstonii* by making the landscape more arid, thus reducing competition with other less physiologically adapted plants. However, we lack sufficient certainty to know specifically how climate change will affect the species. We have not identified, nor are we aware of, any data on an appropriate scale to evaluate habitat or population trends for the *F. johnstonii* within its range, or to make predictions on future trends and whether the species will actually be impacted. We lack predictive local or regional models on how climate change will specifically

affect the *F. johnstonii* or its habitat, and we have no certainty regarding the timing, magnitude, or effects of impacts. Therefore, based on the best available information, we do not consider climate change to be a threat to the *F. johnstonii* now or in the foreseeable future.

In summary, based on our analysis of the new information that has become available since our original 2003 proposal to delist *Frankenia johnstonii,* we continue to believe that the data supporting the original classification were incomplete and that new data have clarified the significance of threats to the species. Moreover, the signing of voluntary conservation agreements or conservation management agreements for a number of populations indicates landowner interest in conservation of the species and their intent to protect the species and its habitat has significantly reduced potential impacts due to destruction or modification of habitat. After reviewing the status of the species, we determine that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Post-Delisting Monitoring Plan

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that the species remains secure from risk of extinction after it has been removed from the protections of the Act. The PDM is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

The Service has developed a draft PDM plan for *Frankenia johnstonii* in cooperation with the TPWD, U.S. International Boundary and Water Commission, TNC, and the Texas Department of Transportation. The PDM plan is designed to verify that *F. johnstonii* remains secure from risk of extinction after removal from the list of endangered species. With this notice, we are soliciting public comments and peer review on the draft PDM plan. All comments on the draft PDM plan from the public and peer reviewers will be considered and incorporated into the final PDM plan as appropriate.

The following is a brief summary of the draft PDM plan. Please see the plan, available at *http://www.fws.gov/southwest/es/Library/*or *http://www.regulations.gov,* for more details. In essence, the PDM plan for the *Frankenia johnstonii* will be implemented for 9 years, and will include habitat evaluation using remote sensing of 20 populations and on-site monitoring of 10 populations. Habitat assessments with remote sensing will occur about every 2 or 3 years, depending on when updated aerial photography is available. Onsite assessments will be conducted in the fall every 3 years for a total of three visits during the 9-year PDM period. Potential impacts to the species are habitat loss from vegetation clearing associated with construction of roads and buildings for residential and commercial development, and clearing and construction associated with oil and gas development (seismic exploration and road, pipeline, and well pad construction). A site visit will be triggered from remote sensing analysis when a 30 percent loss of habitat is detected within any monitored polygon when compared to 2008 baseline data. A second way to trigger site visits is if the overall area being assessed shows a habitat loss of 30 percent or more compared to the 2008 baseline.

If onsite monitoring reveals any cause for concern, such as reduced numbers of plants or decreased extent of a population, a more comprehensive ground assessment of the monitored populations, or addition of extra monitoring sites, may be necessary. If monitoring concerns become sufficiently high, we will conduct a full status review of the species to determine if relisting is warranted.

Public Comments

We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and will be as accurate and effective as possible. To ensure our determination is based on the best available scientific and commercial information, we request information on the *Frankenia johnstonii* from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We request comments or suggestions on our May 22, 2003 (68 FR 27961), proposal to delist the *F. johnstonii,* on the new information presented in this **Federal Register** notice, on the draft post-delisting monitoring plan for *F. johnstonii,* and on any other information. Specifically, we seek information on:

(1) The species' biology, range, and population trends, including:

(a) Life history, ecology, and habitat use of the *F. johnstonii;*

(b) Range, distribution, population size, and population trends;

(c) Positive and negative effects of current and foreseeable land management practices on *F. johnstonii,* including conservation efforts.

(2) The factors, as detailed in the May 22, 2003 (68 FR 27961), that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) The draft post-delisting monitoring plan.

You may submit your information concerning this status review by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this proposal and other listing determinations for the species, will be available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the Service's Southwest Regional Office, Ecological Services Division (see **FOR FURTHER INFORMATION CONTACT**).

If you submitted comments or information previously on the May 22, 2003, proposed rule (68 FR 27961), please do not resubmit them. These comments have been incorporated into the public record and will be fully considered in the preparation of our final determination.

The Service will finalize a new listing determination after we have completed our review of the best available scientific and commercial information, including information and comments submitted during this comment period.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Service's Southwest Regional Office, Ecological Services (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary author of this notice is staff of the Service's Southwest Regional Office, Ecological Services (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 12, 2011.

Gregory E. Siekaniec,

Acting Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217097–0101–01]

RIN 0648–AY22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Generic Annual Catch Limits/Accountability Measures Amendment for the Gulf of Mexico

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Generic Annual Catch Limits/Accountability Measures Amendment (Generic ACL Amendment) to the Reef Fish Resources, Red Drum, Shrimp, and Coral and Coral Reefs Fishery Management Plans for the Gulf of Mexico (FMPs) as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would allow management of selected species by other Federal and/or state agencies; remove species not currently in need of Federal management from the FMPs; develop species groups; modify framework procedures; establish annual catch limits (ACLs); and establish accountability measures (AMs). The intent of this rule is to specify ACLs for species not undergoing overfishing while maintaining catch levels consistent with achieving optimum yield (OY) for the resource.

DATES: Written comments must be received on or before November 18, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by ''NOAA–NMFS–2011–0143'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (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.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0143'' in the keyword search and click on ''search.'' To view posted comments during the comment period, enter ''NOAA–NMFS–2011–0143'' in the keyword search and click on ''search.'' NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments through means not specified in this rule will not be accepted.

Electronic copies of the Generic ACL Amendment, which includes a final environmental impact statement (FEIS), an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone 727–824–5305; e-mail: *Rich.Malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fisheries for reef fish, red drum, shrimp, and coral and coral reefs of the Gulf of Mexico (Gulf) are managed under their respective FMPs. The FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The 2006 revisions to the Magnuson-Stevens Act require that by 2011, for fisheries determined by the Secretary of Commerce (Secretary) to not be subject to overfishing, NMFS establish ACLs and AMs at a level that prevents overfishing and helps to achieve OY. This mandate is intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Management Measures Contained in This Proposed Rule

By removing selected stocks from certain FMPs, this rule would defer to other entities management of those stocks. The rule would also remove 10 species that do not require conservation and management from the Reef Fish FMP; create and revise the species groupings for reef fish; modify the framework procedures; and establish ACLs and AMs for the required species within the Generic ACL Amendment.

Defer to Other Entities Management of Selected Stocks

Some stocks currently managed by FMPs are uncommon in Gulf Federal waters. These stocks are also primarily harvested within areas under the jurisdiction of the South Atlantic Fishery Management Council (South Atlantic Council). National Standard 7 of the Magnuson-Stevens Act states that, to the extent practicable, conservation and management measures shall avoid unnecessary duplication. The proposed rule would remove Nassau grouper from the Reef Fish FMP, and the Council will request that the Secretary designate the South Atlantic Council as the responsible council for Nassau grouper.

If this provision of the Generic ACL Amendment is approved and the South Atlantic Council is designated as the lead council, the South Atlantic Council will need to amend its Snapper-Grouper FMP to extend authority over Nassau grouper into Gulf Federal waters. Given the time necessary to implement these measures, NMFS intends to delay the effective date for removing the prohibition on the harvest of Nassau grouper until the South Atlantic Council has implemented the changes to the Snapper-Grouper FMP. This delay will prevent any lapse in the protective regulations necessary for the species. Similarly, the rule would remove octocorals from the Coral and Coral Reefs FMP. Most octocorals are harvested in waters under the jurisdiction of the South Atlantic Council, which will continue to manage octocorals in their region. Octocorals harvested in the Gulf are primarily taken in Florida state waters; Florida manages octocorals in its state waters, and has notified the Council that it will assume management of octocorals in Gulf Federal waters as well.

Removal of Stocks From Reef Fish Fishery Management Plan

Approximately 50 species of fish are under consideration for management actions in the Generic ACL Amendment. Many uncommonly harvested species were originally placed in fishery management plans for data monitoring purposes, rather than because they were considered to be in need of Federal management. This rule would remove 10 of the less frequently landed species in the Reef Fish FMP, because the Council determined these species are not in need of Federal management. Species proposed for removal include those species for which average landings are less than 15,000 lb (6,804 kg) annually, or that are harvested primarily in state waters, and include: anchor tilefish, misty grouper, sand perch, dwarf sand perch, blackline tilefish, schoolmaster, red hind, rock hind, dog snapper, and mahogany snapper.

Species Groupings

In some cases, groups of stocks share a common habitat and are caught with the same gear in the same area at the same time. Some species groupings, such as shallow-water grouper (SWG), deep-water grouper (DWG), and tilefishes, are already managed in in Gulf Federal water. The Council determined that grouping together species with similar fishery characteristics would allow for more effective management of those lesser caught species because individual single species information is often insufficient. This rule would modify existing species groupings and create the following additional groupings: other SWG (black grouper, scamp, yellowmouth grouper, and yellowfin grouper); DWG (warsaw grouper, snowy grouper, speckled hind, and yellowedge grouper); tilefishes (golden tilefish, blueline tilefish, and goldface tilefish); jacks (almaco jack, banded rudderfish, and lesser amberjack); and mid-water snapper (silk snapper, wenchman, blackfin snapper, and queen snapper).

Modification of Generic Framework Procedures

To facilitate timely adjustments to harvest parameters and other management measures, the Council has added the ability to adjust ACLs and AMs, and to establish and adjust annual target catch (ACT) levels, to the current framework procedures. These adjustments or additions may be accomplished through a regulatory amendment which is less time-intensive than an FMP amendment. By including ACLs, AMs, and ACTs in the framework procedures, the Councils and NMFS would have the flexibility to more promptly alter those harvest parameters as new scientific information becomes available. The proposed addition of other management options into the framework procedures would also add flexibility and the ability to more timely respond to certain future Council decisions through the framework procedures.

Specification of ACLs

This rule would establish 13 initial ACLs for 26 species or species groups, 8 ACLs for individual species, and 5 ACLs for stock complexes. Individual ACLs would be established for vermilion snapper, lane snapper, gray snapper, hogfish, cubera snapper, mutton snapper, yellowtail snapper, and royal red shrimp. Species complex ACLs would be established for deep-water grouper, other shallow-water grouper, tilefishes, jacks, and mid-water snappers. Additionally, the ACL for the other SWG complex would be revised.

The rule would also establish allowable biological catch (ABC) limits in the Gulf Council's area of jurisdiction for several species managed separately by both the Gulf and South Atlantic Councils, but for which only single stock assessments, and single ABCs covering both Council's areas of jurisdiction, were provided. Based on historical landings and recommendations from their respective SSC's, the two councils have agreed to apportion those overarching ABCs between them. This proposed rule would establish commercial and recreational harvest allocations for black grouper for the Gulf based upon historical landings.

The ACLs to be implemented have been developed based upon the Magnuson-Stevens Act National Standards 1 guidelines that state that the Council must establish an ABC control rule based on scientific advice from the Council's Scientific and Statistical Committee (SSC). Additionally, the ABC should be based, when possible, on the probability that an actual catch equal to the stock's ABC would not result in overfishing. The Council selected the ABC control rule based upon SSC recommendations to use varying levels of scientific uncertainty in setting the ACL.

Standard methods for determining the appropriate ABC allow the Council's SSC to determine an objective and efficient assignment of ABC at or less than the overfishing limit (OFL). The SSC's selection of an ABC takes into account scientific uncertainty regarding the harvest levels that would lead to overfishing. The quality and quantity of landings information varies according to the stock in question, thus separate control rules are needed for data-adequate and data-poor stocks. In some cases, the nature of the fishery or other management considerations may require a separate control rule for a given stock. The default buffer level for each stock is to set the ABC at 75 percent of the OFL unless a different risk level is determined by the Council. The Generic ACL Amendment describes the process by which the ABC would be established for the applicable species.

Under the Magnuson-Stevens Act, ACTs are optional management targets intended to help constrain harvest to levels so that the ACL is not exceeded. Establishing control rules for setting these catch levels would provide guidance to the Council on setting an objective and efficient assignment of ACLs that takes into account the potential for management uncertainty. As with the ABC control rule, different levels of landings information about catch levels and management of stocks may require separate control rules for data-adequate and data-poor stocks. The ACT control rule was also developed by the SSC and provided to the Council. It uses assessment information and characterization of uncertainty to develop a percentage for calculating the ACT from the ACL. There are nine ACTs that would be established through this rule. National Standard 1 guidelines recommend that an ACT be used for

stocks when in-season AMs are not used.

Accountability Measures

Accountability measures (AMs) may be used for both in-season and post-season management of a stock to control or mitigate harvest levels with respect to the ACL.

With the exception of royal red shrimp, the stocks and stock complexes requiring AMs are in the reef fish fishery management unit.

The reef fish species requiring AMs within the Generic ACL Amendment are contained in two categories. The first category is for reef fish stocks and stock complexes where the commercial sector is managed under the individual fishing quota (IFQ) program for Gulf groupers and tilefishes, but the recreational sector does not currently have an AM in place. For these species, a portion of the ACL has been apportioned to the commercial sector for IFQ allocation within the IFQ program. For species within the commercial sector of a Gulf IFQ program, this rule would make the IFQ program itself the AM for the commercial sector because commercial landings are closely monitored and IFQ participants are limited to their specific IFQ allocation each fishing year. Thus, if the stock ACL were exceeded, the reason for the overage would be attributable to an excessive harvest by the recreational sector. Therefore, this rule would implement AMs for the recreational sector in the event of a stock ACL overage for the IFQ related species. The three stock complexes whose commercial sectors are managed under an IFQ program but whose recreational sectors do not currently have AMs in place are tilefishes, other SWG, and DWG.

The second category of species or species groups that would have AMs implemented through this rule are those species or species groups that do not currently have AMs in place for either the commercial or recreational sector. This rule would implement new ACLs and AMs in both sectors for the following: Vermilion snapper, lane snapper, mid-water snappers (silk snapper, wenchman, blackfin snapper, and queen snapper), mutton snapper, yellowtail snapper, gray snapper, cubera snapper, hogfish, jacks (lesser amberjack, almaco jack, and banded rudderfish), and royal red shrimp.

For this second category of stocks, with the exception of royal red shrimp and vermilion snapper, if a stock or stock complex exceeds its ACL in a given fishing year, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the commercial and recreational sectors would be closed for the remainder of that fishing year. There is no federally managed recreational sector for royal red shrimp, so the ACL only applies to the commercial sector. The AM for royal red shrimp would apply if commercial landings exceed the ACL in a given fishing year. In that case then during the following fishing year, if the commercial landings reach, or are projected to reach, the ACL, the commercial sector would be closed for the remainder of that fishing year.

In the case of vermilion snapper, in any fishing year, if the combined commercial and recreational landings reach or exceed the stock ACL during the fishing year, then both the commercial and recreational sectors would be closed for the remainder of that fishing year.

For stocks for which an ACL would be set through this rulemaking, none are currently overfished, in a rebuilding plan, or undergoing overfishing. Therefore, there is a reduced likelihood an ACL would be exceeded.

Species in the Amendment Without a Codified ACL or AM

The Generic ACL Amendment proposes to retain Federal management for, and keep within their respective fishery management units, several species that will not have specifically codified ACLs and AMs. These species are red drum, goliath grouper, and corals (excluding octocorals). Harvesting these species is currently prohibited in Gulf Federal waters, and they therefore have a functional ACL of zero. Additionally, the harvest prohibition serves as a functional AM to manage the ACL.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Generic ACL Amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA for this rule, as required by Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this rule, if adopted, would have on small entities. A description of the rule, why it is being considered, and the objectives of, and legal basis for the rule are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

The rule would remove octocorals from the Coral and Coral Reefs FMP; remove Nassau grouper from the Reef Fish Fishery FMP; and remove species that have average annual landings of 15,000 lb (6,804 kg) or less or those that are primarily harvested in state waters, including anchor tilefish, blackline tilefish, red hind, rock hind, misty grouper, schoolmaster, dog snapper, and mahogany snapper, sand perch and dwarf sand perch from the Reef Fish Fishery FMP. The rule would also create the additional species groups other shallow-water groupers (black grouper, scamp, yellowmouth grouper, and yellowfin grouper), deep-water groupers (warsaw grouper, snowy grouper, speckled hind, and yellowedge grouper), tilefishes (golden tilefish, blueline tilefish, and goldface tilefish), jacks (almaco jack, banded rudderfish, and lesser amberjack), and mid-water snapper (silk snapper, wenchman, blackfin snapper, and queen snapper), without using any indicator species within each group.

The rule would adopt an ABC control rule providing separate guidance in setting ABC for Tier 1 species (assessed stocks with estimates of MSY and probability distribution around the estimate), Tier 2 species (assessed stocks without estimates of MSY or its proxy), Tier 3a (unassessed stocks but deemed stable over time), and Tier 3b (unassessed stocks with current fishing levels deemed by the SSC as not sustainable). The rule would additionally establish an initial estimate of ACL/ACT, based on a spreadsheet method and followed by a review by the Council's Socioeconomic Panel, for seven individual reef fish species (vermilion snapper, lane snapper, gray snapper, hogfish, cubera snapper, mutton snapper, and yellowtail snapper) and five reef fish species complexes (other shallow-water grouper, deep-water grouper, tilefishes, jacks, and mid-water snappers). The rule would also adopt a generic framework procedure by modifying existing framework procedures under the Reef Fish, Gulf Shrimp, and Red Drum Fishery FMPs and establishing a framework procedure for the Coral and Coral Reefs FMP; and would specify an ACL of 334,000 lb (151,500 kg) of tails for royal red shrimp based on the overfishing limit of 392,000 lb (177,808 kg) of tails as recommended by the SSC.

Moreover, the rule would establish the ABCs in the Gulf Council's area of

jurisdiction for several species managed separately by both the Gulf and South Atlantic Councils, but for which only single stock assessments, and single ABCs covering both Council's areas of jurisdictions, were provided. The amendment would set the following apportionment of those overarching ABC's: 47 percent of the black grouper ABC for the South Atlantic Council and 53 percent for the Gulf Council; 75 percent of the yellowtail snapper for the South Atlantic Council and 25 percent for the Gulf Council; 82 percent of the mutton snapper ABC for the South Atlantic Council and 18 percent for the Gulf Council. The rule would also further allocate the Gulf Council's black grouper ACL into 27 percent for the recreational sector and 73 percent for the commercial sector; set annual ACLs and optional ACTs based on the ACL/ACT control rule, with ACL being equal to ABC, unless otherwise specified by the Council. The rule would implement in-season AMs for vermilion snapper by closing the commercial and recreational sectors when the stock ACL is reached or projected to be reached within a fishing year; implement in-season AMs for other reef fish species without an existing AM and royal red shrimp if the stock ACL is exceeded in the previous year; set the trigger for post-season AMs when landings exceed the ACL without applying any overage adjustment to the following year's ACL.

The purpose of this rule is to implement the National Standard 1 guidelines to establish the methods for implementing ACLs, AMs and associated parameters for stocks managed by the Gulf Council, along with initial specifications of an ACL that may be changed under the framework procedures for specifying an ACL. Additionally, this rule is intended to improve management capability to prevent or end overfishing and to maintain stocks at healthy levels, and to do so in a consistent and structured manner across all FMPs.

The Magnuson-Stevens Act provides the statutory basis for this rule.

The rule would not establish any new reporting or record-keeping requirements. However, the AMs may constitute a new compliance requirement and are analyzed later in the IRFA. No duplicative, overlapping, or conflicting Federal rules have been identified for this rule. Management of certain species affected by this rule was developed with explicit consideration of applicable rules in the state of Florida and the South Atlantic Council.

The rule is expected to directly affect commercial harvesting and for-hire fishing vessels that harvest reef fish, royal red shrimp, red drum, or octocorals in the Gulf. It should be noted that harvest and possession of red drum in the Gulf EEZ is currently prohibited. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, all the above qualifiers apply except that the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

In 2009, there were 999 vessels with Gulf commercial reef fish permits and 430 vessels with Gulf royal red shrimp permits. There is no entity possessing a Federal permit for harvesting red drum or octocorals in the Gulf EEZ. Based on home states, as reported in Federal permit applications, vessels with commercial reef fish permits were distributed as follows: 37 vessels in Alabama, 814 vessels in Florida, 48 vessels in Louisiana, 15 vessels in Mississippi, 77 vessels in Texas, and 8 vessels in other states. The corresponding distribution of vessels with royal red shrimp permits is as follows: 57 vessels in Alabama, 65 vessels in Florida, 88 vessels in Louisiana, 25 vessels in Mississippi, 152 vessels in Texas, and 43 vessels in other states. In 2008 and 2009, the maximum annual commercial fishing revenue by an individual vessel with a commercial Gulf reef fish permit was approximately $606,000 (2008 dollars). The maximum revenue by an individual vessel in the royal red shrimp or coral fisheries was far less than $606,000.

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. In 2009, there were 1,419 for-hire vessels that were permitted to operate in the Gulf reef fish fishery. These vessels were distributed as follows: 141 vessels in Alabama, 876 vessels in Florida, 100 vessels in Louisiana, 52 vessels in Mississippi, 232 vessels in Texas, and 18 vessels in other states. The for-hire permit does not distinguish between headboats and charter boats, but in 2009 the headboat survey program included 79 headboats. The majority of headboats were located in Florida (43), followed by Texas (22), Alabama (10), and Louisiana (4). The average charterboat is estimated to earn approximately $88,000 (2008 dollars) in annual revenues, while the average headboat is estimated to earn approximately $461,000 (2008 dollars).

Based on the foregoing revenue estimates, all commercial and for-hire vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities. Some fleet activity (*i.e.,* multiple vessels owned by a single entity) may exist in the for-hire sector but its extent is unknown, and all vessels are treated as independent entities in this analysis.

Because all entities expected to be directly affected by this rule are small business entities, no disproportionate effects on small entities relative to large entities are expected because of this rule.

Removing octocorals from the Coral and Coral Reefs FMP is mainly administrative in nature and would have no direct effects on the profitability of small business entities. Removing Nassau grouper from the Reef Fish Fishery FMP, with eventual management of the species being assumed by the South Atlantic Council, has no direct effects on the profits of small entities, given the current prohibition on the harvest of this species. Removing species from the Reef Fish Fishery FMP which have average annual landings of 15,000 lb (6,804 kg) or less (except those misidentified as another species or those exhibiting a trend landings that may indicate a change is status), or those mainly harvested in state waters, such as anchor tilefish, blackline tilefish, red hind, rock hind, misty grouper, schoolmaster, dog snapper, mahogany snapper, sand perch, and dwarf sand fish, would not directly change the current harvest or use of a resource, and therefore would not affect the profitability of small entities. Similarly, rearranging species into species groupings would not directly change the current harvest or use of a resource, and therefore would not affect the profitability of small entities.

The establishment of an ABC control rule is not anticipated to directly affect the harvest and other typical uses of the resource since this action is administrative in nature. As such, this management action is not expected to result in any direct effects on the profits of small entities.

The establishment of an ACL/ACT control rule is an administrative action and would not affect the harvest and other customary uses of the resource. Therefore, this action has no direct

consequence on the profitability of small entities.

Modifications to the framework procedure are also administrative in nature. Since these modifications would not affect the harvest and other customary uses of the resource, they would have no direct consequence on the profitability of small entities.

Any management actions enacted through the modified framework procedure would be evaluated as to their effects on the profits of small entities at the time of their implementation. Initial ACL specification for royal red shrimp would set the ACL for the species at 334,000 lb tails (151,500 kg) which are significantly above the historical landings (138,116 lb (62,648 kg) in 2008). This action, therefore, would not affect harvests and profits of small entities in the foreseeable future.

Apportioning black grouper between the Gulf and South Atlantic Council's jurisdictional areas would result in an increase of profits (producer surplus) to the commercial sector ranging from approximately $90,000 to $113,000 annually for all vessels combined. The effects on for-hire profits are expected to be positive but cannot be quantified with available information. The apportionment of yellowtail snapper between the Gulf and South Atlantic Council's jurisdictional areas is very close to the recent landings ratio of the species between the two jurisdictional areas. Thus, this management action is expected to have minimal effects on the profits of small entities in both areas.

The apportionment of mutton snapper between the Gulf and South Atlantic Council's jurisdictional areas would favor the Gulf fishing fleet and thus would be expected to increase the profits of the Gulf fishing fleet. The effects on the profits of the South Atlantic fishing fleet would, in turn, decrease. In the absence of sufficient information to quantify the effects of this action, its net effects on the fishing fleets of both areas cannot be determined.

The apportionment of black grouper in the Gulf between the commercial and recreational sectors would tend to favor the commercial over the recreational sector. In this sense, the commercial sector is expected to experience profit increases ranging from approximately $11,000 to $14,000 annually for all vessels combined. The negative effects on the for-hire fleet cannot be estimated with available information. Potential effects on small entities anticipated from the implementation of ACLs and/or ACTs for reef fish stocks and stock groupings would depend on the extent to which ACLs and ACTs under consideration would affect the harvest or other customary uses of the resource. While this action does not set any reef fish species and stock groupings ACLs or ACTs for the recreational sector, aggregate catch limits and targets and the ACLs and ACTs specified for the commercial sector would allow for an increased harvest levels for both sectors. Therefore, positive effects on the profits of small entities would be expected to result from this action in the near future.

Specifying in-season AMs for vermilion snapper when the ACL is reached or projected to be reached within the fishing year would result in short-term negative effects on the profits of small entities. The expectation, however, over the medium and long-term is for profits of these small entities to increase or at least not be further impaired due to increased protection for the stock. Implementing AMs for royal red shrimp and other reef fish species that do not currently have AMs enacted the following year after their ACLs are exceeded would negatively affect the short-term profits of small entities. Again, the expectation is for this action to improve medium and long-term profitability.

Three alternatives, including the preferred alternative, were considered for the management of octocorals. The first alternative, the no action alternative, would retain the management of species under the Gulf Coral and Coral Reefs FMP. The second alternative would remove the species from the FMP, with eventual management of the species being the responsibility of the South Atlantic Council. Similar to the preferred alternative, these two other alternatives would have no direct effects on the profits of small entities. The second alternative would mainly entail additional administrative cost on the part of the South Atlantic Council.

Three alternatives, including the preferred alternative, were considered for the management of Nassau grouper. The first alternative, the no action alternative, would retain the management of the species under the Gulf Reef Fish FMP. The second alternative would remove the species from the FMP, with eventual management of the species being the responsibility of the South Atlantic Council. Similar to the preferred alternative, these two other alternatives would have no direct effects on the profits of small entities. The second alternative would mainly entail additional administrative cost on the part of the South Atlantic Council.

Four alternatives, including the preferred alternative, were considered for the management of yellowtail snapper. The first alternative would remove the species from the Gulf Reef Fish FMP. The second alternative would remove the species from the FMP, with eventual management of the species being the responsibility of the South Atlantic Council. The third alternative would add the species to a joint plan with the South Atlantic Council. Similar to the preferred no action alternative, these three other alternatives would have no effects on the profits of small entities. The second alternative would mainly entail additional administrative cost on the part of the South Atlantic Council.

Four alternatives, including the preferred alternative, were considered for the management of mutton snapper. The first alternative would remove the species from the Gulf Reef Fish FMP. The second alternative would remove the species from the FMP, with eventual management of the species being the responsibility of the South Atlantic Council. The third alternative would add the species to a joint plan with the South Atlantic Council. Similar to the preferred no action alternative, these three other alternatives would have no direct effects on the profits of small entities. The second alternative would mainly entail additional administrative cost on the part of the South Atlantic Council while the third alternative would entail additional administrative costs on both Councils.

Five alternatives, of which two are the preferred alternatives, were considered for removing stocks from the Reef Fish FMP. The first alternative, the no action alternative, would not remove any species from Gulf Reef Fish FMP. This alternative would have no direct effects on the short-term profitability of small entities, but over time this is more likely to result in profit reduction than the preferred alternative when certain species with historically low landings become subject to restrictive measures. The second alternative would remove species with average landings of 100,000 lb (45,359 kg) or below from the Reef Fish FMP, except for species that are long-lived, may be misidentified as another species, or have trends in landings that may indicate a change in status. This alternative would have no direct short-term effects on profits of small entities, but with a relatively high historical landings threshold certain species may not be well protected for long-term sustainability. This could then eventually lead to lower harvest and lower profits to small entities over time. The third alternative would

remove species from the Reef Fish FMP if Federal waters are at the edge of the species distribution. This alternative would not directly affect the profitability of small entities, and could possibly have similar long-term effects as the preferred alternative.

Five alternatives, of which two with one sub-alternative are the preferred alternatives, were considered for species groupings. The first alternative, the no action alternative, would maintain the current species groupings. This alternative would have no direct short-term economic effects on small entities. The second alternative would revise the species groupings by adding groupings when life history and landings data may be too sparse to set individual catch limits. Although this alternative would have no direct consequence on the economic status of small entities, it would provide for a greater number of groupings. The third alternative would use species groupings based on NMFS analysis, which uses fishery-dependent data from multiple sectors over multiple years and life history data when available creating complexes and sub-complexes. This alternative would have no direct effects on the economic status of small entities, but it would provide for more groupings than the preferred alternative. In addition to these alternatives, two other sub-alternatives were considered regarding the selection of an indicator species within each grouping, noting that the preferred sub-option is not to use any indicator species. The first sub-option is to use as an indicator species the most vulnerable stock in the group based on productivity-susceptibility analysis. This sub-option would likely result in more restrictive environment that would condition the implementation of ACLs and other management measures. The second sub-option would use the assessed species as an indicator species. This sub-option has similar effects as the first sub-option but it would be relatively less constrictive.

Three alternatives, including the preferred alternative, were considered for the ABC control rule. The first alternative, the no action alternative, would not specify an ABC control rule. This alternative would have no immediate effects on the economic status of small entities, but it may not comply with the Magnuson-Stevens Act National Standard 1 guidelines, which require Councils to establish an acceptable ABC control rule. The second alternative would adopt an ABC control rule fixing the buffer between the overfishing limit and ABC at a level such that ABC is equal to 75 percent of the overfishing limit or ABC is equal to the yield at 75 percent of F_{MSY} (fishing mortality at maximum sustainable yield). Although this alternative is simpler than the preferred alternative, it lacks the stock specificity contained in the preferred alternative.

Five alternatives, including the preferred alternative, were considered for the ACL/ACT control rule. The first alternative, the no action alternative, would not establish an ACL/ACT control rule. The second alternative would establish an initial estimate of ACL/ACT based upon a flow chart method that reviews data availability, data timeliness, and data quality to develop the ACT buffer percentage, and followed by a review by the Council's Socioeconomic Panel. This alternative would have economic effects similar to the preferred alternative, but it would produce a less conservative buffer when comparing stock complexes or stocks with high dead discard levels. Therefore, this alternative may result in less adverse economic impacts in the short term than the preferred alternative. The third alternative would set the buffer between ACL and ACT at a fixed percentage of 25 percent for all sectors, 0 percent for IFQ (individual fishing quota) fisheries and 25 percent for all other sectors, or 2 percent for IFQ fisheries and 25 percent for all other sectors, and followed by a review by the Council's Socioeconomic Panel. This alternative may result in lower economic benefits than the preferred alternative, because it would establish control rules that may not take account of stock specificity. The fourth alternative would set the buffer between ACL and ACT at a fixed percentage of 0 percent, 10 percent, 15 percent, or 25 percent, followed by a review by the Council's Socioeconomic Panel. This alternative has about the same economic implications as the third alternative, except possibly when dealing with IFQ species, so that it would also tend to provide lower economic benefits than the preferred alternative.

Four alternatives, including the preferred alternative, were considered for the generic framework procedures. The first alternative, the no action alternative, would retain the current framework procedures for implementing management measures. The second alternative would add modifications that would make the framework procedures broader than the preferred alternative while the third alternative would make the framework procedures narrower than the preferred alternative. Similar to the preferred alternative, these three other alternatives would have no direct economic effects on small entities.

Three alternatives, including the preferred alternative, were considered for specifying ACL for royal red shrimp. The first alternative, the no action alternative, would not set an ACL for the species. This alternative is the least likely to affect the profits of small entities but it would not meet the legal requirements for establishing an ACL by 2011. The second alternative would set an ACL for the species based on average landings from 1962–2008 (141,379 lb (64,128 kg) of tails), from the last 5 years (191,860 lb (87,026 kg) of tails), or from the last 10 years (233,182 lb (105,770 kg) of tails). This alternative would likely result in a harvest reduction and profit reduction as well, except when the ACL is set at the highest of the three sub-options. Other sub-options would set the ACL equal to 75 percent of ABC (250,500 lb (113,625 kg)) or set the ACL corresponding to the ACL/ACT control rule. These sub-options would be unlikely to result in short-term profit reductions although they are more restrictive than the preferred alternative/sub-alternative.

Three alternatives, including the preferred alternative, were considered for establishing the Gulf portion of the jurisdictional apportionment of the black grouper ABC, as agreed upon by both councils. The first alternative, the no action alternative, would not apportion the species ABC between the Gulf and South Atlantic Councils. This alternative would tend to maintain the distribution of landings and potentially the economic benefits between the Gulf and South Atlantic fishing fleets. The second alternative would evenly apportion the species ABC between the Gulf and South Atlantic Councils. The resulting effects of this alternative on small entities would be lower profits than the preferred alternative.

Four alternatives, including the preferred alternative, were considered for establishing the Gulf portion of the jurisdictional apportionment of the yellowtail snapper ABC, as agreed upon by both councils. The first alternative, the no action alternative, would not apportion the species ABC between the Gulf and South Atlantic Councils. This alternative would tend to maintain the distribution of landings and potentially the economic benefits between the Gulf and South Atlantic fishing fleets. The second alternative would apportion 73 percent of the species ABC to the South Atlantic Council and 27 percent to the Gulf Council. This alternative would potentially yield higher profits to the Gulf fishing fleet than the preferred alternative, but the difference in the profit outcome of the two alternatives would be relatively small. The third

alternative would apportion 77 percent to the South Atlantic Council and 23 percent to the Gulf Council. This alternative would result in lower profits to the Gulf fishing fleet than the preferred alternative, although the difference in profit outcome between the two alternatives would be relatively small.

Three alternatives, including the preferred alternative, were considered for establishing the Gulf portion of the jurisdictional apportionment of the mutton snapper ABC, as agreed upon by both councils. The first alternative, the no action alternative, would not apportion the species ABC between the Gulf and South Atlantic Councils. This alternative would tend to maintain the distribution of landings and potentially economic benefits between the Gulf and South Atlantic fishing fleets. The second alternative would apportion 79 percent of the species ABC to the South Atlantic Council and 21 percent to the Gulf Council. This alternative would result in lower profits to Gulf fishing fleet than the preferred alternative, although the difference in profit outcome between the two alternatives would be relatively small.

Four alternatives, including the preferred alternative, were considered for the sector allocation of black grouper. The first alternative, the no action alternative, would not establish sector allocation of the species. This alternative would tend to maintain the distribution of landings and potentially economic benefits between the commercial and recreational sectors. The second alternative would allocate 18 percent of the species ACL to the recreational sector and 82 percent to the commercial sector. This alternative would result in higher profit increases to the commercial sector than the preferred alternative. However, it would also result in higher profit reductions to the for-hire fleet. The net effects of this alternative cannot be estimated with available information. The third alternative would allocate 24 percent of the species ACL to the recreational sector and 76 percent to the commercial sector. This alternative would provide slightly higher profitability to the commercial sector and lower profitability to the for-hire sector than the preferred alternative. The net effects of this alternative cannot be estimated with available information.

Three alternatives, including the preferred alternative, and two sub-options, one of which is the preferred sub-option, were considered for specifying ACLs/ACTs for reef fish stocks and stock groupings. The first alternative, the no action alternative, would not set an annual ACL/ACT for stocks or stock groups, but this would not meet the legal requirements for establishing an ACL by 2011. The second alternative would set a 10 percent buffer between the ABC and ACL or between the ACL and ACT if ACL is equal to ABC. This alternative would likely result in lower profits to small entities than the preferred alternative. The second sub-option would set the ABC equal to the value specified in the ACL/ACT control rule, with the ACT not being used unless specified otherwise by the Council. This alternative would likely result in profits to small entities that would be equal to or less than those of the preferred alternative.

Four alternatives, of which two are the preferred alternatives, and five sub-options, of which two are the preferred sub-options, were considered for AMs. The first alternative, the no action alternative, would not create new AMs for reef fish and royal red shrimp. This alternative would likely result in higher profits to small entities than the preferred alternative, but it would not be consistent with the requirement to establish AMs for stocks managed by the Council. The second alternative would implement only post-season AMs for stocks and sectors that do not currently have AMs should the ACL for a year be exceeded. This alternative would likely result in larger profit reductions in the short-term than the preferred alternative due to possibly more restrictive corrective actions being implemented to address ACL overages. The first sub-option would set the trigger for post-season AMs if the average landings for the past 3 years exceed the ACL. This sub-option would likely result in lower short-term profit reductions than the preferred alternative, although over time it would result in larger profit reductions due to more restrictive actions to remedy the overages. The second sub-option would set the trigger for post-season AMs if average landings for the past 5 years, after excluding the highest and lowest values, exceed the ACL. This alternative would have nearly similar effects as the second alternative. The third sub-option would provide for an overage adjustment if the ACL for the stock or sector is exceeded and the stock is under a rebuilding plan. The amount of adjustment would equal the full amount of the overage, unless the best scientific information shows a lesser amount is needed to mitigate the effects of exceeding the ACL. This sub-option would result in larger profit reductions in the short-term than the preferred alternative due to harvest reductions that would be implemented to mitigate the overages.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 20, 2011.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

§ 622.1 [Amended]

2. In § 622.1, paragraph (b), in Table 1, remove the row titled, ''FMP for Coral and Coral Reefs of the Gulf of Mexico''.

3. In § 622.2, the definitions for ''deep-water grouper (DWG)'' and ''shallow-water grouper (SWG)'' are revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Deep-water grouper (DWG) means, in the Gulf, yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, scamp are also included as DWG as specified in § 622.20(b)(2)(vi).

* * * * *

Shallow-water grouper (SWG) means, in the Gulf, gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper. In addition, for the purposes of the IFQ program for Gulf groupers and tilefishes in § 622.20, speckled hind and warsaw grouper are also included as SWG as specified in § 622.20(b)(2)(v).

* * * * *

4. In § 622.3, paragraph (c) is revised to read as follows:

§ 622.3 Relation to other laws and regulations.

* * * * *

(c) For allowable octocoral, if a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the South Atlantic EEZ must comply with the more restrictive state regulation.

* * * * *

5. In § 622.4, the first sentence of paragraph (a)(2)(ix) and paragraph (a)(3)(ii) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(ix) *Gulf IFQ vessel accounts.* For a person aboard a vessel, for which a commercial vessel permit for Gulf reef fish has been issued, to fish for, possess, or land Gulf red snapper or Gulf groupers (including DWG and SWG, as specified in § 622.20(a)) or tilefishes (including goldface tilefish, blueline tilefish, and tilefish), regardless of where harvested or possessed, a Gulf IFQ vessel account for the applicable species or species groups must have been established. * * *

* * * * *

(3) * * *

(ii) *Allowable octocoral.* For an individual to take or possess allowable octocoral in the South Atlantic EEZ, other than allowable octocoral that is landed in Florida, a Federal allowable octocoral permit must have been issued to the individual. Such permit must be available for inspection when the permitted activity is being conducted and when allowable octocoral is possessed, through landing ashore.

* * * * *

6. In § 622.20, the first three sentences in paragraph (a) are revised to read as follows:

§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.

(a) *General.* This section establishes an IFQ program for the commercial components of the Gulf reef fish fishery for groupers (including DWG, red grouper, gag, and other SWG) and tilefishes (including goldface tilefish, blueline tilefish, and tilefish). For the purposes of this IFQ program, DWG includes yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind, and scamp, but only as specified in paragraph (b)(2)(vi) of this section. For the purposes of this IFQ program, other SWG includes black grouper, scamp, yellowfin grouper, and yellowmouth grouper, and warsaw grouper and speckled hind, but only as specified in paragraph (b)(2)(v) of this section. * * *

* * * * *

7. In § 622.31, paragraphs (f) and (n) are revised to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(f) *Power-assisted tools.* A power-assisted tool may not be used in the Caribbean EEZ to take a Caribbean coral reef resource, in the Gulf EEZ to take prohibited coral or live rock, or in the South Atlantic EEZ to take allowable octocoral, prohibited coral, or live rock.

* * * * *

(n) Gulf reef fish may not be used as bait in any fishery, except that, when purchased from a fish processor, the filleted carcasses and offal of Gulf reef fish may be used as bait in trap fisheries for blue crab, stone crab, deep-water crab, and spiny lobster.

8. In § 622.32, the first sentence of paragraph (b)(2)(iii) is revised to read as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(2) * * *

(iii) Red drum may not be harvested or possessed in or from the Gulf EEZ. * * *

* * * * *

9. In § 622.34, the third sentence of paragraph (g)(1) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(g) * * *

(1) * * * The provisions of this paragraph do not apply to hogfish.

* * * * *

10. In § 622.37, paragraph (d)(1)(iii) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(iii) Cubera, gray, and yellowtail snappers—12 inches (30.5 cm), TL.

* * * * *

11. In § 622.39, the first sentence in paragraph (b)(1)(ii) and paragraph (b)(1)(v) are revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding goliath grouper—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag per person per day. * * *

* * * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section—20.

* * * * *

12. In § 622.42, paragraph (a)(1)(ii), the introductory paragraph for paragraph (a)(1)(iii), paragraph (a)(1)(iii)(A), paragraph (a)(1)(iv), and paragraph (b) are revised to read as follows:

§ 622.42 Quotas.

(a) * * *

(1) * * *

(ii) Deep-water groupers (DWG) have a combined quota, as specified in paragraphs (a)(1)(ii)(A) through (E) of this section. These quotas are specified in gutted weight, that is eviscerated, but otherwise whole.

(A) For fishing year 2012—1.127 million lb (0.511 million kg).

(B) For fishing year 2013—1.118 million lb (0.507 million kg).

(C) For fishing year 2014—1.110 million lb (0.503 million kg).

(D) For fishing year 2015—1.101 million lb (0.499 million kg).

(E) For fishing year 2016 and subsequent fishing years—1.024 million lb (0.464 million kg).

(iii) Shallow-water groupers (SWG) have separate quotas for gag and red grouper and a combined quota for other shallow-water grouper (SWG) species (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper), as specified in paragraphs (a)(1)(iii)(A) through (C) of this section. These quotas are specified in gutted weight, that is eviscerated but otherwise whole.

(A) *Other SWG combined.* (*1*) For fishing year 2012—509,000 lb (230,879 kg).

(*2*) For fishing year 2013—518,000 lb (234,961 kg).

(*3*) For fishing year 2014—523,000 lb (237,229 kg).

(*4*) For fishing year 2015 and subsequent fishing years—525,000 lb (238,136 kg).

* * * * *

(iv) Tilefishes (including goldface tilefish, blueline tilefish, and tilefish)—582,000 lb (263,991 kg), gutted weight, that is, eviscerated but otherwise whole.

* * * * *

(b) *South Atlantic allowable octocoral.* The quota for all persons who harvest allowable octocoral in the EEZ of the South Atlantic is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

* * * * *

13. In § 622.43, paragraph (a)(2) is revised to read as follows:

§ 622.43 Closures.

(a) * * *

(2) *South Atlantic allowable octocoral.* Allowable octocoral may not be harvested or possessed in the South Atlantic EEZ and the sale or purchase of

allowable octocoral in or from the South Atlantic EEZ is prohibited.

* * * * *

14. In § 622.48, paragraphs (d), (e), (i), and (j) are revised and paragraph (p) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(d) *Gulf reef fish.* For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(e) *Gulf royal red shrimp.* Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait).

* * * * *

(i) *Gulf shrimp.* For a species or species group: Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait), target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specification.

(j) *Gulf red drum.* Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

* * * * *

(p) *Gulf coral resources.* For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested corals.

15. In § 622.49, the heading for § 622.49 and paragraph (a)(3) are revised and paragraphs (a)(6) through (a)(16) and paragraph (d) are added to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

(a) * * *

(3) *Other shallow-water grouper (SWG) combined (including black grouper, scamp, yellowfin grouper, and yellowmouth grouper).* (i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for other commercial SWG. The commercial ACL for other SWG is equal to the applicable quota specified in § 622.42(a)(1)(iii)(A).

(ii) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(3)(iii), then during the following fishing year, if the sum of the commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(3)(iii), the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACLs for other SWG, in gutted weight, are 688,000 lb (312,072 kg) for 2012, 700,000 lb (317,515 kg) for 2013, 707,000 lb (320,690 kg) for 2014, and 710,000 lb (322,051 kg) for 2015 and subsequent years.

* * * * *

(6) *Deep-water grouper (DWG) combined (including yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind)*—

(i) *Commercial sector.* The IFQ program for groupers and tilefishes in the Gulf of Mexico serves as the accountability measure for commercial DWG. The commercial ACL for DWG is equal to the applicable quota specified in § 622.42(a)(1)(ii).

(ii) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(6)(iii) of this section, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(6)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACLs for DWG, in gutted weight, are 1.216 million lb (0.552 million kg) for 2012, 1.207 million lb (0.547 million kg) for 2013, 1.198 million lb (0.543 million kg) for 2014, 1.189 million lb (0.539 million kg) for 2015, and 1.105 million lb (0.501 million kg) for 2016 and subsequent years.

(7) *Tilefishes combined (including goldface tilefish, blueline tilefish, and tilefish)*—(i) *Commercial sector.* The IFQ program for groupers and tilefishes in

the Gulf of Mexico serves as the accountability measure for commercial tilefishes. The commercial ACL for tilefishes is equal to the applicable quota specified in § 622.42(a)(1)(iv).

(ii) *Recreational sector.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL specified in paragraph (a)(7)(iii) of this section, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the applicable ACL specified in (a)(7)(iii) of this section, the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of that fishing year.

(iii) The stock complex ACL for tilefishes is 608,000 lb (275,784 kg), gutted weight.

(8) *Lesser amberjack, almaco jack, and banded rudderfish, combined.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock complex ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock complex ACL for lesser amberjack, almaco jack, and banded rudderfish, is 312,000 lb (141,521 kg), round weight.

(9) *Silk snapper, queen snapper, blackfin snapper, and wenchman, combined.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock complex ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock complex ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock complex ACL for silk snapper, queen snapper, blackfin snapper, and wenchman, is 166,000 lb (75,296 kg), round weight.

(10) *Vermilion snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. The stock ACL for vermilion snapper is 3.42 million lb (1.55 million kg), round weight.

(11) *Lane snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for lane snapper is 301,000 lb (136,531 kg), round weight.

(12) *Gray snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for gray snapper is 2.42 million lb (1.10 million kg), round weight.

(13) *Cubera snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for cubera snapper is 5,065 lb (2,297 kg), round weight.

(14) *Yellowtail snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for yellowtail snapper is 725,000 lb (328,855 kg), round weight.

(15) *Mutton snapper.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for mutton snapper is 203,000 lb (92,079 kg), round weight.

(16) *Hogfish.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for hogfish is 208,000 lb (94,347 kg), round weight.

* * * * *

(d) *Royal red shrimp in the Gulf.* (1) *Commercial sector.* If commercial landings, as estimated by the SRD, exceed the commercial ACL, then during the following fishing year, if commercial landings reach or are projected to reach the commercial ACL, the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of that fishing year. The commercial ACL for royal red shrimp is 334,000 lb (151,500 kg), tail weight.

(2) [Reserved]

16. In Appendix A to part 622, Table 3 is revised to read as follows:

Appendix A to Part 622—Species Tables

* * * * *

Table 3 of Appendix A to Part 622—Gulf Reef Fish

Balistidae—Triggerfishes
- Gray triggerfish, *Balistes capriscus*

Carangidae—Jacks
- Greater amberjack, *Seriola dumerili*
- Lesser amberjack, *Seriola fasciata*
- Almaco jack, *Seriola rivoliana*
- Banded rudderfish, *Seriola zonata*

Labridae—Wrasses
- Hogfish, *Lachnolaimus maximus*

Lutjanidae—Snappers
- Queen snapper, *Etelis oculatus*
- Mutton snapper, *Lutjanus analis*
- Blackfin snapper, *Lutjanus buccanella*
- Red snapper, *Lutjanus campechanus*
- Cubera snapper, *Lutjanus cyanopterus*
- Gray (mangrove) snapper, *Lutjanus griseus*
- Lane snapper, *Lutjanus synagris*
- Silk snapper, *Lutjanus vivanus*
- Yellowtail snapper, *Ocyurus chrysurus*
- Wenchman, *Pristipomoides aquilonaris*
- Vermilion snapper, *Rhomboplites aurorubens*

Malacanthidae—Tilefishes
- Goldface tilefish, *Caulolatilus chrysops*
- Blueline tilefish, *Caulolatilus microps*
- Tilefish, *Lopholatilus chamaeleonticeps*

Serranidae—Groupers
- Speckled hind, *Epinephelus drummondhayi*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Goliath grouper, *Epinephelus itajara*
- Red grouper, *Epinephelus morio*
- Warsaw grouper, *Epinephelus nigritus*
- Snowy grouper, *Epinephelus niveatus*
- Black grouper, *Mycteroperca bonaci*
- Yellowmouth grouper, *Mycteroperca interstitialis*
- Gag, *Mycteroperca microlepis*
- Scamp, *Mycteroperca phenax*

Yellowfin grouper, *Mycteroperca venenosa*

* * * * *

[FR Doc. 2011–27589 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 206

Tuesday, October 25, 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–2011–0094]

Availability of an Environmental Assessment for Field Testing Avian Influenza-Marek's Disease Vaccine, H5 Subtype, Serotype 3, Live Marek's Disease Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Avian Influenza-Marek's Disease Vaccine, H5 Subtype, Serotype 3, Live Marek's Disease Vector. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before November 25, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2011–0094–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0094, 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–2011–0094* 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. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 734–8245, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, a risk analysis has been prepared to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: Biomune Company.

Product: Avian Influenza-Marek's Disease Vaccine, H5 Subtype, Serotype 3, Live Marek's Disease Vector.

Field Test Locations: Delaware and Kansas.

The above-mentioned product consists of a live recombinant Marek's disease virus vector expressing an avian influenza virus protein. The vaccine is for in ovo vaccination of 18-day-old chick embryos or for the subcutaneous vaccination of healthy day-of-age chicks as an aid in the prevention of Marek's Disease and avian influenza.

The EA has 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 provision 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).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an

environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 19th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27555 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0072]

Plants for Planting Whose Importation Is Not Authorized Pending Pest Risk Analysis; Notice of Availability of Data Sheets for Taxa of Plants for Planting That Are Quarantine Pests or Hosts of Quarantine Pests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: We are reopening the comment period for a notice that advised the public that we have determined that 41 taxa of plants for planting are quarantine pests and 107 taxa of plants for planting are hosts of 13 quarantine pests and therefore should be added to our lists of taxa of plants for planting whose importation is not authorized pending pest risk analysis. The notice also made available to the public for review and comment data sheets that detail the scientific evidence we evaluated in making the determination that the taxa are quarantine pests or hosts of quarantine pests. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before November 25, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0072-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0072, 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-2011-0072* 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. Arnold Tschanz, Senior Plant Pathologist/Senior Risk Manager, Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

On July 26, 2011, we published in the **Federal Register** (76 FR 44572–44573, Docket No. APHIS–2011–0072) a notice advising the public that we have determined that 41 taxa of plants for planting are quarantine pests and 107 taxa of plants for planting are hosts of 13 quarantine pests and therefore should be added to our lists of taxa of plants for planting whose importation is not authorized pending pest risk analysis. The notice also made available to the public for review and comment data sheets that detail the scientific evidence we evaluated in making the determination that the taxa are quarantine pests or hosts of quarantine pests.

Comments on the notice were required to be received on or before September 26, 2011. We are reopening the comment period on Docket No. APHIS–2011–0072 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between September 27, 2011, and the date of this notice.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 19th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–27559 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Madera County Resource Advisory Committee will be meeting in North Fork, California on November 15, 2011. The purpose of the meeting will be to to update the committee on the status and monitoring of projects that were recommended for funding at the March 30, 2011 meeting, as authorized under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L.110–343) for expenditure of Payments to States Madera County Title II funds.

DATES: The meeting will be held on November 15, 2011.

ADDRESSES: The meeting will be held at the Bass Lake Ranger District, 57003 Road 225, North Fork, California, 93643. Send written comments to Julie Roberts, Madera County Resource Advisory Committee Coordinator, c/o Sierra National Forest, Bass Lake Ranger District, at the above address, or electronically to *jaroberts@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Julie Roberts, Madera County Resource Advisory Committee Coordinator, (559) 877–2218 ext. 3159.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Madera County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meetings.

Dated: October 18, 2011.

Dave Martin,

District Ranger.

[FR Doc. 2011–27608 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sabine Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting cancellation.

SUMMARY: The Sabine-Angelina Resource Advisory Committee was scheduled to meet October 20, 2011 in Hemphill, Texas. The committee is authorized under the Secure Rural

Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The committee's charter expires in October 2011 and its renewal is under review by the Secretary of Agriculture. In compliance with the Federal Advisory Committee Act the committee will not be meeting until the charter is renewed.

DATES: The cancelled meeting was scheduled to be held via teleconference call on Thursday, October 20, 2011, 3:30 p.m.

ADDRESSES: The canceled meeting would have been held at the Sabine National Forest Office, 5050 State Hwy 21 East, Hemphill, TX 75948. Written comments concerning this cancellation may be submitted to the Designated Federal Officer.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 5050 State Hwy 21 East, Hemphill, TX 75948. Please call ahead to (409) 625–1940 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: William E. Taylor, Jr., Designated Federal Officer, Sabine National Forest, 5050 State Hwy. 21 E., Hemphill, TX 75948: Telephone: 936–639–8501 or e-mail at: *etaylor@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

Dated: October 17, 2011.

William E. Taylor, Jr.,

Designated Federal Officer, Sabine National Forest RAC.

[FR Doc. 2011–27610 Filed 10–24–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports.

OMB Control Number: 0648–0371.

Form Number(s): 88–191.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 10,216.

Average Hours per Response: Trip reports, 12 minutes; trip reports without fishing, 2 minutes; cost-earnings and annual summary reports, 30 minutes.

Burden Hours: 36,189.

Needs and Uses: This request is for extension of a current information collection.

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. In addition, NMFS must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*), which implements the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations. NMFS collects information via vessel logbooks to monitor the U.S. catch of Atlantic swordfish, sharks, billfish, and tunas in relation to the quotas, thereby ensuring that the United States complies with its domestic and international obligations. HMS logbooks are verified using observer data that is collected under OMB Control No. 0648–0593 (Observer Programs' Information That Can Be Gathered Only Through Questions). In addition to HMS fisheries, the HMS logbook is also used to report catches of dolphin and wahoo by commercial and charter/headboat fisheries. The HMS logbooks collect data on incidental species, including sea turtles, which is necessary to evaluate the fisheries in terms of bycatch and encounters with protected species. For both directed and incidentally caught species, the information supplied through vessel logbooks also provides the catch and effort data on a per set or per trip level of resolution. These data are necessary to assess the status of highly migratory species, dolphin, and wahoo in each fishery. International stock assessments for tunas, swordfish, billfish, and some species of sharks are conducted and presented to the International Commission for the Conservation of Atlantic Tunas (ICCAT) periodically and provide, in part, the basis for ICCAT management recommendations which become binding on member nations. Domestic stock assessments for most species of sharks and for dolphin and wahoo are used as the basis of managing these species. Supplementary information on fishing costs and earnings has been collected via this vessel logbook program. This economic information enables NMFS to assess the economic impacts of regulatory programs on small businesses and fishing communities, consistent with the National Environmental Policy Act (NEPA), Executive Order 12866, the Regulatory Flexibility Act, and other domestic laws.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: October 20, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–27548 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 65–2011]

Proposed Foreign-Trade Zone—Ada and Canyon Counties, ID, Under Alternative Site Framework, Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Caldwell Economic Development Council, Inc. to establish a general-purpose foreign-trade zone at sites in Ada and Canyon Counties, Idaho, adjacent to the Boise U.S. Customs and Border Protection (CBP) port of entry, under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new

''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 19, 2011. The applicant is authorized to make the proposal under Idaho Statute 67–4703A.

The proposed zone would be the second general-purpose zone approved to serve the Boise CBP port of entry. FTZ 192 in Meridian, Idaho was established on February 17, 1993 (Board Order 629, 58 FR 11834, 03/01/1993) but has since lapsed.

The applicant's proposed service area under the ASF would be Ada and Canyon Counties, Idaho. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is both within and adjacent to the Boise CBP port of entry.

The proposed zone would initially include two ''magnet'' sites in Canyon County: *Proposed Site 1* (524.04 acres)—Caldwell Airport/Industrial Park, 4814 East Linden Street, Caldwell; and, *Proposed Site 2* (241.04 acres)—within the 350-acre Sky Ranch Business Center, 4190 Highway 20/26, Caldwell. The parcels within the sites are both publicly and privately owned, as described in the application. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted.

The application indicates a need for zone services in Ada and Canyon Counties, Idaho. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 27, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 9, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's website, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov.*

Dated: October 19, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–27578 Filed 10–24–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Application for Insular Watch and Jewelry Program Benefits

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 27, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Supriya Kumar, Statutory Import Programs Staff, (202)482–3530, *supriya.kumar@trade.gov* and fax number (202) 501–7952.

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 97–446, as amended by Public Law 103–465, Public Law 106–36, and Public Law 108–429, requires the Departments of Commerce and the Interior (Departments) to administer the distribution of watch duty-exemptions and watch and jewelry duty-refunds to program producers in the U.S. insular possessions and the Northern Mariana Islands. The primary consideration in collecting information is the enforcement of the law and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. The ITA–334P is the principal program form used for recording operational data on the basis of which program entitlements are distributed among the producers. This form also serves as the producer's application to the Departments for these entitlements and is completed biannually by watch and jewelry assemblers and manufacturers. The form consists of four versions: mid-year and annual application for watch producers; and mid-year and annual application for jewelry producers.

II. Method of Collection

The form is sent to each watch and jewelry producer biannually. It is also available at *http://ita-web.ita.doc.gov/doc/eFormsPub.nsf* and may be completed online and printed, and submitted via mail.

III. Data

OMB Control Number: 0625–0040.

Form Number(s): ITA–334P.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 4.

Estimated Total Annual Cost to Public: $100.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 19, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–27507 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') published its Preliminary Results of administrative review (''AR'') of the antidumping duty order, new shipper review (''NSR''), and intent to revoke order in part, on folding metal tables and chairs from the People's Republic of China (''PRC'') on June 20, 2011.[1] The period of review (''POR'') for both reviews is June 1, 2009, through May 31, 2010. We invited interested parties to comment on our *Preliminary Results.* Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results. The final dumping margins for these reviews are listed in the ''Final Results of Review'' section below.

DATES: *Effective Date:* October 25, 2011.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Trisha Tran, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6412 or (202) 482–4852, respectively.

Background

On June 20, 2011, the Department published its Preliminary Results. On July 11, 2011,[2] Meco Corporation (''Meco''), a domestic producer of the like product and the petitioner in the underlying investigation, and Xinjiamei Furniture (Zhangzhou) Co., Ltd. (''Xinjiamei Furniture''), the new shipper in the NSR, provided new surrogate value information for the administrative review and NSR, respectively. On June 28, 2011, the Department announced its new wage rate methodology and invited comments from parties in both reviews. On July 5, 2011, the Department announced a minor revision to the exchange rate calculation methodology used to convert the surrogate wage rate.

On July 20, 2011,[3] Meco, New-Tec Integration (Xiamen) Co., Ltd. (''New-Tec''), a mandatory respondent in the administrative review, and Lifetime Hong Kong, Ltd. (''Lifetime''), a separate-rate respondent in the administrative review, submitted case briefs for the administrative review, and Xinjiamei Furniture submitted a case brief in the NSR.

On July 25, 2011,[4] the Department received rebuttal briefs in the administrative review from Meco, New-Tec, Feili Group (Fujian) Co., Ltd. and Feili Furniture Development Limited Quanzhou City (collectively, ''Feili''), a mandatory respondent in the administrative review, Lifetime, and Cosco Home and Office Products, an importer interested party, and from Meco for the NSR. On August 11, 2011, the Department held a public hearing on the administrative review.

We have conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), 19 CFR 351.241, and 19 CFR 351.213.

Scope of Order

The products covered by the order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

(1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

Lawn furniture;
Trays commonly referred to as ''TV trays;''
Side tables;
Child-sized tables;
Portable counter sets consisting of rectangular tables 36″ high and matching stools; and, Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28″ to 36″ wide by 48″ to 96″ long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross-braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

(2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross-braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

Folding metal chairs with a wooden back or seat, or both;
Lawn furniture;
Stools;
Chairs with arms; and
Child-sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.011, 9401.71.0030, 9401.71.0031, 9401.79.0045, 9401.79.0046, 9401.79.0050, 9403.20.0018, 9403.20.0015, 9403.20.0030,

[1] *See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, and Intent to Revoke in Part,* 76 FR 35832 (June 20, 2011) (''*Preliminary Results*'').

[2] The Department rejected Meco's July 11, 2011, surrogate value submission and Meco re-submitted it on August 9, 2011.

[3] The Department rejected Meco's July 20, 2011, case brief and Meco re-submitted it on August 9, 2011.

[4] The Department rejected Meco's original rebuttal brief submitted on July 25, 2011 for the NSR and Meco re-submitted it on August 2, 2011.

9403.60.8040, 9403.70.8015, 9403.70.8020, and 9403.70.8031 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in these reviews are addressed in the memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the 2009–2010 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China'' (October 18, 2011) (''Issues and Decision Memorandum of the Administrative Review'') and the memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the 2009–2010 New Shipper Review of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China'' (October 18, 2011) (''Issues and Decision Memorandum of the NSR''), which are hereby adopted by this notice. Lists of the issues that parties raised and to which we responded in the Issues and Decision Memoranda are attached to this notice as an appendix. The Issues and Decision Memoranda are public documents and are on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memoranda can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memoranda and the electronic versions of the Issues and Decision Memoranda are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for Feili and New-Tec in the administrative review and Xinjiamei Furniture in the NSR.

- With respect to New-Tec, we applied the Sigma freight cap to the factors of production (''FOP'') inputs where the reported distances from the domestic supplier to the factory were greater than the reported distance from the factory to the nearest port.[5]
- With respect to New-Tec, we have deducted PHONEYCOMB1, (*i.e.,* paper honeycomb reported as a direct material) in the total packing calculation and PHONEYCOMB2 (*i.e.,* paper honeycomb reported as a packing material) in the total direct material calculation.[6]
- With respect to Xinjiamei Furniture, the Department corrected the program so that the calculated labor costs properly reflect the result of the reported direct labor, indirect labor, and packing labor FOPs multiplied by the labor surrogate value.[7]
- We have recalculated New-Tec's, Feili's, and Xinjiamei Furniture's surrogate values for the labor cost based on the methodology proposed in (1) *Labor Methodologies,*[8] (2) Wage Rate Memo and NSR Memorandum: Industry-Specific Surrogate Wage Rate;[9] and (3) Labor Cost Conversion Memo and NSR Memorandum: Labor Cost Conversion.[10] As a result of the Department's newly-adopted, single-country and industry-specific, labor cost calculation methodology and application of the daily exchange rate in the SAS program, we have changed the surrogate labor rate for New-Tec, Feili, and Xinjiamei Furniture to 50.36 Rs/Hrs.
- For the final results of the AR and NSR, the Department relied on the ILO Yearbook Chapter 6A as its primary data source and revised the overhead financial ratio as set forth in *Labor Methodologies,* Wage Rate Memo, the NSR Memorandum: Industry-Specific Surrogate Wage Rate, Labor Cost Conversion Memo, and the NSR Memorandum: Labor Cost Conversion. As a result, the following individual identifiable labor costs in the surrogate financial statements were re-categorized in order to ensure that Chapter 6A labor costs, included in the ILO defined ''Labor cost'' and ''Compensation of employees,'' are not over-stated, as listed below: (1) Contribution to Provident Fund, EDLI Gratuity Etc. and (2) Staff & Labour Welfare. Based on the foregoing methodology, the revised surrogate overhead ratio to be applied for the final results is 4.92 percent for New-Tec Feili, and Xinjiamei Furniture.
- For the final results for Lifetime, we have applied the 2.78 percent rate that was calculated for Xinjiamei Furniture, the respondent in the companion new shipper review, instead of the rate applied in the preliminary results, which was calculated for New Tec in a previous administrative review.[11]

Final Results of Reviews

We determine that the dumping margins for the POR are as follows:

Exporter	Weighted-average margin
Feili Group (Fujian) Co., Ltd., Feili Furniture Development Limited Quanzhou City	0.03 (*de minimis*)
New-Tec Integration (Xiamen) Co., Ltd	0.00%
Lifetime Hong Kong Ltd	2.78%

[5] *See* Issues and Decision Memorandum of the Administrative Review, at Comment 3.

[6] *See id.,* at Comment 4.

[7] *See* Issues and Decision Memorandum of the NSR, at Comment 2.

[8] *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''Labor Methodologies'').

[9] *See* Memorandum to the File, entitled ''2009–2010 New Shipper Review of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China: Industry-Specific Surrogate Wage Rate and Surrogate Financial Ratio Adjustments,'' dated June 28, 2011 (''NSR Memorandum: Industry-Specific Surrogate Wage Rate'') and Memorandum to the File, entitled ''2009–2010 Administrative Review of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China: Industry-Specific Surrogate Wage Rate and Surrogate Financial Ratio Adjustments,'' dated June 28, 2011 (''Wage Rate Memo'').

[10] *See* Memorandum to the File, entitled ''2009–2010 New Shipper Review of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China: Labor Cost Conversion,'' dated July 15, 2011 (''NSR Memorandum: Labor Cost Conversion'') and Memorandum to the File, entitled ''2009–2010 Administrative Review of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China: Labor Cost Conversion,'' dated July 15, 2011 (''Labor Cost Conversion Memo'').

[11] *See* Issues and Decision Memorandum of the Administrative Review, at Comment 5.

Exporter	Weighted-average margin
Xinjiamei Furniture (Zhangzhou) Co., Ltd., Xinjiamei (Zhangzhou) Commodity Co., Ltd	2.78%

Determination To Revoke Order, in Part

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (''NV'') in the current

review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.[12] Upon receipt of such a request to revoke an order in part, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.[13]

We have determined that the request from New-Tec meets all of the criteria for revocation under 19 CFR 351.222. With regard to the criteria of 19 CFR 351.222(b)(2), our final margin calculations show that New-Tec sold folding metal tables and chairs at not less than NV during the current review period. In addition, New-Tec sold folding metal tables and chairs at not less than NV in the two previous administrative reviews (*i.e.,* New-Tec's dumping margins were zero or *de minimis*).[14] Also, we find that application of the antidumping duty order to New-Tec is no longer warranted. We base this partial revocation of the order with respect to New-Tec on three consecutive years of sales made in commercial quantities at not less than NV and on New-Tec's agreement to immediate reinstatement in the relevant antidumping order, if the Department concludes that it sold the subject merchandise at less than NV subsequent to revocation.[15] Moreover, no party has contested the revocation analysis for New-Tec. Therefore, we continue to find that New-Tec qualifies for revocation, in part, of the antidumping duty order on folding metal tables and chairs from the PRC under 19 CFR 351.222(b)(2).

Accordingly, we are revoking the order with respect to subject merchandise exported by New-Tec.

Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are exported by New-Tec, and are entered, or withdrawn from warehouse, for consumption on or after June 1, 2010. The Department will order the suspension of liquidation lifted for all such entries and will instruct U.S. Customer and Border Protection (''CBP'') to release any cash deposits or bonds. The Department will further instruct CBP to refund with interest any cash deposits on entries made on or after June 1, 2010.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of these reviews. For assessment purposes, we calculated exporter/importer- (or customer) specific assessment rates for merchandise subject to these reviews. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate 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. Where an importer- (or customer) specific assessment rate is *de minimis* under 19 CFR 351.106(c) *(i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. Because we have revoked the order with respect to subject merchandise exported by New-Tec, we will instruct CBP to terminate the suspension of liquidation for imports of such merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 2010, and to refund all cash deposits collected. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of these reviews.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the

[12] *See* 19 CFR 351.222(e)(1).

[13] *See* 19 CFR 351.222(b)(2)(i) and *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part,* 67 FR 69719, 69720 (November 19, 2002).

[14] *See Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3560 (January 21, 2009); and *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 68568 (December 28, 2009).

[15] *See* Memorandum to the File entitled, ''Analysis of Commercial Quantities for New-Tec's Request for Revocation,'' dated May 31, 2011.

most recent period; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate established in the final results of this review (*i.e.,* 70.71 ercent); and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a 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 the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. 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 the terms of an APO is a sanctionable violation.

This notice of the final results of these reviews is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 18, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Issues and Decision Memorandum for the Administrative Review

Comment 1: Selection of the Primary Surrogate Country.
A. Economic Comparability.
B. Significant Production of Comparable Merchandise.
C. Best Available Surrogate Value Information.
1. Best Available Data.
2. Labor Rate.
Comment 2: Surrogate Financial Statements.
A. Use of Maximaa's Financial Statements.
B. Use of Lion's Financial Statements.
Comment 3: Application of Sigma Cap in New-Tec's Supplier Distance Calculation.
Comment 4: Application of Paper Honey Comb in New-Tec's Direct and Packing Material Calculation.
Comment 5: Application of the Appropriate Margin to Lifetime.

List of Comments and Issues in the Issues and Decision Memorandum for the New Shipper Review

Comment 1: Surrogate Value for Cold Rolled Steel Coil.
Comment 2: Calculation of Labor Costs.
Comment 3: Treatment of Overhead Surrogate Financial Ratio.

[FR Doc. 2011–27576 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815, A–533–806, C–533–807]

Sulfanilic Acid From the People's Republic of China and India: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') orders on sulfanilic acid from the People's Republic of China (''PRC'') and India would likely lead to continuation or recurrence of dumping, that revocation of the countervailing duty (''CVD'') order on sulfanilic acid from India would likely lead to continuation or recurrence of a countervailable subsidy, and that revocation of these AD and CVD orders would likely lead to a continuation or recurrence of material injury to an industry in the United States, the Department is publishing this notice of continuation of these AD and CVD orders.

DATES: *Effective Date:* October 25, 2011.

FOR FURTHER INFORMATION CONTACT: Laurel Lacivita or Eugene Degnan (PRC Order), Eric Greynolds (Indian AD/CVD Orders), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243, (202) 482–0414, or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION: On April 1, 2011, the Department initiated the third sunset review of the AD orders on sulfanilic acid from the PRC and India and the CVD order on sulfanilic acid from India, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-Year (''Sunset'') Review*, 76 FR 18163 (April 1, 2011).

As a result of its review, the Department determined that revocation of the AD orders on sulfanilic acid from the PRC and India would likely lead to a continuation or recurrence of dumping and that revocation of the CVD order on sulfanilic acid from India would likely lead to continuation or recurrence of subsidization and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the orders be revoked. *See Sulfanilic Acid From India: Final Results of Expedited Sunset Review of Countervailing Duty Order*, 76 FR 33243 (June 8, 2011) and *Sulfanilic Acid From India and the People's Republic of China; Final Results of Third Expedited Sunset Reviews of Antidumping Duty Orders*, 76 FR 45510 (July 29, 2011).

On October 4, 2011, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the AD orders on sulfanilic acid from the PRC and India and the CVD order on sulfanilic acid from India would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* USITC Publication 4270 (October 2011), Sulfanilic Acid From China And India: Investigation Nos. 701–TA–318 and 731–TA–538 and 561 (Third Review) and *Sulfanilic Acid From China and India*, 76 FR 62843 (October 11, 2011).

Scope of the Orders

The merchandise covered by the AD and CVD orders is all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additive. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders.

Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic

acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.[1]

The merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 2921.42.22 and 2921.42.24.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the orders is dispositive.

Continuation of the Orders

As a result of these determinations by the Department and the ITC that revocation of the AD and CVD orders on sulfanilic acid would likely lead to a continuation or recurrence of dumping or a countervailable subsidy, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD orders on sulfanilic acid from the PRC and India and the CVD order on sulfanilic acid from India. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year (sunset) reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: October 20, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–27716 Filed 10–21–11; 4:15 pm]

BILLING CODE 3510–DS–P

[1] In response to a request from 3V Corporation, on May 5, 1999, the Department clarified that sodium sulfanilate processed in Italy from sulfanilic acid produced in India is within the scope of the AD and CVD orders on sulfanilic acid from India. *See Notice of Scope Rulings*, 65 FR 41957 (July 7, 2000).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 110908574–1561–01]

NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 2.0 (Draft); Request for Comments

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks comments on the draft NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 2.0. Comments must be received on or before 5 p.m. Eastern time on November 25, 2011. The entire draft version of the NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 2.0 (Draft), is available online at: *http://collaborate.nist.gov/twiki-sggrid/bin/view/SmartGrid/IKBFramework.*

DATES: Comments must be received on or before 5 p.m. Eastern Time on November 25, 2011.

ADDRESSES: Written comments may be sent to Office of the National Coordinator for Smart Grid Interoperability, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8100, Gaithersburg, MD 20899–8100 or by e-mail at *nistsgfwcmts@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. George W. Arnold, National Coordinator for Smart Grid Interoperability, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8100, Gaithersburg, MD 20899–8100; telephone 301–975–2232, fax 301–975–4091; or via e-mail at *nistsgfwcmts@nist.gov.*

SUPPLEMENTARY INFORMATION: Section 1305 of the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110–140, 121 Stat. 1492) requires the Director of NIST ''to coordinate the development of a framework that includes protocols and model standards for information management to achieve interoperability of smart grid devices and systems.''

In January, 2010, NIST published the NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 1.0 (Release 1.0). Release 1.0 described a high-level conceptual reference model for the Smart Grid, identified 75 existing standards that are applicable (or likely to be applicable) to the ongoing development of the Smart Grid, specified 15 high-priority gaps and harmonization issues for which new or revised standards and requirements are needed, documented action plans with aggressive timelines by which designated standards-setting organizations (SSOs) will address these gaps, and described the strategy to establish requirements and standards to help ensure Smart Grid cybersecurity.

NIST announces the publication of the NIST Framework and Roadmap for Smart Grid Interoperability Standards, Release 2.0 (Release 2.0) (Draft) for public review and comment. The entire draft version of Release 2.0 (Draft) is available online at: *http://collaborate.nist.gov/twiki-sggrid/bin/view/SmartGrid/IKBFramework.* Release 2.0 builds upon the work in Release 1.0 with an update on the progress in closing the previously identified high-priority gaps and additional standards issues that are now being addressed, a description of the recently-formed Smart Grid Interoperability Panel (SGIP), an expanded cybersecurity chapter, and a new testing and certification chapter.

Request for Comments: NIST seeks comments on the draft framework and roadmap report. In particular, the agency requests that: Comments be categorized as (1) Technical; (2) editorial; or (3) general. If a comment is not a general comment, please identify the relevant page, line number, and section the comment addresses. Also include a proposal on how to address the comment. Comments should be submitted in accordance with instructions in the **ADDRESSES** section of this notice.

Dated: October 13, 2011.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2011–27556 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Meeting To Explore Feasibility of Establishing a NIST/Industry Consortium on ''Concrete Rheology: Enabling Metrology (CREME)''

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a pre-consortium meeting on November 8,

2011 to be held at the NIST campus, with the option of participating via web-based meeting. The purpose of the meeting is to evaluate industry interest in creating a NIST/industry/Academia consortium focused on ''Concrete Rheology: Enabling Metrology (CREME)''. The goal of such a consortium could include determining key rheological parameters that best characterize the placement, finishability and consolidation of concrete. This goal would be achieved by developing test methods and models to measure and predict the performance parameters of fresh concrete in the lab and at the construction site. To move these ideas into practice and to engage industry, test bed facilities and quality control test methods for the field would be developed at NIST consortium members' participation. The consortium would be administered by NIST with consortium members' participation. Consortium planning, research and development would be conducted by NIST staff along with at least one technical representative from each participating member entities. Each member of the consortium will be required to sign a Cooperative Research and Development Agreement (''CRADA'') with NIST. Membership fees for participation in the consortium will be Twenty-five Thousand ($25,000) per year. The initial term of the consortium is intended to be three years.

DATES: The meeting will take place on November 8, 2011 from 11 a.m. to 1 p.m., in Bldg. 226/Rm. B205. For those planning to attend the meeting at the NIST Gaithersburg campus, please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice. Web-based meeting participation: Connection details can be obtained by contacting Chiara Ferraris or Nicos Martys one week prior to the meeting.

ADDRESSES: The meeting will be held on the NIST Gaithersburg campus, 100 Bureau Drive, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Chiara Ferraris, Nicos Martys, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8615, Gaithersburg, MD 20899–8615, USA; Telephone: (301) 975–6711; Fax (301) 990–6891; E-mail: *chiara.ferraris@nist.gov*; *nicos.martys@nist.gov*.

SUPPLEMENTARY INFORMATION: All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business November 1, 2011, in order to attend. Please submit your name, time of arrival, e-mail address, and phone number to: *chiara.ferraris@nist.gov.* Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Chiara Ferraris's e-mail address is *chiara.ferraris@nist.gov* and her telephone number is (301) 975–6711.

Dated: October 13, 2011.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2011–27554 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA786

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ecosystem and Ocean Planning Committee will hold a public meeting.

DATES: The meeting will be held on Monday, November 14, 2011, from 9 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at the Four Points Sheraton BWI Airport, 7032 Elm Road, Baltimore, MD 21240 and *telephone:* (410) 859–3300.

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 purpose of the meeting is to review previous Committee efforts and chart the future direction under the new leadership.

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: October 20, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–27537 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA762

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The SSC meeting will be held on November 15–16, 2011, from 9 a.m. to 5 p.m. The meeting is open to the public, and will be conducted in English.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 8000 Tartak Street, Carolina, Puerto Rico 00979.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The SSC will meet to discuss the items contained in the following agenda:

November 15, 2011—9 a.m.

—Call to order
—Discuss the legal responsibility of the SSC for providing OFL and ABC recommendations to the CFMC for species not undergoing overfishing and are not overfished (NOAA Legal Counsel)
—Revisit spiny lobster (Panulirus argus) recommendations for OFL ABC based on information provided by SERO/SEFSC/USVI DPNR/PRDNER for both Puerto Rico and the USVI
—Discuss whether a pilot ERAEF study in St. Thomas, USVI should be funded by the CFMC and discuss the scope of work, if it is recommended that such a project be funded

November 16, 2011—9 a.m.

—Continue discussion and make a recommendation to the CFMC regarding funding a pilot ERAEF study in St. Thomas, USVI

—Review fishery monitoring programs and provide recommendations
—Old business
—New business
—Next meeting
—Adjourn

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: October 20, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–27582 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA785

Endangered Species; File No. 1551

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

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that the NMFS Southeast Fisheries Science Center (*Responsible Party:* Bonnie Ponwith) has been issued a modification to scientific research Permit No. 1551–02.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On August 8, 2011, notice was published in the **Federal Register** (76 FR 48146) that a modification of Permit No. 1551, issued July 24, 2008 (73 FR 44225) had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The modification increases the number of leatherback (*Dermochelys coriacea*), loggerhead (*Caretta caretta*), green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*) and unidentified hardshell sea turtles that may be harassed during aerial surveys. This work will assess potential injury from Mississippi Canyon 252 oil on sea turtle populations in the northern Gulf of Mexico as part of the post-spill Natural Resources Damage Assessment of the BP Deepwater Horizon event. The modification is valid through July 1, 2013.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 20, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–27591 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Advisory Committee on Commercial Remote Sensing (ACCRES); Request for Nominations

ACTION: Notice requesting nominations for the Advisory Committee on Commercial Remote Sensing (ACCRES).

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) was established to advise the Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, on matters relating to the U.S. commercial remote sensing industry and NOAA's activities to carry out responsibilities of the Department of Commerce as originally set forth in the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5621 *et seq.,* but now recodified by the National and Commercial Space Programs Act of 2010 at 51 U.S.C. 60101 *et seq.* The Committee is comprised of leaders in the commercial space-based remote sensing industry, space-based remote sensing data users, government (state and local), and academia. The Department of Commerce is seeking highly qualified individuals who are knowledgeable about the commercial space-based remote sensing industry and uses of space-based remote sensing data to serve on the Committee.

DATES: Nominations must be postmarked no later than 30 days from the publication date of this notice.

SUPPLEMENTARY INFORMATION: ACCRES was established by the Secretary of Commerce on May 21, 2002, to advise the Secretary, through the Under Secretary of Commerce for Oceans and Atmosphere, on matters relating to the U.S. commercial remote sensing industry and NOAA's activities to carry out responsibilities of the Department of Commerce as set forth in the National and Commercial Space Programs Act of 2010.

Committee members serve in a representative capacity for a term of two years and may serve additional terms, if reappointed. No more than 15 individuals at a time may serve on the Committee. ACCRES will have a fairly balanced membership consisting of approximately 9 to 15 members. Nominations are encouraged from all interested U.S. persons and organizations representing interests affected by the National and Commercial Space Programs Act of 2010 and the U.S. commercial space based remote sensing policy. Nominees must possess demonstrable expertise in a field related to the spaced based commercial remote sensing industry or exploitation of space based commercial remotely sensed data and be able to attend committee meetings that are held usually two times per year. In addition, selected candidates must apply for and obtain a security clearance. Membership is voluntary, and service is without pay.

Each nomination that is submitted should include the proposed committee member's name and organizational affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, a curriculum vitae or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each submission: the nominee's name, address, phone number, fax number, and e-mail address, if available.

Nominations should be sent to Director, Commercial Remote Sensing Regulatory Affairs Office, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910. Nominations must be postmarked no later than 30 days from the publication date of this notice. The full text of the Committee Charter and its current membership can be viewed at the Agency's web page at: *http://www.nesdis.noaa.gov/CRSRA/accresHome.html.*

FOR FURTHER INFORMATION CONTACT: ACCRES Administration, NOAA Commercial Remote Sensing Regulatory Affairs Office, 1335 East West Highway, Room 8260, Silver Spring, Maryland 20910; telephone (301) 713–1644, e-mail *CRSRA@noaa.gov.*

Charles S. Baker,

Deputy Assistant Administrator for Satellite and Information Services .

[FR Doc. 2011–27498 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Membership of the National Telecommunications and Information Administration's Performance Review Board

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: REVISED—Notice of Membership on the National Telecommunications and Information Administration's Performance Review Board Membership.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on October 25, 2011.

FOR FURTHER INFORMATION CONTACT: Ruthie B. Stewart, Department of Commerce Human Resources Operations Center (DOCHROC), Office of Staffing, Recruitment, and Classification/Executive Resources Operations, 14th and Constitution Avenue, NW., Room 7419, Washington, DC 20230, at (202) 482–3130.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC), announce the appointment of those individuals who have been selected to serve as members of NTIA's Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and rating of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards for SES members. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for NTIA's Performance Review Board begins on October 25, 2011. The name, position title, and type of appointment of each member of NTIA's Performance Review Board are set forth below by organization:

Department of Commerce, International Trade Administration (ITA)

Renee A. Macklin, Chief Information Officer, ITA, Career SES.

Department of Commerce, National Telecommunications and Information Administration

Fiona M. Alexander, Associate Administrator, Office of International Affairs, Career SES, (*New Member*).

Leonard M. Bechtel, Chief Financial Officer and Director of Administration, Career SES, Chairperson, (*New Member*).

Bernadette A. McGuire-Rivera, Associate Administrator for Telecommunications and Information Applications, Career SES.

Karl B. Nebbia, Associate Administrator for Spectrum Management, Career SES.

Alan W. Vincent, Associate Administrator for Telecom Sciences and Director Institute for Telecom Sciences, Career SES.

Dated: October 19, 2011.

Susan Boggs,

Director, Office of Staffing, Recruitment and Classification, Department of Commerce Human Resources Operations Center.

[FR Doc. 2011–27486 Filed 10–24–11; 8:45 am]

BILLING CODE 3510–25–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of Day of Service Project Promotion Tool. Anyone organizing a volunteer event will be able to register their projects, including: national service projects, corporations, volunteer organizations and individuals. The Corporation wants to help promote activities across the country and also to be able to assess impact of the Corporation's initiatives. Information provided is purely voluntary and will not be used for any grant or funding support.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 27, 2011.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Office of External Affairs; Attention: David

Premo, Program Support Specialist, Room 10302–C; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3460 Attention: David Premo, Program Support Specialist.

(4) *Electronically through www.regulations.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Premo, (202) 606–6717, or by email at *dpremo@cns.gov.*

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Corporation seeks to support volunteer projects through service initiatives including Martin Luther King Jr. Day of Service, September 11th Day of Service and Remembrance, United We Serve, Let's Read-Let's Move, AmeriCorps Week, Senior Corps Week and other initiatives. To help promote activities and to ascertain impact of our initiatives, it is important to be aware of activities and projects taking place. Anyone participating in, or organizing a project will be encouraged to register their project on our website. The information will be collected electronically and stored securely on our computer network.

Current Action

The Corporation seeks to renew the current information collection request. In order to provide more useful information we have added some questions and removed others.

The information collection will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on December 30, 2012.

Type of Review: Revision and renewal.

Agency: Corporation for National and Community Service.

Title: Day of Service Project Promotion Tool.

OMB Number: 3045–0122.

Agency Number: None.

Affected Public: Any person or group organizing a service project in conjunction with a *Corporation initiative.*

Total Respondents: 100,000.

Frequency: 6 times annually.

Average Time per Response: Averages 10 minutes.

Estimated Total Burden Hours: 66,667.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 19, 2011.

Marco A. Davis,

Director of Public Engagement.

[FR Doc. 2011–27594 Filed 10–24–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–24]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–24 with attached transmittal and policy justification.

Dated: October 20, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

OCT 18 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-24, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to France for defense articles and services estimated to cost $180 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard A. Genaille, Jr.

Richard A. Genaille, Jr.
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–P

Transmittal No. 11–24

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* France.

(ii) *Total Estimated Value:*

Major Defense Equipment*.	$150 million.
Other	$30 million.
Total	$180 million.

*As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* upgrade of four E–2C HAWKEYE Aircraft with weapon system sensor upgrades with Mode 5/S Identification Friend or Foe (IFF). Included are 5 APX–122 IFF Mode 5/S Interrogator Systems, 5 APX–123 IFF Mode 5/S Transponder Systems, and 5 ALQ–217 Electronic Support Measure Systems. In addition, this proposed sale will include related spare and repair parts, support and test equipment, weapon system support, development, publications and technical documentation, integration and testing, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (LHG).

(v) *Prior Related Cases:* Multiple cases dating back to 1995 .

(vi) *Sales Commission, Fee, etc., Paid, offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 18 October 2011.

Policy Justification

France—Upgrade of E–2C HAWKEYE Aircraft

The Government of France has requested a possible sale of the upgrade of four E–2C HAWKEYE Aircraft with weapon system sensor upgrades with Mode 5/S Identification Friend or Foe (IFF). Included are 5 APX–122 IFF Mode 5/S Interrogator Systems, 5 APX–123 IFF Mode 5/S Transponder Systems, and 5 ALQ–217 Electronic Support Measure Systems. In addition, this proposed sale will include related spare and repair parts, support and test equipment, weapon system support, development, publications and technical documentation, integration and testing, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel support services, and other related elements of logistics support. The estimated cost is $180 million.

France is one of the major political and economic powers in Europe and NATO and an ally of the United States in the pursuit of peace and stability. It is vital to the U.S. national interest to assist France to develop and maintain a strong and ready self-defense capability.

France's current IFF Interrogator, transponder, and electronic support measures is old technology and requires upgrading to the most current technology. The proposed sale will give France Mode 5/S capabilities. France intends to incorporate these systems into its E–2C HAWKEYE Navigation upgrade aircraft. France has significant experience in operating and maintaining modern weapon systems and infrastructure required and will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Northrop Grumman Corporation in Bethpage, New York. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to France.

There will be no adverse impact on the U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–27551 Filed 10–24–11; 8:45 am]

BILLING CODE 5001–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–09]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–09 with attached transmittal and policy justification.

Dated: October 20, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON VA 22202-5408

OCT 18 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-09, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Argentina for defense articles and services estimated to cost $166 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 11–09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Argentina

(ii) *Total Estimated Value:*

Major Defense Equipment*.	$ 0 million.
Other	$166 million.
Total	$166 million.

*as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Commercial-off-the-shelf avionics upgrade of five (5) C–130H aircraft that includes minor Class IV modifications, ground handling equipment, repair and return, spare and repair parts, support equipment, publications and technical documentation, tools and test equipment, personnel training and training equipment, programmed depot maintenance, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of program support.

(iv) *Military Department:* Air Force (QAT)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 18 October 2011

Policy Justification

Argentina—C–130H Avionics Upgrade

The Government of Argentina has requested a possible purchase of commercial-off-the-shelf avionics upgrade of five (5) C–130H aircraft that includes minor Class IV modifications, ground handling equipment, repair and return, spare and repair parts, support equipment, publications and technical documentation, tools and test equipment, personnel training and training equipment, programmed depot maintenance, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of program support. The estimated cost is $166 million.

The proposed sale will contribute to the foreign policy and national security of the United States by improving the security of a major non- NATO ally.

The proposed sale will improve Argentina's capability to meet current and future needs for its existing C–130 fleet. Argentina uses its C–130 in humanitarian and Antarctic missions. Argentina, which already has C–130s in its inventory, will have no difficulty absorbing the upgraded systems into its armed forces. The proposed sale will enhance U.S and Argentine Air Force relations.

The proposed sale of this equipment will not alter the basic military balance in the region.

The prime contractors for this sale are not known at this time. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the temporary assignment of approximately two (2) U.S. Government and 48 contractor representatives to Argentina during the duration of the program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–27550 Filed 10–24–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–38]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives,

Transmittals 11–38 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 20, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON VA 22202-5408

OCT 18 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-38, concerning the Department of the Army and Air Force's proposed Letter(s) of Offer and Acceptance to Oman for defense articles and services estimated to cost $1.248 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 11–38

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Oman

(ii) *Total Estimated Value:*

Major Defense Equipment*.	$1.068 billion
Other	$.180 billion
Total	$1.248 billion

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 18 AVENGER Fire Units, 266 STINGER–Reprogrammable Micro-Processor (RMP) Block 1 Anti-Aircraft missiles, 6 STINGER Block 1 Production Verification Flight Test missiles, 24 Captive Flight Trainers, 18 AN/VRC–92E exportable Single Channel Ground and Airborne Radio Systems (SINCGARS), 20 S250 Shelters, 20 High Mobility Multi-Purpose Wheeled Vehicles (HMMWVs), 1 lot AN/MPQ–64F1 SENTINEL Radar software, 290 AIM–120C–7 Surface-Launched Advanced Medium Range Air-to-Air Missiles, 6 Guidance Sections, Surface-Launched Advanced Medium Range Air-to-Air Missile (SL–AMRAAM) software to support Oman's Ground Based Air defense System, training missiles, missile components, warranties, containers, weapon support equipment, repair and return, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support services, and other related elements of logistics support.

(iv) *Military Department:* Army (UJR) Air Force (YEK)

(v) *Prior Related Cases, if any:* FMS case YEI–$68M–5Jun02

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 18 October 2011

Policy Justification

Oman—AVENGER Fire Units/STINGER Missiles/Surface-Launched AMRAAM

The Government of the Oman has requested a possible sale of 18 AVENGER Fire Units, 266 STINGER—Reprogrammable Micro-Processor (RMP) Block 1 Anti-Aircraft missiles, 6 STINGER Block 1 Production Verification Flight Test missiles, 24 Captive Flight Trainers, 18 AN/VRC–92E exportable Single Channel Ground and Airborne Radio Systems (SINCGARS), 20 S250 Shelters, 20 High Mobility Multi-Purpose Wheeled Vehicles (HMMWVs), 1 lot AN/MPQ–64F1 SENTINEL Radar software, 290 AIM–120C–7 Surface-Launched Advanced Medium Range Air-to-Air Missiles, 6 Guidance Sections, Surface-Launched Advanced Medium Range Air-to-Air Missile (SL–AMRAAM) software to support Oman's Ground Based Air defense System, training missiles, missile components, warranties, containers, weapon support equipment, repair and return, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support services, and other related elements of logistics support. The estimated cost is $1.248 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability in the Middle East.

The proposed purchase of the AVENGER fire units and SL–AMRAAM will improve Oman's capability to meet current and future regional threats. Oman is developing a layered air defense capability that incorporates a larger Foreign Military Sale-Direct Commercial Sale hybrid effort. This modern multi-layered air defense system will be integrated into the national command and control to protect strategic locations in Oman and its nearest vicinity. The system will serve as a deterrent to potential threats from regional unmanned aerial vehicles, cruise missiles, and fighter aircraft. The proposed sale will provide a significant increase in Oman's defensive capability while enhancing interoperability with the U.S. and other coalition forces. Oman will have no difficulty absorbing this additional capability into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be Raytheon Missile Systems of Tucson, Arizona, and Boeing of Huntsville, Alabama.

The purchaser typically requests offsets. Any offset agreements will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require multiple trips to Oman involving many U.S. Government or contractor representatives over a period of up to or over 15 years for program and technical support, equipment checkout, and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 11–38

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AVENGER system is a lightweight, highly mobile, and transportable surface-to-air missile/gun weapon system mounted on a high mobility multi-purpose wheeled vehicle (HMMWV). It has a two-man crew and can operate in day or night, in clear or adverse weather conditions. The system incorporates an operator's position with displays, fire control electronics, and Standard Vehicle Mounted Launcher (SVML). The SVML supports and launches multiple STINGER missiles. The highest classification of the AVENGER hardware is Confidential and the data and information is Secret.

2. The Captive Flight Trainer (CFT) is a simulated weapon with general appearance, weight, and center of gravity as the tactical missile, used at the operational level to provide training to the gunner in the techniques of acquiring, tracking, and engaging targets. CFT simulates STINGER missile target acquisition functions but does not contain a warhead or motor. CFT contains operational seeker hardware and firmware and must be protected in accordance with classified hardware guidance. Secret data could be obtained from the system by reverse engineering through extensive engineering analysis and testing. Access to AVENGER firmware and hardware could allow the development of counter-measures.

3. The STINGER–RMP Block I Anti-Aircraft missile is a fire-and-forget infrared missile system that can be fired from a number of ground-to-air and rotary wing platforms. The missile homes in on the heat emitted by either jet or propeller-driven, fixed wing aircraft or helicopters. The STINGER system employs a proportional navigation system that allows it to fly an intercept course to the target. The STINGER Block I International Missile System, hardware, software and documentation contain sensitive technology and are classified Confidential. The guidance section of the missile and tracking head trainer

contain highly sensitive technology and are classified Confidential. No man-portable grip stocks will be sold under these LOAs.

4. Missile System hardware and fire unit components contain sensitive critical technologies. The potential for reverse engineering is not significant for most technologies although the release of some end items could lead to development of countermeasures. STINGER critical technology is primarily in the area of design and production know-how and not end-items. This sensitive/critical technology is inherent in the hybrid microcircuit assemblies; microprocessors; magnetic and amorphous metals; purification; firmware; printed circuit boards; laser range finder; dual detector assembly; detector filters; missile software; optical coatings; ultraviolet sensors; semi-conductor detectors infrared band sensors; compounding and handling of electronic, electro-optic, and optical materials; equipment operating instructions; energetic materials formulation technology; energetic materials fabrication and loading technology; and warhead components seeker assembly. The hardware for all versions of STINGER International Platform Launched Missile is classified Confidential. Information on vulnerability to electronic countermeasures and countermeasures, system performance capabilities and effectiveness, and test data are classified up to Secret.

5. The SL–AMRAAM is a lightweight day or night, and adverse weather non-line of sight system for countering cruise missiles and unmanned air vehicle threats with engagement capabilities in excess of 18 kilometers. The system is comprised of a Fire Control System, for command and control, and missile launcher fire unit platforms, which hold AIM–120 AMRAAM missiles. The SENTINEL radar (export variant), which will be sold separately via direct commercial sale (DCS), provides surveillance and fire control data for the system.

6. The AIM–120C–7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a new generation air-to-air missile. The AIM–120C–7 AMRAAM hardware, including the missile guidance section, is classified Confidential. State-of-the-art technology is used in the missile to provide it with unique beyond-visual-range capability. Significant AIM–120C–7 features include a target detection device with embedded electronic countermeasures, an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection and warhead burst point determination. Anti-tampering security measures have been incorporated into the AIM–120C–7 to prevent exploitation of the AMRAAM software.

7. The AN/MPQ–64 SENTINEL Radar System is a fielded air defense radar system that provides the capability for SENTINEL to detect and classify small radar cross-section (RCS) targets, such as cruise missiles and unmanned aerial vehicles at extended ranges. The system provides SHORAD system information dominance via a digital air picture for support of maneuver forces and critical assets. The ETRAC improvements to the SENTINEL radar also provide the capability to determine aircraft type and to support manned versus unmanned determinations to fully support precision engagements beyond visual range. The improved Secret-U.S. only SENTINEL radar includes hardware updates to the basic SENTINEL radar and Secret-U.S. only software that includes Electronic Counter-countermeasures (ECCM), High-Range Resolution (HRR), and Hostile Aircraft Identification Equipment (HAIDE) capabilities.

8. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–27552 Filed 10–24–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of the Fiscal Year 2010 United States Special Operations Command (USSOCOM) Inventory List of Contracts for Services

AGENCY: United States Special Operations Command (USSOCOM), Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: In accordance with section 2330a of Title 10 United States Code as amended by the National Defense Authorization Act for Fiscal Year 2008 (NDAA 08) Section 807, the Director of Procurement USSOCOM and the Office of the Director, Defense Procurement and Acquisition Policy, Office of Strategic Sourcing (DPAP/SS) will make available to the public the first inventory of activities performed pursuant to contracts for services. The inventory will be published to the USSOCOM public portal Web site at the following location: *http://www.socom.mil/sordac/Documents/USSOCOMFY10ServicesInventoryList.pdf.*

DATES: Inventory to be made publically available within 30 days after publication of this notice.

ADDRESSES: Send written comments and suggestions concerning this inventory to Marian Duchesne, Procurement Analyst, SORDAC–KM, 7701 Tampa Point Blvd., MacDill AFB, FL 33621–5323.

FOR FURTHER INFORMATION CONTACT: Marian Duchesne at (813) 826–6499 or e-mail *marian.duchesne@socom.mil.*

Dated: October 19, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–27457 Filed 10–24–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before November 25, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments

which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 20, 2011.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: National Longitudinal Transition Study 2012.

OMB Control Number: 1850–0882.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Individuals or Households; State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 52,100.

Total Estimated Annual Burden Hours: 30,800.

Abstract: To gauge progress in addressing the needs of youth with disabilities, the U.S. Department of Education is sponsoring a five-year longitudinal study focused on the educational and transitional experiences of youth between the ages of 13 and 21 in December 2011. The study focuses on three sets of research questions: What are the characteristics of youth with disabilities? What services and accommodations do they receive and what are their courses of study? What are their transitional experiences as they leave high school and their educational, social, and economic outcomes?

The study will compare this group with three other groups: (1) Youth who have no identified disability, (2) youth who do not have an IEP but who have a condition that qualifies them for accommodation under Section 504 of the Vocational Rehabilitation Act of 1973, and (3) similar cohorts of youth with an IEP who were studied in the past.

Districts and youth will be randomly selected to ensure that they are nationally representative. The study sample will include approximately 500 school districts and 15,000 students. Phase I data collection will occur in spring 2012 and spring 2014, when sample members will be ages 13–21 and 15–23, respectively. The study will collect data from parents, youth, principals, teachers, and student school records.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4673. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–27629 Filed 10–24–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2390–079]

Northern States Power Company; Notice of Application To Amend License and Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to License.

b. *Project No:* 2390–079.

c. *Date Filed:* September 21, 2011.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* Big Falls Hydroelectric Project.

f. *Location:* The project is located on the Flambeau River, near the towns of Ladysmith and Tony, in Rusk County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William P. Zawacki, Director of Hydro Plants, Xcel Energy, 1414 W. Hamilton Ave., P.O. Box 8, Eau Claire, WI 54702–0008; and Matthew J. Miller, Hydro Licensing Specialist, Xcel Energy, 1414 W. Hamilton Ave., P.O. Box 8, Eau Claire, WI 54702–0008.

i. *FERC Contact:* Christopher Chaney; (202) 502–6778; *christopher.chaney@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2390–079) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee is seeking to amend the license for the Big Falls Hydroelectric Project to authorize the proposed rehabilitation of two of the project's three units. The project's total authorized installed capacity would increase by 1,572 kW [from 7,780 kW to 9,352 kW] and the maximum hydraulic capacity would increase by 245 cubic feet per second (cfs) [from 2,482 cfs to 2,727 cfs].

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208- 3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is

also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''Comments,'' ''Protest,'' or ''Motion To Intervene'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27522 Filed 10–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–9–000]

High Point Gas Transmission, LLC; Notice of Application

Take notice that on October 13, 2011, High Point Gas Transmission, LLC (High Point), 6800 West Loop South, Suite 120, Houston, Texas 77401, filed an application in Docket No. CP12–9–000 pursuant to section 7(c) of the Natural Gas Act and parts 157 and 284 of the Commission's Regulations, for authorization to acquire, own and operate certain onshore facilities located in Louisiana and certain offshore facilities located offshore Louisiana in the Gulf of Mexico. In a related application filed on October 7, 2011 in Docket No. CP12–4–000, Southern Natural Gas Company, L.L.C. (Southern) seeks authorization to abandon the facilities subject to High Point's application. Specifically, High Point seeks: (1) A certificate of public convenience and necessity to acquire, own and operate the facilities Southern seeks to abandon; (2) blanket construction and open access transportation certificates pursuant to subpart F of part 157 and subpart G of part 284, respectively, of the Commission's regulations; (3) approval of its *pro forma* tariff; and (4) waiver of the segmentation requirement, all as more fully set forth in the application which are on file with the Commission and open for public inspection.

Any questions regarding this application should be directed to Matthew Rowland, High Point Gas Transmission, LLC, 6800 West Loop South, Suite 120, Houston, Texas 77401, or call at (713) 660–7171.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed

documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: November 9, 2011.

Dated: October 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27524 Filed 10–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC11–83–001]

Exelon Corporation Constellation Energy Group, Inc.; Notice of Filing

Take notice that, on October 11, 2011, Exelon Corporation and Constellation Energy Group, Inc. (Merger Applicants) submitted a filing styled as an answer in the above-referenced proceeding attaching an agreement that Merger Applicants have reached with the Independent Market Monitor for PJM (Market Monitor) involving certain mitigation commitments Merger Applicants have agreed to implement upon the closing of the proposed transaction that is the subject of Merger Applicants' application that was filed in the above-referenced proceeding on May 20, 2011 under section 203 of the Federal Power Act. Merger Applicants request that the Commission issue an order approving the transaction, conditioned on the Merger Applicants' compliance with the terms of the agreement with the Market Monitor (along with the other commitments described in their application, which are not superseded by the agreement with the Market Monitor). Merger Applicants' filing is hereby noticed as an amendment to their application for purposes of section 33.11(a) of the Commission's regulations (18 CFR 33.11(a)).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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: November 1, 2011.

Dated: October 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27525 Filed 10–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–4–000]

Southern Natural Gas Company, L.L.C.; Notice of Application

Take notice that on October 7, 2011, Southern Natural Gas Company, L.L.C. (Southern), 569 Brookwood Village, Suite 501, Birmingham, AL 35209, filed an application in Docket No. CP12–4–000 pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for authorization to abandon, by sale to High Point Gas Transmission, LLC (High Point), certain onshore facilities located in Louisiana and certain offshore supply facilities located offshore Louisiana in the Gulf of Mexico. In its related application filed in Docket No. CP12–9–000, High Point seeks authorization to acquire, own and operate the facilities to be abandoned, as well as certain blanket certificates, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any questions regarding this application should be directed to Glenn A. Sheffield, Director—Rates and Regulatory, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, or call at (205) 325–3813; or Patricia S. Francis, Associate General Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, or call at (205) 325–7696.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of

this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: November 9, 2011.

Dated: October 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27528 Filed 10–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199–205]

South Carolina Public Service Authority; Notice of Meeting

The National Marine Fisheries Service (NMFS) has contacted Commission staff regarding a meeting with South Carolina Public Service Authority (SCPSA), licensee for the Santee-Cooper Hydroelectric Project No. 199, and staff to continue discussions of what is needed to complete formal consultation for shortnose sturgeon (*Acipenser brevirostrum*) under section 7 of the Endangered Species Act. Accordingly, Commission staff will meet with representatives of NMFS and SCPSA, the Commission's non-federal representative for the Santee-Cooper Project, on Tuesday, November 8, 2011. The meeting will start at 9 a.m. at NMFS' office at 263 13th Avenue South, St. Petersburg, Florida. All local, state, and federal agencies, and interested parties, are hereby invited to attend and observe this meeting. Questions concerning the meeting should be directed to Dr. Stephania Bolder of NMFS at (727) 824–5312.

Dated: October 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27523 Filed 10–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD11–9–000]

North American Electric Reliability Corporation; Order Approving Interpretation of Reliability Standard; Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur

Issued October 20, 2011.

1. On April 15, 2011, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted a petition for Commission approval of an interpretation of Requirement R10 of Transmission Operations (TOP) Reliability Standard TOP–002–2a (Normal Operations Planning). This Reliability Standard requires, in pertinent part, each balancing authority and transmission operator to maintain plans to evaluate options and establish procedures for the reliable operation of the Bulk-Power System for current day and future operations, as well as coordinate current day and future operations with neighboring balancing authorities and transmission operators. Requirement R10, the subject of NERC's Petition, addresses the planning required to meet all System Operating Limits and Interconnection Reliability Operating Limits. NERC also requests that the Standard including the interpretation, which would be referred to as Reliability Standard TOP–002–2b, be made effective immediately upon the issuance of an order in this proceeding.

2. In this order, the Commission finds that NERC's proposed interpretation of Requirement R10 of Reliability Standard TOP–002–2a is just, reasonable, not unduly discriminatory or preferential, and in the public interest. Therefore, the Commission approves the interpretation, referred to as Reliability Standard TOP–002–2b, effective as of the date of this order.

I. Background

3. Section 215 of the Federal Power Act (FPA) requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[1]

[1] *See* 16 U.S.C. 824o(e) (2006).

4. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO [2] and, subsequently, certified NERC as the ERO.[3] On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by NERC, including Reliability Standard TOP–002–2.[4] On December 2, 2009, the Commission approved TOP–002–2a, an interpretation submitted by NERC on Requirement R11.[5]

5. NERC's Rules of Procedure provide that a person that is ''directly and materially affected'' by Bulk-Power System reliability may request an interpretation of a Reliability Standard.[6] The ERO's ''standards process manager'' will assemble a team with relevant expertise to address the requested interpretation and also form a ballot pool. NERC's Rules provide that, within 45 days, the team will draft an interpretation of the Reliability Standard, with subsequent balloting. If approved by ballot, the interpretation is appended to the Reliability Standard and submitted to the Board of Trustees. Once approved by the Board of Trustees, the Reliability Standard with the interpretation is filed with the applicable regulatory authority for regulatory approval.

II. NERC Petition

6. In its April 15, 2011 Petition,[7] NERC requests Commission approval of a proposed interpretation of Requirement R10 of Reliability Standard TOP–002–2a (Normal Operations Planning). The stated purpose of Reliability Standard TOP–002–2a is to ensure that current operations plans and procedures are prepared for reliable operations, including responses to unplanned events. Requirement R10, the subject of the proposed interpretation, requires:

Each Balancing Authority and Transmission Operator shall plan to meet all System Operating Limits (SOLs) and Interconnection Reliability Operating Limits (IROLs).

7. The Petition explains that NERC received a request from Florida Municipal Power Pool (FMPP) seeking an interpretation of Requirement R10 of Reliability Standard TOP–002–2a. Specifically, FMPP asked:

In Requirement 10 is the requirement of the BA to plan to maintain load-interchange-generation balance under the direction of the TOPs meeting all SOLs and IROLs?

8. In response to FMPP's interpretation request, NERC provided the following interpretation:

Yes. As stated in the NERC *Glossary of Terms Used in Reliability Standards,* the Balancing Authority is responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within a Balancing Authority Area, and supporting Interconnection frequency in real time. The Balancing Authority does not possess the Bulk Electric System information necessary to manage transmission flows (MW, MVAR or Ampere) or voltage. Therefore, the Balancing Authority must follow the directions of the Transmission Operator to meet all SOLs and IROLs.

9. In the Petition, NERC explains that the interpretation is consistent with the stated purpose of the Reliability Standard, which is to ensure that current operations plans and procedures are prepared for reliable operation, including response to unplanned events. The *NERC Glossary of Terms Used in Reliability Standards* (NERC Glossary) definitions for balancing authority and transmission operator are referenced along with an explanation that the balancing authority does not possess information needed to manage flows or voltage, thus requiring the balancing authority to follow direction of the transmission operator or reliability coordinator. Further, the Petition states that when balancing authority actions do not resolve targeted transmission issues, the transmission operator or reliability coordinator is responsible for directing alternative actions.[8]

III. Notice of Filing, Interventions and Comments

10. On August 22, 2011, notice of NERC's filing was published in the **Federal Register** with interventions and protests due on or before September 14, 2011.[9] A motion to intervene was timely filed by American Municipal Power, Inc. (AMP). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[10] the timely, unopposed motion to intervene serves to make AMP a party to this proceeding.

IV. Commission Determination

11. The Commission finds that the ERO's interpretation of Requirement R10 of Reliability Standard TOP–002–2a is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[11]

12. The interpretation supports the stated purpose of the Reliability Standard, i.e., current operational plans and procedures are essential for an entity to be prepared for reliable operations, including responses to unplanned events. The interpretation also clarifies the responsibilities of the balancing authority with regard to normal operations planning. Further, the language of the interpretation is consistent with the language of the requirement. Accordingly, the Commission approves the ERO's interpretation of Requirement R10 of Reliability Standard TOP–002–2a.

13. We agree with NERC that the balancing authority is responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within a balancing authority area, and supporting interconnection frequency in real time under the definition of Balancing Authority found in the NERC Glossary.[12] Additionally, the Commission notes that communication and coordination between the balancing authority and transmission operator can be essential in normal operations planning under TOP–002–2a, Requirement R10 to ''plan to meet all System Operating Limits (SOLs) and Interconnection Reliability Operating Limits (IROLs).'' [13]

14. Accordingly, the Commission approves Reliability Standard TOP–002–2b, effective as of the date of this order.

V. Information Collection Statement

15. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and

[2] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[3] *North American Electric Reliability Corp., 116 FERC ¶ 61,062, order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[4] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[5] *North American Electric Reliability Corp.,* 129 FERC ¶ 61,191 (2009).

[6] NERC Rules of Procedure, Appendix 3A, Reliability Standards Development Procedure, Version 6.1, at 27–29 (2010).

[7] *North American Electric Reliability Corp.,* April 15, 2011, Petition for Approval of an Interpretation of Requirement R10 of Reliability Standard TOP–002–2a (Petition).

[8] *Id.* 6–7.

[9] 76 FR 52,325 (2011).

[10] 18 CFR 385.214 (2011).

[11] 16 U.S.C. 824(d)(2).

[12] Petition at 6.

[13] *See* Reliability Standard TOP–002–2a, Requirement R10; *see generally Electric Reliability Organization Interpretation of Transmission Operations Reliability Standard,* Order No. 753, 136 FERC ¶ 61,176, at P 15–17 (2011).

recordkeeping requirements (collections of information) imposed by an agency.[14] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[15]

16. The Commission approved Reliability Standard TOP–002–2, the subject of this order, in Order No. 693.[16] This order proposes to approve the interpretation of the previously approved Reliability Standard, which was developed by NERC as the ERO. The interpretation relates to an existing Reliability Standard, and the Commission does not expect it to affect entities' current reporting burden.[17] Accordingly, we will submit this Final Rule to OMB for informational purposes only.

The Commission Orders:

(A) NERC's interpretation is hereby approved, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27566 Filed 10–24–11; 8:45 am]

BILLING CODE 6717–01–P

[14] 5 CFR 1320.11 (2011).

[15] 44 U.S.C. 3507(d).

[16] Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[17] 5 CFR 1320.3(b)(2).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD11–8–000; 137 FERC ¶ 61,043]

North American Electric Reliability Corporation; Order Approving Regional Reliability Standard

Issued October 20, 2011.

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

1. On May 31, 2011, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted a petition for Commission approval of the Northeast Power Coordinating Council's (NPCC) Protection and Control (PRC) regional Reliability Standard PRC–002–NPCC–01 (Disturbance Monitoring) and two associated new definitions. The regional Reliability Standard requires transmission owners and generator owners to provide recording capability necessary to monitor the response of the Bulk-Power System to system disturbances, including scheduled and unscheduled outages; requires each reliability coordinator to establish requirements for its area's dynamic disturbance recording needs; and establishes disturbance data reporting requirements.

2. In this order, we approve regional Reliability Standard PRC–002–NPCC–01, finding that it is just, reasonable, not unduly discriminatory or preferential, and in the public interest. Also, we approve NERC's requested implementation plan which provides staggered effective dates, i.e., the date on which applicable entities are subject to mandatory compliance, with full compliance required within four years of regulatory approval.

I. Background

3. Section 215 of the Federal Power Act (FPA) requires the ERO to develop mandatory and enforceable Reliability Standards, which provide for the reliable operation of the Bulk-Power System, subject to Commission review and approval.[1] Section 215(d)(2) of the FPA states that the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. Once approved, the Reliability Standard may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[2]

4. Reliability Standards that the ERO proposes to the Commission may include Reliability Standards that are developed by a Regional Entity.[3] On April 19, 2007, the Commission approved delegation agreements between NERC and eight Regional Entities, including NPCC.[4] In the Delegation Agreement Order, the Commission accepted NPCC as a Regional Entity and accepted NPCC's Standards Development Manual, which sets forth the process for NPCC's development of regional Reliability Standards.[5] The NPCC region is a less than interconnection-wide region, and its standards apply only to that part of the Eastern Interconnection within the NPCC geographical footprint.

5. In Order No. 672, the Commission urged uniformity of Reliability Standards, but recognized a potential need for regional differences.[6] Accordingly, the Commission stated that:

> As a general matter, we will accept the following two types of regional differences, provided they are otherwise just, reasonable, not unduly discriminatory or preferential and in the public interest, as required under the statute: (1) A regional difference that is more stringent than the continent-wide Reliability Standard, including a regional difference that addresses matters that the continent-wide Reliability Standard does not; and (2) a regional Reliability Standard that is necessitated by a physical difference in the Bulk-Power System.[7]

6. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards filed by the ERO.[8] In that order, the Commission determined that it would not take action on certain proposed Reliability Standards that required supplemental information from regional reliability organizations. Such Reliability Standards refer to regional criteria or procedures that had not been submitted to the Commission for approval and, as such, are referred to as ''fill-in-the-blank'' standards. Pending Reliability Standard PRC–002–1 (Define Regional Disturbance Monitoring and Reporting) is one such fill-in-the-blank standard and, therefore, is not enforceable. NERC's continent-wide, fill-in-the-blank standard PRC–002–1 would require regional reliability organizations to establish: (i) Installation requirements for sequence of event recording, fault recording, and dynamic disturbance recording, and (ii) reporting requirements for recorded disturbance data. Because PRC–002–1 is an unenforceable and unapproved fill-in-the-blank standard, NPCC's proposed regional Reliability Standard PRC–002–NPCC–01 is intended to fill the reliability gap related to disturbance monitoring and reporting by establishing enforceable disturbance monitoring and reporting requirements for the NPCC region.

[1] 16 U.S.C. 824o(d) (2006).

[2] *See* 16 U.S.C. 824o(e).

[3] *Id.* § 824o(e)(4).

[4] *See North American Electric Reliability Corp.*, 119 FERC ¶ 61,060, at P 316–350 (Delegation Agreement Order), *order on reh'g*, 120 FERC ¶ 61,260 (2007).

[5] *Id.* P 302.

[6] *Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 290, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[7] Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 291.

[8] *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

II. NERC Petition and Notice of Filing

7. In its May 31, 2011 petition,[9] NERC requests Commission approval of proposed regional Reliability Standard PRC–002–NPCC–01 (Disturbance Monitoring) and two associated new definitions. NERC states that PRC–002–NPCC–01 is intended to ensure that adequate disturbance data is available to facilitate bulk electric system event analyses and thereby improve system reliability by promoting improved system design and operations.

8. The standard is applicable to transmission owners, generator owners, and reliability coordinators and contains 17 requirements that identify the proper locations for sequence of events recorders, fault recorders, and dynamic disturbance recorders within the NPCC region and specify the data to be captured and reported by this equipment.

9. Sequence of events recorders capture the sequences of events for monitored changes of state in equipment and protection systems occurring in substations, switchyards, or power plants. Requirement R1 requires that each transmission owner and generator owner provide sequence of events recording capability at specified locations either through installation of sequence of events recorders or as part of another device such as a remote terminal unit or a generator plant digital (or distributed) control system.

10. Fault recorders capture and store power system waveforms that can be used to analyze transients and abnormalities in system frequency. Requirement R2 requires each transmission owner to provide fault recording capability for specified elements of the Bulk-Power System, and Requirement R3 requires that each transmission owner have fault recording capability that determines the ''Current Zero Time'' for loss of bulk electric system transmission elements. ''Current Zero Time'' is a new defined term used in PRC–002–NPCC–01 to mean the precise time of circuit interruption. It is defined as ''the time of the final current zero on the last phase to interrupt.''

11. Requirement R4 requires each generator owner to provide fault recording capability for ''Generating Plants'' at and above 200 MVA and connected through a generator step-up transformer to a bulk electric system element, unless such recording capability is provided by the transmission owner. ''Generating Plants'' is a new term defined as ''one or more generators at a single physical location whereby a single contingency can affect all the generators at that location.'' The term appears in this Requirement and in Requirement R1's description of where sequence of event recording capability is to be located. It is used to clarify that, for the sake of efficiency, one sequence of event recorder or a single fault recorder may be used where it will capture all the information from a single contingency affecting all the generators at a single location, and multiple recorders would be redundant.

12. Because certain data are necessary for post-event analysis, Requirement R5 requires each transmission owner and generator owner to record for faults sufficient electrical quantities for each monitored bulk electric system element to determine: (i) Three phase-to-neutral voltages; (ii) three phase currents and neutral currents; (iii) polarizing currents and voltages, if used; (iv) frequency; and (v) real and reactive power. Requirement R6 sets out the recording specifications required of the fault recording equipment in order to ensure the monitored data is captured in sufficient detail for it to be meaningfully used in analyses.

13. Dynamic disturbance recorders monitor power system conditions when the system experiences dynamic events such as low frequency oscillations, or frequency or voltage excursions. Requirement R7 requires each reliability coordinator to establish dynamic disturbance recording needs for its area in accordance with specified recording requirements, and Requirement R8 requires that dynamic disturbance recorders function continuously. To capture system disturbance data with sufficient detail for use in post-event analyses, Requirement R9 specifies the minimal recording duration, sample rate and trigger events for dynamic disturbance recorders. Requirement R10 requires each reliability coordinator to establish requirements to ensure that certain specified data are monitored or derived where dynamic disturbance recorders are installed.

14. Requirement R11 requires each reliability coordinator to document additional settings and deviations from the required trigger settings described in Requirement R9 and the required list of monitored quantities described in Requirement R10 and to report these settings and deviations to the Regional Entity upon request. Requirement R12 requires each reliability coordinator to specify its dynamic disturbance recording requirements, including trigger settings, to transmission owners and generator owners.

15. Each transmission owner and generator owner that receives a request from its reliability coordinator to install a dynamic disturbance recorder is required, under Requirement R13, to acquire and install the recorder in accordance with an implementation schedule agreed to with the reliability coordinator. They also are required by Requirement R14 to establish a maintenance and testing program for their stand alone disturbance monitoring equipment (i.e., equipment whose only purpose is disturbance monitoring). The Requirement lists elements of such a program.

16. Requirement R15 requires that each reliability coordinator, transmission owner, and generator owner share data within 30 days upon request, and each generator owner must provide recorded disturbance data from disturbance monitoring equipment within 30 days of receipt of a request for information from NERC, the Regional Entity, the reliability coordinator, or transmission or generator owners within NPCC. Requirement R16 specifies the format requirements for data files. Requirement R17 requires each reliability coordinator, transmission owner and generator owner to maintain, record and provide to the Regional Entity, upon request, specified data regarding the disturbance monitoring equipment installed to meet regional Reliability Standard PRC–002–NPCC–01.

17. Notice of NERC's filing was published in the **Federal Register**, 76 FR 40,350 (2011), with interventions and protests due on or before August 1, 2011. No motion to intervene or protest was received.

III. Discussion

18. The Commission approves regional Reliability Standard PRC–002–NPCC–01 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. To that end, the Commission finds that PRC–002–NPCC–01 satisfies the Order No. 672 factors on how the Commission determines whether a regional Reliability Standard is just and reasonable in that PRC–002–NPCC–01: (1) Is clear and unambiguous regarding what is required and who is required to comply (transmission owners, generator owners, and reliability coordinators within the NPCC region); (2) has clear and objective measures for compliance and achieves a reliability goal (namely, ensuring that adequate disturbance data is available to facilitate bulk electric system event analyses); and (3) is ''more stringent''

[9] *North American Electric Reliability Corp.*, May 31, 2011 Petition for Approval of Proposed NPCC Regional Reliability Standard PRC–002–NPCC–01 — Disturbance Monitoring (NERC Petition).

than NERC's existing unapproved and unenforceable continent-wide disturbance monitoring and reporting standard, PRC–002–1.

19. Regional Reliability Standard PRC–002–NPCC–01 includes two new defined terms that apply only to the NPCC region: ''Current Zero Time'' and ''Generating Plant.'' The two proposed regional terms do not conflict with any existing terms in the NERC Glossary of Terms. Accordingly, the Commission approves the inclusion of the two regional terms related to PRC–002–NPCC–01 in the NERC Glossary specifically as NPCC regional terms.

20. The Commission finds that the NERC's violation risk factors and violation severity levels for regional Reliability Standard PRC–002–NPCC–01 are consistent with the Commission's established guidelines.[10] We therefore approve the assigned violation risk factors and violation severity levels.

21. As requested by NERC, the Commission approves the implementation plan for regional Reliability Standard PRC–002–NPCC–01.

IV. Information Collection Statement

22. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency actions.[11] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirement of this order will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA)[12] requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or continuing a collection for which OMB approval and validity of the control number are about to expire.[13]

23. The Commission will submit these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA.[14] Comments are solicited within sixty days of the date this order is published in the **Federal Register** on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Comments should be submitted following the Commission's submission guidelines at *http://www.ferc.gov/help/submission-guide.asp* and should reference Docket No. RD11–8–000.

24. This Order approves regional Reliability Standard PRC–002–NPCC–01 (Disturbance Monitoring) which introduces new mandatory and enforceable requirements for the applicable entities. It generally identifies the evidence that will be used to monitor compliance. NPCC presently has criteria addressing monitoring equipment and published guidance addressing maintenance and testing of such equipment. The Disturbance Monitoring Equipment Criteria[15] seek the same or equivalent information identified in Reliability Standard PRC–002–NPCC–01, and NPCC's guidance establishes maintenance and testing expectations similar to those imposed by the regional Reliability Standard.[16] Thus, it is currently usual and customary for affected entities within NPCC to create, maintain and store some of the same or equivalent information identified in Reliability Standard PRC–002–NPCC–01. Therefore, many of the requirements contained in PRC–002–NPCC–01 do not impose new burdens on the affected entities.[17]

25. Several requirements contained in regional Reliability Standard PRC–002–NPCC–01 do introduce entirely new responsibilities for the applicable entities. Each such requirement is discussed below. Requirement R13 requires that each transmission owner and generator owner retain evidence that it acquired and installed dynamic disturbance recorders in accordance with the specifications requested by the reliability coordinator, and that the generator owner, transmission owner, and reliability coordinator retain evidence that they agreed on an implementation schedule. Requirement R14 requires that each transmission owner and generator owner establish a maintenance and testing program for stand-alone disturbance monitoring equipment. Sub-requirements 14.5 specifies that the program must require active analog quantities to be verified monthly, and Sub-requirement 14.7 requires that if failed units cannot be returned to service within 90 days, the owner must record its efforts to restore the equipment to service. These components of the program have not been included in NPCC's current Disturbance Monitoring Criteria or Application Guide. Requirement R17 requires each reliability coordinator, transmission owner, and generator owner to maintain and record specific data on installed disturbance monitoring equipment, and submit the data to the Regional Entity upon request. Under the Disturbance Monitoring Criteria, the reliability coordinator was not obligated to maintain these records or provide the records to the Regional Entity.

26. *Public Reporting Burden:* The estimate below regarding the number of respondents is based on the NERC compliance registry as of August 29, 2011. According to the NERC compliance registry, there are 35 transmission owners, 136 generation owners, and five reliability coordinators in the NPCC region. However, under NERC's compliance registration program, entities may be registered for multiple functions, so these numbers incorporate some double counting. The net number of entities responding will be approximately 167 entities registered as a transmission owner, generation owner, or reliability coordinator. This includes eight entities registered as both a generation owner and transmission owner, as well as one entity registered as both a transmission owner and a reliability coordinator.

27. We estimate that annually, approximately one entity within NPCC will have to procure dynamic disturbance recording capability. Based on Commission staff outreach and analysis, we estimate the total acquisition and installation cost will range between $150,000 and $750,000. We also estimate that an entity will experience a unit failure greater than 90 days once every five years. Therefore, 20 percent of NPCC's 163 generator owners and transmission owners will experience a unit failure of this duration each year. The estimated burden for the requirements in this Order follow:

[10] *See North American Electric Reliability Corp.*, 119 FERC ¶ 61,145, *order on reh'g*, 120 FERC ¶ 61,145, at P 8–13 (2007); *North American Electric Reliability Corp.*, 123 FERC ¶ 61,284, at P 20–35, *order on reh'g & compliance,* 125 FERC ¶ 61,212 (2008); *North American Electric Reliability Corp.*, 135 FERC ¶ 61,166 (2011).

[11] 5 CFR 1320.10.

[12] 44 U.S.C . 3501–20.

[13] 44 U.S.C. 3502(3)(A)(i), 44 U.S.C. 3507(a)(3).

[14] 44 U.S.C. 3507(d).

[15] Disturbance Monitoring Equipment Criteria (Aug. 2007), *available at https://www.npcc.org/Standards/Criteria/A-15.pdf* (Disturbance Monitoring Criteria).

[16] Guide for Application of Disturbance Recording Equipment (Sept. 2006), *available at https:/www.npcc.org/Standards/Guides/B-26.pdf* (Application Guide).

[17] 5 CFR 1320.3(b)(2) (2011).

PRC–002–NPCC–01	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual hours (1 × 2 × 3)	
R13: GO [18] and TO to document acquisition and installation of dynamic disturbance recorders. GO, TO, and RC to develop and employ implementation schedule.	1	1	Record Retention	10	10
R14.5: GO and TO maintenance and testing program for stand-alone disturbance monitoring equipment includes monthly verification of active analog quantities.	163	12	Record Retention	5	9,780
R14.7: GO and TO requirement to return failed units to service in 90 days. Record kept of efforts if greater than 90 days.	33	1	Reporting (assessment and dist. of records).	10	330
	.....	.....	Record Retention	10	330
R17: RC maintains data on equipment, and provide to RE upon request.	5	1	Reporting (assessment and dist. of data).	5	25
	.....	.....	Record Retention	10	50
Total	.....	.....	Reporting (assessment and dist).	.....	355
	.....	.....	Record Retention	.....	10,170

[18] For purposes of this chart, generation owner is abbreviated to GO, transmission owner is abbreviated to TO, and reliability coordinator is abbreviated to RC.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements and recordkeeping burden associated with regional Reliability Standard PRC–002–NPCC–01.

- *Total Annual Hours for Collection:* (Reporting and Record Retention) = 10,525 hours.
- Total Estimated Annual Record Retention Cost [19] = 10,170 hours @ $28/hour = $284,360
- *Total Estimated Annual Reporting Cost* = 355 hours @ $120/hour = $42,600
- *Total Estimated Annual Compliance Cost* (acquisition and installation of dynamic disturbance recorders) = $750,000
- *Total Estimated Annual Cost* = $1,077,640
- *Title:* NPCC Regional Reliability Standards
- *Action:* Proposed Collection FERC–725I.
- *OMB Control No:* To be determined.
- *Respondents:* Business or other for profit, and/or not for profit institutions.
- *Frequency of Responses:* On occasion.
- *Necessity of the Information:* This proposed rule would approve a new regional Reliability Standard that requires entities within the NPCC region to identify the proper locations for sequence of events recorders, fault recorders, and dynamic disturbance recorders and specify the data to be captured and reported by this equipment.
- *Internal review:* The Commission has reviewed the requirements pertaining to the proposed regional Reliability Standard and determined that the proposed requirements are necessary to meet the statutory provisions of the Energy Policy Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific objective support for the burden estimates associated with the information requirements.

28. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, e-mail: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873].

The Commission orders:

Regional Reliability Standard PRC–002–NPCC–01, its assigned VRFs and VSLs, inclusion of the terms ''Current Zero Time'' and ''Generating Plant'' in the NERC Glossary of Terms Used in Reliability Standards, and the implementation plan proposed by NERC are herby approved, as discussed in this order.

By the Commission. Commissioner Spitzer is not participating.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27567 Filed 10–24–11; 8:45 am]

BILLING CODE 6717–01–P

[19] The hourly reporting cost is based on the estimated cost of an engineer to implement the requirements of the rule. The record retention cost comes from Commission staff research on record retention requirements.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

Electric System Planning Working Group

October 24, 2011, 10 a.m.–4:00 p.m., Local Time

November 7, 2011, 10 a.m.–4 p.m., Local Time

November 21, 2011, 10 a.m.–4 p.m., Local Time

Inter-Regional Planning Advisory Committee

November 29, 2011, 8:30 a.m.–12:30 p.m., Local Time

The above-referenced meetings will be held at: NYISO's offices, Rensselaer, NY.

The above-referenced meetings are open to stakeholders.

Further information may be found at *http://www.nyiso.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. RM10–23, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*

Docket No. ER08–1281, *New York Independent System Operator, Inc.*

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: October 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27527 Filed 10–24–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings: of the Organization of MISO States and Midwest Independent Transmission System Operator, Inc. (MISO):

MISO Planning Advisory Committee, October 25, 2011, 9 a.m.–4 p.m., Local Time.

MISO RECB Task Force, October 27, 2011, 9 a.m.–3 p.m., Local Time.

The above-referenced meetings will be held at:

MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *http://www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–3728, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–56, *First Energy Service Company.*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: October 19, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27526 Filed 10–24–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0699; FRL–8889–4]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c))'' and identified by EPA ICR No. 1031.10 and OMB Control No. 2070–0017, is scheduled to expire on August 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before December 27, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0699 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. *Attention:* Docket ID Number EPA–HQ–OPPT–2011–0699. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0699. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington,

DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Mike Mattheisen, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–3077; *fax number:* (202) 564–4755; *e-mail address: mattheisen.mike@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; *e-mail address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this ICR are manufacturers, processors or importers of chemical substances.

Title: ''Recordkeeping and Reporting Requirements for Allegations of Significant Adverse Reactions to Human Health or the Environment (TSCA Section 8(c))''.

ICR numbers: EPA ICR No. 1031.10, OMB Control No. 2070–0017.

ICR status: This ICR is currently scheduled to expire on August 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: TSCA section 8(c) requires manufacturers, processors, and distributors of chemicals to maintain records of significant adverse reactions to health or the environment alleged to have been caused by such chemicals. Since section 8(c) includes no automatic reporting provisions, EPA can obtain and use the information contained in company files only by inspecting those files or requiring reporting of records that relate to specific substances of concern. Therefore, under certain conditions, and using the provisions found in 40 CFR part 717, EPA may require companies to report such allegations to the Agency. EPA uses such information on a case-specific basis to corroborate suspected adverse health or environmental effects of chemicals already under review by EPA. The information is also useful to identify trends of adverse effects across the industry that may not be apparent to any one chemical company. This information collection addresses the reporting and recordkeeping provisions described above. Responses to the collection of information are mandatory (see 40 CFR part 717). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between approximately 1 minute and 8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 13,951.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.1.

Estimated total annual burden hours: 23,650 hours.

Estimated total annual costs: $1,562,535. This includes an estimated burden cost of $ 0 and an estimated cost

of $ 0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is an increase of 114 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's estimate of a greater number of potential respondents affected by the reporting requirement. This change is an adjustment.

V. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 5, 2011.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2011–27612 Filed 10–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2011–0585; FRL–9483–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA Section 123 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 25, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2011–0585, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lisa Boynton, Office of Solid Waste and Emergency Response, Office of Emergency Management, (5104A) Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:*202–564–2487; *fax number:* 202–564–8729; *e-mail address: Boynton.Lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 13, 2011 (76 FR 41242), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2011–0585, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.*gov as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Application for Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases Under CERCLA section 123 (Renewal).

ICR numbers: EPA ICR No. 1425.08, OMB Control No. 2050–0077.

ICR Status: This ICR is scheduled to expire on October 21, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Agency requires applicants for reimbursement under this program authorized under Section 123 of CERCLA to submit an application that demonstrates consistency with program eligibility requirements. This is necessary to ensure proper use of the Superfund. EPA reviews the information to ensure compliance with all statutory and program requirements. The applicants are local governments who have incurred expenses, above and beyond their budgets, for hazardous substance response. Submission of this information is voluntary and to the applicant's benefit.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9 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.

Respondents/Affected Entities: Local governments.

Estimated Number of Respondents: 60.

Frequency of Response: On occasion.

*Estimated Total Annual Hour Bur*den: 540.

Estimated Total Annual Cost: $9,990, includes no annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 135 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to expected growth in the number of respondents applying for reimbursement.

Dated: October 19, 2011.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. 2011–27597 Filed 10–24–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9482–3]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Borough of Ocean Gate, NJ

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Borough of Ocean Gate, New Jersey (Borough), for the purchase of a foreign manufactured 50 kW wind turbine generator that meets the Borough's design and performance specifications. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by the Borough and its consulting engineer, EPA has concluded that there are currently no domestic manufactured 50 kW wind turbines available in sufficient and reasonable quantity and of a satisfactory quality to meet the Borough's project design and performance specifications, and that a waiver is justified. The Regional Administrator is making this determination based on the review and recommendations of the State Revolving Fund Program Team. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605(a) of ARRA. This action permits the purchase of a foreign manufactured 50 kW wind turbine generator by the Borough, as specified in its June 6, 2011 waiver request.

DATES: *Effective Date:* August 8, 2011.

FOR FURTHER INFORMATION CONTACT: Alicia Suárez, Environmental Engineer, (212) 637–3851, State Revolving Fund Program Team, Division of Environmental Planning and Protection, U.S. EPA, 290 Broadway, New York, NY 10007.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA Sections 1605(c) and 1605(b) (2), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the Borough for the purchase of a 50 kW wind turbine generator, manufactured by Atlantic Orient Corporation, that meets the Borough's design and performance specifications. EPA has evaluated the Borough's basis for the procurement of a foreign made wind turbine generator. Based upon information submitted by the Borough and its consulting engineer, EPA has concluded that there are currently no domestic manufactured 50 kW wind turbines available in sufficient and reasonable quantity and of a satisfactory quality to meet the Borough's project design and performance specifications.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project are produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) of ARRA if EPA determines that (1) Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

EPA has also evaluated the Borough's request to determine if its submission is considered late or if it could be considered timely, as per the Office of Management and Budget (OMB) regulations at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as ''late'' if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB regulations, which says ''the award official *may* deny the request.'' For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, the contract for the construction and erection of a 50 kW wind turbine was awarded in December 2009. At the time of award the contractor was proposing the installation of an Entegrity 50 kW wind turbine. The contractor's bid was based on using the Entegrity unit. Shortly after the contract was awarded it was discovered that Entegrity Wind Systems had filed for bankruptcy and was possibly going into receivership. The bankruptcy proceedings carried on for about a year. The issue was further complicated because the matter was in the Canadian courts. Due to the uncertainty of which turbine would actually be installed the Borough and contractor waited until that decision was finalized. The contractor was given the start work order in November 2010. At that time the wind system to be used was confirmed and the necessary waiver was developed by the Borough. There is no indication that the Borough failed to request a waiver in order to avoid the requirements of ARRA, particularly

since there are no domestically manufactured products available that meet the project specifications. The Borough's subsequent research indicated that no other domestic manufactured 50 kW wind turbine generators that met project specifications were available. Accordingly, EPA will evaluate the request as a timely request.

The Borough is completing a wind power project to supply power to its water treatment plant. The project is funded in part by the New Jersey Clean Energy Initiative. To qualify for the state's rebate, the wind turbine generator cannot produce more power than the plant's power consumption for the last year. Based on that requirement, a 50 kW wind turbine generator was specified.

The Borough is requesting a waiver for the purchase of a 50 kW wind turbine generator, manufactured by Atlantic Orient Corporation, because according to the Borough, there are no domestic manufacturers that produce a wind turbine generator that meets the project design and performance specifications.

Based on the technical evaluation of the Borough's waiver request and supporting documentation conducted by EPA's national contractor, the Borough's claim that no domestic manufacturer can produce a 50 kW wind turbine generator that meets the project specifications is supported by the available evidence. In addition, the evaluation of the supporting documentation indicates that Atlantic Orient Corporation, who manufactures its wind turbine generators in Canada, can provide a 50 kW wind turbine generator that can meet project design and performance specifications.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are already ''shovel ready'' by requiring entities, such as the Borough, to revise their design standards and specifications and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and potentially the cancellation of this project as sited. The delay or cancellation of this construction would directly conflict with the fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009, EPA Headquarters Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' '' (Memorandum), defines: *reasonably available quantity* as ''the quantity of iron, steel, or the relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design,'' and *satisfactory quality* as ''the quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs.''

The Region 2 State Revolving Fund Program Team has reviewed this waiver request and has determined that the supporting documentation provided by the Borough establishes both a proper basis to specify the particular good required and that the manufactured good is not available from a producer in the United States to meet the design specifications for the proposed project. The information provided is sufficient to meet the criteria listed under Section 1605(b) of ARRA, OMB regulations at 2 CFR 176.60–176.170, and in the EPA Headquarters April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the Borough's technical specifications, a waiver from the Buy American requirement is justified.

The Administrator's March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Authority is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of a 50 kW wind turbine generator, as specified in its June 6, 2011 waiver request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, Section 1605.

Dated: August 8, 2011.

Judith A. Enck,

Regional Administrator, Environmental Protection Agency, Region 2.

[FR Doc. 2011–27607 Filed 10–24–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Reviewed by the Federal Communications Commission Comments Requested

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 27, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of

Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith B. Herman,* Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov*. To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0813.

Title: Section 20.18, Enhanced 911 Emergency Calling Systems.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Federal Government; and State, Local, or Tribal Government.

Number of Respondents: 47,031 respondents; 47,031 responses.

Estimated Time per Response: 4.2142416 hours.

Frequency of Response: On occasion and annual reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 154(i), 303(f) and (r), 309, 316, and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 198,200 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission is seeking an extension of this information collection in order to obtain the full three year approval from OMB. There are no changes in any of the reporting and/or third party disclosure requirements. There is no change to the Commission's previous burden estimates.

The notification requirement on Public Safety Answering Points (PSAPs) will be used by the carriers to verify that wireless E911 calls are referred to PSAPs who have the technical capability to use the data to the caller's benefit. TTY and dispatch notification requirements will be used to avoid customer confusion as to the capabilities of their handsets in reaching help in emergency situations, thus minimizing the possibility of critical delays in response time. The annual TTY reports will be used to monitor the progress of TTY technology and thus capability. Consultations on the specific meaning assigned to pseudo-Automatic Location Identification (ALI) are appropriate to ensure that all parties are working with the same information. Coordination between carriers and state and local entities to determine the appropriate PSAPs to receive and respond to E911 calls is necessary because of the difficulty in assigning PSAPs based on the location of the wireless caller. The deployment schedule that must be submitted by carriers seeking a waiver of Phase I or Phase II deployment schedule will be used by the Commission to guarantee that the rules are enforced in as timely manner as possible within technological constraints. In addition, a wireless carrier must implement E911 service within the six-month period following the date of the PSAP's request. If the carrier challenges the validity of the request, the request will be deemed valid if the PSAP making the request provides the following information:

(a) *Cost Recovery:* The PSAP must demonstrate that a mechanism is in place by which the PSAP will recover its costs of the facilities and equipment necessary to receive and utilize the E911 data elements.

(b) *Necessary Equipment:* The PSAP must provide evidence that it has ordered the equipment necessary to receive and utilize the E911 data elements; and

(c) *Necessary Facilities:* The PSAP must demonstrate that it has made a timely request to the appropriate local exchange carrier (LEC) for the necessary trunking and other facilities to enable E911 data to be transmitted to the PSAP.

This collection is needed to ensure that they are ready to receive E911 Phase I or Phase II information at the time that wireless carrier's obligation to deliver that information becomes due. This will reduce the possibility of both carriers and PSAPs investing money before the PSAP is actually E911 capable.

OMB Control Number: 3060–1155.

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

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

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 47 U.S.C. Sections 154(i), 302, 303(c), 303(f) and 307 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,000 hours.

Total Annual Cost: 100,000.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission is seeking approval for a revision of this information collection in order to obtain the full three year approval from OMB. There is no change to the Commission's previous burden estimates.

The Commission is seeking a revision to add questions about prefill applications and the number of available channels, make clarifications for some existing questions to the on-line database screens. This is being done to make completion of the form easier for the respondents.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–27468 Filed 10–24–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Submitted for Review to the Office of Management and Budget for Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), Public Law 104–13. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) Control Number.

DATES: Written comments should be submitted on or before November 25, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at: (202) 395–5167, or via e-mail to: *Nicholas_A._Fraser@omb.eop.gov;* and to Leslie F. Smith, Federal Communications Commission (FCC), Room 1–C216, 445 12th Street, SW., Washington, DC, or via e-mail to: *Leslie.Smith@fcc.gov* and to: *PRA@fcc.gov.* Please include in the comments the OMB Control Number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Leslie F. Smith at (202) 418–0217 or via e-mail at: *Leslie.Smith@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0430.

Title: Section 1.1206, Permit-but-Disclose Proceedings.

Form Number(s): N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal governments.

Number of Respondents and Responses: 11,500 respondents; 34,500 responses.

Estimated Time per Response: 45 minutes (0.75 hours).

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 25,875 hours.

Total Annual Cost: $0.00.

Privacy Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: Consistent with the Commission's rules on confidential treatment of submissions, under 47 CFR Section 0.459, a presenter may request confidential treatment of *ex parte* presentations. In addition, the Commission will permit parties to remove metadata containing confidential or privileged information, and the Commission will also not require parties to file electronically *ex parte* notices that contain confidential information. The Commission will, however, require a redacted version to be filed electronically at the same time the paper filing is submitted, and that the redacted version must be machine-readable whenever technically possible.

Needs and Uses: The Commission's rules, under 47 CFR Section 1.1206, require that a public record be made of *ex parte* presentations (*i.e.,* written presentations not served on all parties to the proceeding or oral presentations as to which all parties have not been given notice and an opportunity to be present) to decision-making personnel in ''permit-but-disclose'' proceedings, such as notice-and-comment rulemakings and declaratory ruling proceedings.

On February 2, 2011, the FCC released a *Report and Order and Further Notice of Proposed Rulemaking,* GC Docket Number 10–43, FCC 11–11, which amended and reformed the Commission's rules on *ex parte* presentations (47 CFR Section 1.1206(b)(2)) made in the course of Commission rulemakings and other permit-but-disclose proceedings. The modifications to the existing rules adopted in this Report and Order require that parties file more descriptive summaries of their *ex parte* contacts, by ensuring that other parties and the public have an adequate opportunity to review and respond to information submitted *ex parte,* and by improving the FCC's oversight and enforcement of the *ex parte* rules. The modified *ex parte* rules provide as follows: (1) *Ex parte* notices will be required for all oral *ex parte* presentations in permit-but-disclose proceedings, not just for those presentations that involve new information or arguments not already in the record; (2) If an oral *ex parte* presentation is limited to material already in the written record, the notice must contain either a succinct summary of the matters discussed or a citation to the page or paragraph number in the party's written submission(s) where the matters discussed can be found; (3) Notices for all *ex parte* presentations must include the name of the person(s) who made the *ex parte* presentation as well as a list of all persons attending or otherwise participating in the meeting at which the presentation was made; (4) Notices of *ex parte* presentations made outside the Sunshine period must be filed within two business days of the presentation; (5) The Sunshine period will begin on the day (including business days, weekends, and holidays) after issuance of the Sunshine notice, rather than when the Sunshine Agenda is issued (as the current rules provide); (6) If an *ex parte* presentation is made on the day the Sunshine notice is released, an *ex parte* notice must be submitted by the next business day, and any reply would be due by the following business day. If a permissible *ex parte* presentation is made during the Sunshine period (under an exception to the Sunshine period prohibition), the *ex parte* notice is due by the end of the same day on which the presentation was made, and any reply would need to be filed by the next business day. Any reply must be in writing and limited to the issues raised in the *ex parte* notice to which the reply is directed; (7) Commissioners and agency staff may continue to request *ex parte* presentations during the Sunshine period, but these presentations should be limited to the specific information required by the Commission; (8) *Ex parte* notices must be submitted electronically in machine-readable format. PDF images created by scanning a paper document may not be submitted, except in cases in which a word-processing version of the document is not available. Confidential information may continue to be submitted by paper filing, but a redacted version must be filed electronically at the same time the paper filing is submitted. An exception to the electronic filing requirement will be made in cases in which the filing party claims hardship. The basis for the hardship claim must be substantiated in the *ex parte* filing; (9) To facilitate stricter enforcement of the *ex parte* rules, the Enforcement Bureau is authorized to levy forfeitures for *ex*

parte rule violations; (10) Copies of electronically filed *ex parte* notices must also be sent electronically to all staff and Commissioners present at the *ex parte* meeting so as to enable them to review the notices for accuracy and completeness. Filers may be asked to submit corrections or further information as necessary for compliance with the rules; and (11) Minor conforming and clarifying rule changes proposed in the Notice are adopted. The only changes entailing increased information collection are the requirement that parties making permissible *ex parte* presentations in restricted proceedings file an *ex parte* notice, and that *ex parte* notices contain either a summary of the presentation or a reference to where the information can be found in the written record, and that *ex parte* notices list all persons attending the presentation.

The information is used by parties to permit-but-disclose proceedings, including interested members of the public, to respond to the arguments made and data offered in the presentations. The responses may then be used by the Commission in its decision-making. The availability of the *ex parte* materials ensures that the Commission's decisional processes are fair, impartial, and comport with the concept of due process in that all interested parties can know of and respond to the arguments made to the decision-making officials.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–27470 Filed 10–24–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

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

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0855.

OMB Approval Date: 10/14/2011.

Expiration Date: 10/31/2014.

Title: Telecommunications Reporting Worksheets and Related Collections, FCC Forms 499–A and 499–Q.

Form No.: FCC Forms 499–A and 499–Q.

Estimated Annual Burden: 8,183 respondents; 46,957 responses; .25 hours to 25 hours per response; 313,881 burden hours per year; $0 annual cost burden.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 151, 154(i), 154(j), 155, 157, 201, 205, 214, 225, 254, 303(r), 715 and 719 of the Act, 47 U.S.C. 151, 154(i), 154(j), 155, 157, 201, 205, 214, 225, 254, 303(r), 616, and 620.

Nature and Extent of Confidentiality: The Commission will allow respondents to certify that data contained in their submissions is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the entity filing the FCC worksheets. If the Commission receives a request for or proposes to disclose the information, the respondent would be required to make the full showing pursuant to the Commission's rules for withholding from public inspection information submitted to the Commission.

Needs and Uses: On October 7, 2011, the Commission released the *Contributions to the Telecommunications Relay Services Fund Report and Order* (*Report and Order*) FCC 11–150, adopting rules to implement section 715 of the Act. The *Report and Order* takes the following actions: Requires non-interconnected voice over Internet protocol (VoIP) service providers with interstate end-user revenues that are subject to contribution to the Telecommunications Relay Services (TRS) Fund to register with the Commission, designate a District of Columbia agent for service of process, annually file FCC Form 499–A, and contribute to the TRS Fund; extends the 64.9 percent safe harbor provision for calculating interstate end-user revenues to non-interconnected VoIP service providers; maintains interstate end-user revenues as the basis for calculating TRS Fund contributions; requires no contributions to the TRS Fund by non-interconnected VoIP service providers that offer services for free and have zero interstate end-user revenues.

The modification is to apply the registration and annual filing requirement for FCC Form 499–A to non-interconnected VoIP service providers, pursuant to 47 U.S.C. 1, 4(i), (4)(j), 225, and 715 of the Act, as amended 47 U.S.C. 151, 154(i), 154(j), 225, and 616; and 47 CFR 64.601 through 64.613 of the Commission's rules. The application of the FCC Form 499–A to carriers, interconnected VoIP service providers, and non-interconnected VoIP service providers, is needed to administer the Universal Service Fund, the TRS Fund, and the cost recovery mechanism for numbering administration and long-term number portability. FCC Form 499–Q and its instructions remain unchanged.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–27469 Filed 10–24–11; 8:45 am]

BILLING CODE 6712–01–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 November 18, 2011.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *BankUnited, Inc.,* Miami Lakes, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of BankUnited, National Association, Miami Lakes, Florida, upon the conversion of its subsidiary Bank United, a federal savings bank, to a national bank.

Board of Governors of the Federal Reserve System, October 20, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–27534 Filed 10–24–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–12–12AG]

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 Catina Conner, CDC Acting 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

HIV Prevention Among Latino MSM: Evaluation of a Locally Developed Intervention—New—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Latinos are the largest and fastest growing ethnic minority group in the U.S. and have the second highest rate of HIV/AIDS diagnoses of all racial/ethnic groups in the country. From the beginning of the epidemic through 2007, Latinos accounted for 17% of all AIDS cases reported to the CDC. Among Latino males, male-to-male sexual contact is the single most important source of HIV infection, accounting for 46% of HIV infections in U.S.-born Latino men from 2001 to 2005, and for more than one-half of HIV infections among South American, Cuban, and Mexican-born Latino men in the U.S. (CDC, 2007a; 2007b). In 2006, male-to-male sex accounted for 72% of new HIV infections among Latino males. Relative to other men who have sex with men (MSM), the rate of HIV infection among Latino MSM is twice the rate recorded among whites (43.1 vs. 19.6 per 100,000).

Despite the high levels of infection risk that affect Latino MSM, no efficacious interventions to prevent infection by HIV and other sexually transmitted diseases (STDs) are available for this vulnerable population. CDC's Prevention Research Synthesis group, whose role is to identify HIV prevention interventions that have met rigorous criteria for demonstrating evidence of efficacy, has not identified any behavioral interventions for Latino MSM that meet current efficacy criteria, and no such interventions are listed in CDC's 2011 update of its Compendium of Evidence-Based HIV Behavioral Interventions (*http://www.cdc.gov/hiv/topics/research/prs/compendium-evidence-based-interventions.htm*). There is an urgent need for efficacious, culturally congruent HIV/STD prevention interventions for Latino MSM.

The purpose of this project is to test the efficacy of an HIV prevention intervention for reducing sexual risk among Latino men who have sex with men in North Carolina. The HOLA en Grupos intervention is a Spanish-language, small-group, 4-session intervention that is designed to increase consistent and correct condom use and HIV testing among Latino MSM and to affect other behavioral and psychosocial factors that can increase their vulnerability of HIV/STD infection. This study will use a randomized controlled trial design to assess the efficacy of the HOLA en Grupos intervention compared to a general health comparison intervention.

CDC is requesting approval for a 3-year clearance for data collection. The data collection system involves screening of potential study participants for eligibility, collection of participants' contact information, and measures of intervention and comparison participants' socio-demographic characteristics, health seeking actions, HIV/STD and substance use-related risk behaviors, and psychosocial factors at baseline before intervention delivery and 6 months after intervention delivery. An estimated 350 men will be screened for eligibility in order to enroll the 300 men required for the study. The baseline and the 6-month follow-up assessments will be similar. However, the 6-month assessment will ask study participants fewer questions because there is no need to ask all questions during both assessments. Collection of eligibility information from potential participants will require about 10 minutes; collection of baseline assessment information and participant contact information will require about 1 hour and 45 minutes; and collection of the 6-month follow-up assessment information will require about 1 hour.

There is no cost to participants other than their time.

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per respondent (in hours)	Total annual burden in hours
Prospective Study Participant	Participant Screening Form	350	1	10/60	58

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per respondent (in hours)	Total annual burden in hours
Enrolled Study Participant	Baseline Assessment	300	1	1.75	525
Enrolled Study Participant	6-month follow-up assessment	300	1	1	300
Total					883

Catina Conner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–27588 Filed 10–24–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–12–0800]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Focus Group Testing to Effectively Plan and Tailor Cancer Prevention and Control Communication Campaigns (OMB No. 0920–0800, exp. 1/31/2012)—Extension (Generic)—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the CDC's Division of Cancer Prevention and Control (DCPC) is to reduce the burden of cancer in the United States through cancer prevention, reduction of risk, early detection, better treatment, and improved quality of life for cancer survivors. Toward this end, the DCPC supports the scientific development, implementation, and evaluation of various health communication campaigns with an emphasis on specific cancer burdens. This process requires testing of messages, concepts, and materials prior to their final development and dissemination. Communication campaigns vary according to the type of cancer, the qualitative dimensions of the message described above, and the type of respondents.

CDC is requesting OMB approval of a three-year extension to an existing generic clearance that supports cancer-related communications (OMB No. 0920–0800, exp. 1/31/2012). Information will be collected primarily through focus groups, and will be used to assess numerous qualitative dimensions of cancer prevention and control messages, including, but not limited to, knowledge, attitudes, beliefs, behavioral intentions, information needs and sources, and compliance to recommended screening intervals. Insights gained from the focus groups will assist in the development and/or refinement of future campaign messages and materials.

Over a three-year period, DCPC plans to conduct or sponsor up to 72 focus groups per year, with each group involving an average of 12 respondents. Screening will be conducted to recruit respondents for specific target audiences, *e.g.,* health care providers or the general public. Each focus group discussion will be facilitated by a written discussion guide, and will last approximately two hours. CDC will submit an information collection request to OMB for approval of each focus group activity.

There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,814.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Health care providers and general public	Screening Form	1,728	1	3/60
	Focus Group Discussion Guide	864	1	2

Dated: October 18, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–27586 Filed 10–24–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–12–0278]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request a copy of these requirements, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Hospital Ambulatory Medical Care Survey [OMB No. 0920–0278]exp.08/31/2012—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''utilization of health care'' in the United States. The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992. The purpose of NHAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments, and ambulatory surgery centers.

The target universe of the NHAMCS is in-person visits made to outpatient departments (OPDs), emergency departments (EDs), and ambulatory surgery locations (ASLs) of non-Federal, short-stay hospitals (hospitals with an average length of stay of less than 30 days) or those whose specialty is general (medical or surgical) or children's general, as well as visits to freestanding ambulatory surgery centers (FS–ASCs).

The objectives of this revision are to convert data collection instruments from paper to computer-based instruments; add 167 hospitals to the NHAMCS sample to make state-based estimates in five states on emergency department characteristics; expand the data collection to include a lookback module; conduct a colonoscopy supplement pretest; and make slight modifications to survey questions.

Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners. There are no costs to the respondents other than their time. The total estimated annualized burden hours are 10,348.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Hospital Chief Executive Officer	Hospital Induction	482	1	1.5
Hospital Chief Executive Officer	Hospital Induction (new sample)	167	1	30/60
Ancillary Service Executive	Freestanding ASC Induction	200	1	30/60
Ancillary Service Executive	Ambulatory Unit Induction	1,946	1	15/60
Physician/Registered Nurse/ Medical Record Clerk	ED Patient Record form	154	100	7/60
Physician/Registered Nurse/ Medical Record Clerk	OPD Patient Record form	78	200	14/60
Physician/Registered Nurse/ Medical Record Clerk	AS Patient Record Form	108	100	7/60
Medical Record Clerk	Pulling and re-filing Patient Records (ED, OPD, and AS).	1,018	133	1/60

Dated: October 18, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–27583 Filed 10–24–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Partnerships To Advance the National Occupational Research Agenda (NORA)

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: ''Partnerships to Advance the National Occupational Research Agenda (NORA)''.

Public Meeting Time and Date: 10 a.m.–3:30 p.m. EST, January 26, 2012.

Place: Patriots Plaza, 395 E Street, SW., Conference Room 9000, Washington, DC 20201.

Purpose of the Meeting: The National Occupational Research Agenda (NORA) has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now structured as a public meeting via the Internet to attract participation by a larger number of organizations and to further enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include updates from NIOSH leadership on NORA as well as updates from approximately half of the NORA Sector Councils on their progress, priorities, and implementation plans to date, likely including the NORA Agriculture, Forestry and Fishing; Construction; Healthcare and Social Assistance; Mining; Oil and Gas Extraction; Transportation, Warehousing and Utilities Councils. Updates will also be given on the Mid-Decade Review of NORA and at least one NIOSH Program that is working on several NORA priorities, e.g., the NIOSH Work Organization and Stress-Related Disorders Program. After each update, there will be time to discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and conference room facilities. There is limited space available in the meeting room (capacity

34). Therefore, information to allow participation in the meeting through the Internet (to see the slides) and a teleconference call (capacity 50) will be provided to registered participants. Participants are encouraged to consider attending by this method. Each participant is requested to register for the free meeting by sending an e-mail to *noracoordinator@cdc.gov* containing the participant's name, organization name, contact telephone number on the day of the meeting, and preference for participation by Web meeting (requirements include: computer, Internet connection, and telephone, preferably with ''mute'' capability) or in person. An e-mail confirming registration will include the details needed to participate in the Web meeting. Non-US citizens are encouraged to participate in the Web meeting. Non-US citizens who do not register to attend in person on or before January 4, 2012, will not be granted access to the meeting site and will not be able to attend the meeting in-person due to mandatory security clearance procedures at the Patriots Plaza facility.

Background: NORA is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html*.

Since 2006, NORA has been structured according to industrial sectors. Ten major sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the Web and town hall meetings, ten NORA Sector Councils have been working to define sector-specific strategic plans for conducting research and moving the results into widespread practice. During 2008–10, most of these Councils posted draft strategic plans for public comment and eight have posted finalized National Sector Agendas after considering comments on the drafts. For the National Sector Agendas, see *http://www.cdc.gov/niosh/nora/*.

FOR FURTHER INFORMATION CONTACT: Sidney C. Soderholm, Ph.D, NORA Coordinator, E-mail *noracoordinator@cdc.gov,* telephone (404) 957–0260.

Dated: October 18, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–27627 Filed 10–24–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0084]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: On July 14, 2011, the Agency submitted a proposed collection of information entitled ''Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals'' to OMB for review and clearance under 44 U.S.C. 3507. 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 has now approved the information collection and has assigned OMB control number 0910–0562. The approval expires on September 30, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 19, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27532 Filed 10–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0159]

Albert Ronald Cioffi: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Albert Cioffi, MD for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on findings that Dr. Cioffi was convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct underlying the conviction undermines the process for the regulation of drugs. Dr. Cioffi was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Dr. Cioffi failed to request a hearing. Dr. Cioffi's failure to request a hearing constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective October 25, 2011.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Compliance Policy, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., rm. 4144, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) permits FDA to debar an individual if it finds that the individual has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act, and if FDA finds that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On January 9, 2008, based upon a plea of guilty to one count of misbranding a drug while held for sale after shipment in interstate commerce, in violation of 21 U.S.C. 331(k), 333(a)(1), and

352(i)(3), judgment was entered against Dr. Cioffi in the United States District Court for the Southern District of Florida.

FDA's finding that debarment is appropriate is based on the misdemeanor conviction referenced herein. The factual basis for the conviction is as follows: During 2004, Dr. Cioffi was a physician licensed to practice in the State of Florida. In February 2004, Dr. Cioffi became the medical doctor of Body Rx, a medical office located in Boca Raton, FL. In July 2004, Dr. Cioffi became the sole owner of Body Rx which specialized in cosmetic procedures, including the treatment of forehead wrinkles. When Dr. Cioffi began working at Body Rx, he learned that Body Rx had been treating patients for forehead wrinkles with the unapproved drug derived from Botulinum Toxin Type A (TRI-toxin), sold by Toxin Research International (TRI), a company in Tuscon, AZ. Dr. Cioffi spoke with TRI representatives and learned that TRI-toxin was not approved by FDA for treatment of facial wrinkles. Nonetheless, Dr. Cioffi continued to purchase and use the unapproved drug from TRI. On four separate occasions between February and November of 2004, Body Rx purchased a total of eight vials of unapproved TRI-toxin at Dr. Cioffi's direction. Dr. Cioffi used the unapproved drug to inject approximately 30 patients and never informed these patients that they were receiving an unapproved version of Botulinum Toxin Type A. Instead, Dr. Cioffi told patients that they were purchasing and being injected with the approved BOTOX Cosmetic, and he indicated in these patients' medical records that they were receiving the FDA approved BOTOX Cosmetic.

From in or about February 2004, and continuing through in or about November 2004, in the Southern District of Florida, and elsewhere, Dr. Cioffi did misbrand a drug, namely Botulinum Toxin Type A distributed by TRI, while it was held for sale and after shipment in interstate commerce, in that he offered the unapproved Botulinum Toxin Type A for sale by injection to patients under the name of another drug, all in violation of 21 U.S.C. 331(k), 333(a)(1), 352(i)(3), and 18 U.S.C. 2.

As a result of his conviction, on June 1, 2011, FDA sent Dr. Cioffi a notice by certified mail proposing to debar him for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(b)(2)(B)(i)(I) of the FD&C Act that Dr. Cioffi was convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act, and the conduct that served as a basis for the conviction undermines the process for the regulation of drugs. The proposal also offered Dr. Cioffi an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Cioffi failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Acting Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(I) of the FD&C Act under authority delegated to him (Staff Manual Guide 1410.35), finds that Albert R. Cioffi has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act, and that the type of conduct that served as a basis for the conviction undermines the process for the regulation of drugs.

As a result of the foregoing finding, Dr. Cioffi is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**), (see sections 306(c)(1)(B), (c)(2)(A)(iii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(iii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Cioffi, in any capacity during Dr. Cioffi's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Cioffi provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Cioffi during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Dr. Cioffi for termination of debarment under section 306(d)(1) of the Act (21 U.S.C. 355a(d)(1)) should be identified with Docket No. FDA–2011–N–0159 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 11, 2011.

Armando Zamora,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2011–27509 Filed 10–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0643]

Guidance for Industry on What You Need to Know About Administrative Detention of Foods; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''What You Need to Know About Administrative Detention of Foods.'' This guidance provides information pertaining to FDA's authority to order the administrative detention of food for human or animal consumption under the Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the FDA Food Safety and Modernization Act (FSMA).

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

ADDRESSES: Submit written requests for single copies of the guidance to the Outreach and Information Center (HFS–009), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the

Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: William A. Correll, Jr., Office of Compliance (HFS–607), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1611.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''What You Need to Know About Administrative Detention of Foods,'' which replaces the guidance of the same title issued in November 2004. The guidance is intended to provide individuals in the human and animal food industries with an understanding of FDA's authority to order the administrative detention of human or animal food under section 304(h) of the FD&C Act (21 U.S.C. 334(h)), as amended by section 207 of FSMA. It provides practical information, including who can approve an administrative detention order, what food may be subject to administrative detention, who receives a copy of an administrative detention order, and the process for appealing an administrative detention order. Additionally, the guidance identifies references that contain more information regarding FDA's authority to order administrative detention.

This guidance is being issued consistent with FDA's good guidance practices (GGPs) regulation § 10.115 (21 CFR 10.115) as a level 1 guidance. The Agency will accept comments, but it is implementing this document immediately, in accordance with § 10.115(g)(2) because the Agency has determined that prior public participation is not feasible or appropriate. The Agency made this determination because much of this guidance remains the same as the guidance issued in November 2004. In addition, this guidance simply reflects the statutory changes made by section 207 of FSMA to section 304(h)(1)(A) of the FD&C Act (21 U.S.C. 334(h)(1)(A)) and seeks to remove any confusion that might arise due to the existence of a guidance document that is inconsistent with the FD&C Act and its implementing regulations. Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency's GGPs regulation.

FSMA was signed into law on January 4, 2011. Section 207 of FSMA amended the criteria for ordering administrative detention in section 304(h)(1)(A) of the FD&C Act to provide FDA the authority to order administrative detention if there is reason to believe that an article of food is adulterated or misbranded. On May 5, 2011, in accordance with FSMA, FDA published an interim final rule in the **Federal Register** amending its regulations in part 1, subpart K (21 CFR part 1, subpart K), (76 FR 25538), that pertain to the criteria for ordering administrative detention. This interim final rule became effective on July 3, 2011.

The guidance represents the Agency's current thinking on its authority to order the administrative detention of human or animal foods. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We conclude that the collections of information in §§ 1.381(d) and 1.402 are exempt from OMB review under 44 U.S.C. 18(c)(1)(B)(ii) and 5 CFR 1320.4(a)(2) as collections of information obtained during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities. The regulations in 5 CFR 1320(c) provide that the exception in 5 CFR 1320.4(a)(2) applies during the entire course of the investigation, audit, or action, but only after a case file or equivalent is opened with respect to a particular party. Such a case file would be opened as part of the decision to detain an article of food.

III. Comments

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

IV. Electronic Access

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

Dated: October 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27529 Filed 10–24–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0568]

Small Entity Compliance Guide: Required Warnings for Cigarette Packages and Advertisements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Required Warnings for Cigarette Packages and Advertisements—Small Entity Compliance Guide'' for a final rule published in the **Federal Register** on June 22, 2011. This small entity compliance guide (SECG) is intended to set forth in plain language the requirements of the regulation and to help small businesses understand and comply with the regulation.

DATES: Submit either electronic or written comments on the SECG at any time.

ADDRESSES: Submit written requests for single copies of the SECG entitled ''Required Warnings for Cigarette Packages and Advertisements—Small Entity Compliance Guide'' to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gerie Voss, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 877–287–1373, *gerie.voss@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 22, 2011 (76 FR 36628), FDA issued a final rule regarding required warnings for use on cigarette packages and in cigarette advertisements. FDA examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the rule would have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making available this SECG stating in plain language the legal requirements of the June 22, 2011, final rule, set forth in 21 CFR part 1141, establishing requirements for graphic health warnings on cigarette packages and in cigarette advertisements.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain an electronic version of this guidance document at either *http://www.regulations.gov* or *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm.*

Dated: October 20, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27530 Filed 10–24–11; 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, Small Business: Non-HIV Diagnostics, Food Safety, Sterilization/Disinfection and Bioremediation.

Date: November 17–18, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Gagan Pandya, PhD, Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mai.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Respiratory Sciences.

Date: November 17–18, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, DA–12–004: The Placebo Effect: Mechanisms and Methodology (R21).

Date: November 30, 2011.

Time: 9 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, DA–12–003: The Placebo Effect: Mechanisms and Methodology (R01).

Date: November 30, 2011.

Time: 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@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: October 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27545 Filed 10–24–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee:

Center for Scientific Review Special Emphasis Panel Fellowships: AIDS Predoctoral and Postdoctoral.

Date: November 14, 2011.
Time: 11 a.m. to 7:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Georgetown, 2350 M Street, NW., Washington, DC 20037.
Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group HIV/AIDS Vaccines Study Section.
Date: November 18, 2011.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Cell Biology.
Date: November 29–30, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Rass M Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Early Embryo Development Pluripotency.
Date: November 29–30, 2011.
Time: 8 a.m. to 8 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Antimicrobials and Resistance.
Date: November 29–30, 2011.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: John C Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Biology and Signaling.
Date: November 30–December 1, 2011.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Rolf Jakobi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301–495–1718,*jakobir@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Stroke, Spinal Cord and Brain Injury.
Date: November 30–December 1, 2011.
Time: 11 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838,*bhagavas@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Oncological Sciences Overflow.
Date: November 30, 2011.
Time: 11 a.m. to 4 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: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov*.

(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: October 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27544 Filed 10–24–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.
Date: November 10, 2011.
Time: 11:30 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Camilla E. Day, PhD, Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27542 Filed 10–24–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases

Special Emphasis Panel; Study on Gastroparesis.

Date: December 5, 2011.

Time: 5 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27541 Filed 10–24–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF DENTAL & CRANIOFACIAL RESEARCH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

Date: November 28–30, 2011.

Time: November 28, 2011, 7 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814,

Time: November 29, 2011, 8 a.m. to 6:30 p.m.

Agenda To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Center Drive, 117, Bethesda, MD 20892.

Time: November 30, 2011, 8 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Center Drive, 117, Bethesda, MD 20892

Contact Person: Alicia J. Dombroski, PhD, Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about/Council Committees.asp,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 19, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27540 Filed 10–24–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4030–DR; Docket ID FEMA–2011–0001]

Pennsylvania; 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 Pennsylvania (FEMA–4030–DR), dated September 12, 2011, and related determinations.

DATES: *Effective Date:* October 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 Commonwealth of Pennsylvania is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 12, 2011.

Juniata County for Public Assistance.

Berks, Bradford, Columbia, Dauphin, Lancaster, Lebanon, Luzerne, Lycoming, Montour, Schuylkill, Snyder, Sullivan, Susquehanna, and Wyoming 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. 2011–27617 Filed 10–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 8 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–4031–DR), dated September 13, 2011, and related determinations.

DATES: *Effective Date:* October 13, 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 September 13, 2011.

Montgomery 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. 2011–27613 Filed 10–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4029–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 9 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–4029–DR), dated September 9, 2011, and related determinations.

DATES: *Effective Date:* October 13, 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 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 9, 2011.

Anderson, Henderson, Hill, Marion, Smith and Upshur 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. 2011–27616 Filed 10–24–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BOEM–2011–0087]

Notice of Industry Workshop on Technical and Regulatory Challenges in Deep and Ultra-Deep Outer Continental Shelf Waters

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Announcement of Industry Workshop.

SUMMARY: BSEE is announcing the Effects of Water Depth Workshop. This workshop with industry will offer a blend of technical presentations and interactive peer review discussions expected to help identify Outer Continental Shelf (OCS) challenges and technologies associated with oil and gas exploration and production at various water depths. This workshop will also identify approaches to address the water depth issue through regulations, standards, and practices designed to safeguard personnel, operations, and the environment.

DATES: The workshop will be held on November 2 and 3, 2011, between 8 a.m. and 5 p.m. Early sign-in begins November 1, 2011, at 5:30 p.m.

ADDRESSES: The workshop will be held at the San Luis Hotel, 5222 Seawall Blvd., Galveston, Texas 77551. Lodging at the San Luis Hotel is available for Workshop participants.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Else, Technology Assessment and Research Program, (703) 787–1769 or by *e-mail: Michael.else@bsee.gov* or Mr. Joseph Braun at (630) 252–5574 or by *e-mail: joebraun@anl.gov*.

SUPPLEMENTARY INFORMATION: The primary intent of this workshop is to support BSEE's goal of ensuring safe and environmentally sound offshore oil and gas exploration and production in deep and ultra-deep OCS waters. Through this workshop, BSEE will obtain feedback and analysis from stakeholders related to drilling, production technologies, operations, spill prevention, emergency response, and cleanup. In addition, the two-day workshop will offer a structured venue for consultation among offshore deepwater oil and gas industry and regulatory experts in order to:

(a) Identify the effects of water depth and related issues on equipment and operations; and

(b) Identify approaches to address the water depth issue through regulations, standards, and practices designed to safeguard personnel, operations and the environment.

This workshop will assist in improving existing regulations and develop new regulations under the authority of the BSEE, which assumed regulatory responsibility for safety and environmental protection over OCS oil and gas operations effective October 1, 2011. The workshop will also provide an opportunity to identify approaches industry can use to address water depth issues, such as the development of new standards or improvements in existing standards. Domestic energy reserves are vitally important to the Nation's economic strength. BSEE is committed to helping ensure environmental protection and human safeguards during exploration and development of these energy reserves. This workshop is a critical step in clearing a path forward for responsible deep water development.

Registration: Registration fees will be approximately $425.00 per person to cover food, refreshments, and administrative costs. Attendance at this workshop is by invitation only. To apply, please visit BSEE's workshop webpage at *http://www.boemre.gov/tarworkshops/EWD/Apply.htm*. You will be redirected to the U.S. Department of Energy, Argonne National Lab's webpage to complete your application electronically and will be contacted by Argonne National Lab staff, who have been contracted to provide workshop registration services.

Paperwork Reduction Act of 1995 Statement

This **Federal Register** Notice does not refer to or impose any information

collection subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Dated: October 17, 2011.

Robert P. LaBelle,

Acting Deputy Director, Bureau of Safety and Environmental Enforcement.

[FR Doc. 2011–27633 Filed 10–21–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 49537 LLCAD08000 L51010000.FX0000 LVRWB11B4670]

Notice of Intent To Prepare a Supplemental Draft Environmental Impact Statement for the K Road Calico Solar Project, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM), California Desert District, intends to prepare a Supplemental Draft Environmental Impact Statement (EIS) for an amendment to the right-of-way (ROW) grant for the K Road Calico Solar Project (Project) in San Bernardino County, California.

DATES: The BLM will provide a 45-day public comment period upon publication of the Supplemental Draft EIS.

ADDRESSES:

- *Web site: http://www.blm.gov/ca/st/en/fo/barstow/K Road_Calico_Solar.html.*
- *E-mail: CalicoPV_SEIS@blm.gov.*
- *Fax:* (760) 252–6098.
- *Mail:* Bureau of Land Management, Joan Patrovsky, Project Manager, 2601 Barstow Road, Barstow, California 92311.

FOR FURTHER INFORMATION CONTACT: Joan Patrovsky, BLM Project Manager, or Edy Seehafer, BLM NEPA Compliance Coordinator, telephone (760) 252–6000. Please contact Ms. Patrovsky if you'd like to have your name added to our mailing list. See also **ADDRESSES** section, above. News media inquiries should be directed to the California Desert District Office, Public Affairs Office, David Briery, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553, telephone (951) 697–5220, or e-mail: *dbriery@blm.gov.*

SUPPLEMENTARY INFORMATION: K Road is seeking approval to construct and operate an electrical generating facility with a nominal capacity of approximately 664 megawatts (MW). The project would use photovoltaic (PV) panels and may include some solar thermal power. Approximately 4,604 acres of BLM-administered public land and 9 acres of privately owned land are needed to develop the Project. K Road has submitted an application to the BLM requesting to amend their ROW grant to change portions of the approved facility from 100 percent SunCatcher technology to PV technology and potentially some SunCatcher technology.

On October 20, 2010, the BLM approved the Calico Solar ROW grant, which would develop a solar thermal energy generating facility in a project area north of Interstate 40 between Newberry Springs and Hector, California approximately 37 miles east of Barstow, California. The grant holder, K Road Calico Solar, LLC has applied to the BLM for a ROW grant amendment on public lands to construct the solar facility in two phases including a change in technology: Phase 1 (275 MW and 1,863 acres) will consist of PV panels, an access road, a central services complex, an on-site substation, and a underground water utility line. Phase 2 (2,750 acres, 389 MW) will consist of PV panels and may include some SunCatcher technology.

Construction would begin in early 2013. Although construction would take approximately 48 months to complete, renewable energy power would be available to the grid as each phase is completed. The facility would be expected to operate for approximately 20 years.

A new 230-kV substation would be built in the center of the project area and would connect to the existing Pisgah Substation via an approximately two-mile long single-circuit, 230-kV transmission line.

The 2010 Final EIS and Proposed Amendment to the California Desert Conservation Area Plan for the Calico Solar Project considered this type of technology but did not analyze it in detail. The Supplemental Draft EIS will analyze this alternative in detail, including any additional site-specific impacts resulting from the change in technology and additional ancillary facilities or relocation of facilities. This includes impacts to air quality, biological resources, cultural resources, water resources, geological resources and hazards, hazardous materials handling, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, waste management and worker safety and fire protection, as well as facility design engineering, efficiency, reliability, transmission system engineering and transmission line safety and nuisance.

If the ROW amendment is approved by the BLM, a multi-technology solar power plant facility on public lands would be authorized in accordance with Title V of FLPMA and the BLM's ROW Regulations at 43 CFR part 2800. A certificate designating approval by the California Energy Commission must be obtained by K Road before it may construct the portion of Phase two involving ''SunCatcher'' solar facilities.

Authority: 40 CFR 1502.9(c) and 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director.

[FR Doc. 2011–27558 Filed 10–24–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON00000 L10200000 DF0000.LXSS080C0000]

Notice of Resource Advisory Council Meeting for the Northwest Colorado Resource Advisory Council (Supplemental Information)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting: Supplemental Information

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, notice has been published that the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Resource Advisory Council (NW RAC) will meet on December 1, 2011. This notice provides supplemental information related to specific fee proposals that will be discussed at the December meeting in Gateway, Colorado, specifically the consideration of two new fee proposals for public lands within the Grand Junction Field Office, and one fee adjustment proposal for the Kremmling Field Office.

DATES: This supplemental information is being provided for the NW RAC meeting to be held on December 1, 2011. The meeting will begin at 8 a.m. and adjourn at approximately 3 p.m., with public comment periods regarding matters on the agenda at 10 a.m. and 2 p.m.

ADDRESSES: Gateway Canyons Resort, 43200 Colorado Highway 141.

FOR FURTHER INFORMATION CONTACT: David Boyd, Public Affairs Specialist, Colorado River Valley Field Office, 970–876–9000.

SUPPLEMENTARY INFORMATION: The 15-member NW RAC advises the Secretary of the Interior, through the BLM, on a variety of issues associated with resource management of the public lands in northwestern Colorado. On June 20, 2011, the NW RAC's charter was amended to allow the NW RAC to make recommendations of fee proposals associated with recreational use of BLM-managed public lands in northwestern Colorado under the Federal Lands Recreation Enhancement Act (FLREA). At the December 1 meeting, the NW RAC will consider two new fee proposals being developed by the Grand Junction Field Office, and one fee adjustment in the Kremmling Field Office.

The first proposal would allow the BLM to initiate an expanded amenity fee program for the 18 Road Campground in the North Fruita Desert. The BLM is proposing this fee to address maintenance and improvement issues at the campground based on significant increases in visitation. Fees would allow for campground improvements, including the addition of up to 60 new campsites.

The second proposal would allow the BLM to initiate a fee program for the Ruby-Horsethief section of the Colorado River. This fee would accompany an individual Special Recreation Permit for overnight camping and would assist the BLM in enhancing management to reduce visitor conflict and protect public land resources from damage through enforcement, land restoration and regular patrols.

The fee adjustment proposal would adjust the fee structure at the Pumphouse and Radium recreation sites along the Upper Colorado River. Fees have been charged in the area since 1998. Adjustments are necessary to keep pace with increased costs of maintaining and improving these areas.

More information about these proposals and the complete agenda for December 1 are available on the NW RAC's Web site at *http://www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.* These meetings are open to the public. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited at the discretion of the Chair.

A separate Notice of Intent will be published in the **Federal Register** at a later date to announce the BLM's intent to collect fees on these two areas of public land. A Notice of Intent is not required for the fee adjustment proposal.

Helen M. Hankins,

State Director.

[FR Doc. 2011–27621 Filed 10–24–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT92000 L13100000 FI0000 25–7A]

Notice of Proposed Class II Reinstatement of Terminated Oil and Gas Lease, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act, Bro Energy LLC timely filed a petition for reinstatement of oil and gas lease UTU85562 lands in Carbon County, Utah, accompanied by all required rentals and royalties accruing from July 1, 2011, the date of termination.

FOR FURTHER INFORMATION CONTACT: Kent Hoffman, Deputy State Director, Lands and Minerals, Utah State Office, Bureau of Land Management, 440 West 200 South, Salt Lake City, Utah 84145, phone (801) 539–4063. 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. 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 lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

The public has 30 days after publication in the **Federal Register** to comment on the issuance of the Class II reinstatement. If no objections are received within that 30-day period, the BLM will issue a decision to the lessee reinstating the lease. Written comments will be accepted by fax, e-mail, or letter to: Bureau of Land Management, Utah State Office, Attn: Kent Hoffman, P.O. Box 45155, Salt Lake City, UT 84145.

Having met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 2011, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Approved.

Shelley J. Smith,

Acting State Director.

[FR Doc. 2011–27560 Filed 10–24–11; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 52030, LLCA920000 L1310000 FI0000]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease CACA 52030, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Lands Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease CACA 52030 from Plains Exploration & Production Co. The petition was filed on time and was accompanied by all required rentals and royalties accruing from June 1, 2011, the date of termination.

FOR FURTHER INFORMATION CONTACT: Rita Altamira, Land Law Examiner, Branch of Adjudication, Division of Energy and Minerals, BLM California State Office, 2800 Cottage Way, W–1623, Sacramento, California 95825, (916) 978–4378.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the BLM for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the BLM proposing to reinstate the lease effective June 1, 2011, subject to the original terms and

condition of the lease and the increased rental and royalty rates cited above.

Laurie I. Moore,

Acting Supervisor, Branch of Adjudication, Division of Energy & Minerals.

[FR Doc. 2011–27561 Filed 10–24–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV9230000 L13100000.FI0000 241A; NVN–080833; NVN–080834; NVN–080834; NVN–80835; 11–08807; MO# 4500022597: TAS: 14x1109]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Lands Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Gasco Production Company for noncompetitive oil and gas leases NVN–080833, NVN–080834, NVN–080835, and NVN–080836 on land in White Pine County, Nevada. The petition was timely filed and was accompanied by all the rentals due since the leases terminated under the law. No valid leases have been issued affecting the lands.

FOR FURTHER INFORMATION CONTACT: Elaine Guenaga, BLM Nevada State Office, 775–861–6539, or *e-mail: eguenaga@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: The lessee has agreed to the amended lease terms for rental and royalty at the rate of $5 per acre or fraction thereof per year and 16–2/3 percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Department for the cost of this **Federal Register** notice. The lessee has met all of the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate the leases effective November 1, 2010 under the original terms and conditions of the leases and the increased rental and royalty rates cited above. The BLM has not issued a lease affecting the lands encumbered by the leases to any other interest in the interim.

Authority: 43 CFR 3108.2–3(a)

Gary Johnson,

Deputy State Director, Minerals Management.

[FR Doc. 2011–27569 Filed 10–24–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–1011–8604; 2200–3200–665]

Proposed Information Collection; Nomination of Properties for Listing on the National Register of Historic Places

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. This IC is scheduled to expire on May 31, 2012. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: Please submit your comment on or before December 27, 2011.

ADDRESSES: Please send your comments on the IC to Madonna Baucum, Information Collections Coordinator, National Park Service, 1201 Eye St., NW., MS 1242, Washington, DC 20005 (mail); or *madonna_baucum@nps.gov* (e-mail). Please reference Information Collection 1024–0018.

FOR FURTHER INFORMATION CONTACT: Lisa Deline, NPS Historian, National Register of Historic Places, 1201 Eye St., NW, 20005. You may send an e-mail to *Lisa_Deline@nps.gov* or contact her by telephone at (202/354–2239) or via fax at (202/371–2229). You are entitled to a copy of the entire IC package free-of-charge.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Register of Historic Places (National Register) is the official Federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. National Register properties have significance to the history of communities, States, or the Nation. The National Historic Preservation Act of 1966 requires the Secretary of the Interior to maintain and expand the National Register, and to establish criteria and guidelines for including properties on the National Register. National Register properties must be considered in the planning for Federal or federally assisted projects, and listing on the National Register is required for eligibility for Federal rehabilitation tax incentives.

The National Park Service administers the National Register. Nominations for listing historic properties come from State Historic Preservation Officers, from Federal Preservation Officers for properties owned or controlled by the United States Government, and from Tribal Historic Preservation Officers for properties on tribal lands. Private individuals and organizations, local governments, and American Indian tribes often initiate this process and prepare the necessary documentation. Regulations at 36 CFR 60 and 63 establish the criteria and guidelines for listing properties.

We use three forms for nominating properties and providing documentation for the proposed listings:

- NPS Form 10–900 (National Register of Historic Places Registration Form).
- NPS Form 10–900-a (National Register of Historic Places Continuation Sheet).
- NPS Form 10–900-b (National Register of Historic Places Multiple Property Documentation Form).

These forms and documentation go to the State Historic Preservation Office (SHPO) of the State where the property is located. The SHPO can take one of several options: reject the property, ask for more information, list the property just with the State, or send the forms to us for listing on the National Register. Once we receive the forms, we conduct a similar review process.

Listing on the National Register provides formal recognition of a property's historical, architectural, or archeological significance based on national standards used by every State. The listing places no obligations on private property owners, and there are no restrictions on the use, treatment, transfer, or disposition of private property.

II. Data

OMB Control Number: 1024–0018.

Title: Nomination of Properties for Listing in the National Register of Historic Places, 36 CFR 60 and 63.

Form(s): 10–900, 10–900–a, and 10–900–b.

Type of Request: Extension of a previously approved collection of information.

Description of Respondents: State, tribal, and local governments; businesses; nonprofit organizations; and individuals.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: On Occasion.

Activity	Annual responses	Avgerage time/ response (hr)	Total annual burden hours
(1) Multiple Property Submission	34	36	1,224
(2) Individual Nominations	941	67.5	63,518
(3) District Nominations	306	123	37,638
Total	1,281		102,380

III. Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 18, 2011.

Robert M. Gordon,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2011–27600 Filed 10–24–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–WHHO–1011–8602; 3950–SZM]

Notice of Public Meeting and Request for Comments

AGENCY: National Park Service, Interior.

ACTION: Notice/Request for Public Meeting and Public Comments—The National Christmas Tree Lighting and the subsequent 31 day event.

SUMMARY: The National Park Service is seeking public comments and suggestions on the planning of the 2011 National Christmas Tree Lighting and the subsequent 31 day event.

DATES: The meeting will be held on November 10, 2011. Written comments will be accepted until November 10, 2011.

ADDRESSES: The meeting will be held at 9 a.m. on November 10, 2011, in Room 234 of the National Capital Region Headquarters Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park). Written comments may be sent to the Chief of Interpretation and Education, White House Visitor Center, 1100 Ohio Drive, SW., Washington, DC 20242. Due to delays in mail delivery, it is recommended that comments be provided by telefax at 202–208–1643 or by e-mail to *Russell_Virgilio@nps.gov.* Comments may also be delivered by messenger to the White House Visitor Center at 1450 Pennsylvania Avenue, NW., in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Russell Virgilio at the White House Visitor Center weekdays between 9 a.m., and 4 p.m., at (202) 208–1631.

SUPPLEMENTARY INFORMATION: The National Park Service is seeking public comments and suggestions on the planning of the 2011 National Christmas Tree Lighting and the subsequent 31 day event, which opens on December 1, 2011, on the Ellipse (President's Park), south of the White House. In order to facilitate this process the National Park Service will hold a meeting at 9 a.m. on November 10, 2011, in Room 234 of the National Capital Region Headquarters Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park). Persons who would like to comment at the meeting should notify the National Park Service by November 7, 2011, by calling the White House Visitor Center weekdays between 9 a.m., and 4 p.m., at (202) 208–1631.

In addition public comments and suggestions on the planning of the 2011 National Christmas Tree Lighting and the subsequent 31 day event may be submitted in writing. Written comments may be sent to the Chief of Interpretation and Education, White House Visitor Center 1100 Ohio Drive, SW., Washington, DC 20242, and will be accepted until November 10, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Dated: October 6, 2011.

John Stanwich,

Deputy National Park Service Liaison to the White House.

[FR Doc. 2011–27598 Filed 10–24–11; 8:45 am]

BILLING CODE 4312–54–P

DEPARTMENT OF THE INTERIOR

National Park Service

[1730–SZM]

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Two Hundred Eighty-First notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10) of a meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The meeting of the Cape Cod National Seashore Advisory Commission will be held on November 14, 2011, at 1 pm.

ADDRESSES: The Commission members will meet in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The regular business meeting is being held to discuss the following:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting (September 12, 2011).
3. Reports of Officers.
4. Reports of Subcommittees.
5. Superintendent's Report:

Update on Dune Shacks;
Improved Properties/Town Bylaws;
Herring River Wetland Restoration;
Wind Turbines/Cell Towers;
Flexible Shorebird Management;
Highlands Center Update;
Alternate Transportation funding;
Ocean stewardship topics—shoreline change;
50th Anniversary;
North Beach Cottages, Chatham.

6. Old Business.
7. New Business.
8. Date and agenda for next meeting.
9. Public comment and;
10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the

meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. 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.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 19, 2011.

George E. Price, Jr.,

Superintendent.

[FR Doc. 2011–27595 Filed 10–24–11; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on October 18, 2011, a proposed complaint was filed and a proposed Consent Decree lodged in the case of *United States and the State of Missouri* v. *Blue Tee Corp.,* Civil Action No. 11–cv–03408–SWH, in the United States District Court for the Western District of Missouri.

The United States and the State filed a complaint alleging that Blue Tee Corp. is liable pursuant to Section 107(a) of CERCLA in connection with Operable Unit 01 of the Newton County Mine Tailings Superfund Site in Missouri. EPA issued a Record of Decision in June 2010 selecting a remedy to address contamination from mine waste at the Site. The proposed Consent Decree requires Blue Tee Corp. to pay $3 million to EPA and $32,532 to the State of Missouri within thirty (30) days of the effective date of the Decree.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States and the State of Missouri* v. *Blue Tee Corp.,* D.J. Ref. No. 90–11–2–07088/2.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–27490 Filed 10–24–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on October 17, 2011, a proposed consent decree with defendant Boehringer Ingelheim Vetmedica, Inc. (BIV), was lodged in the civil action *United States* v. *Boehringer Ingelheim Vetmedica, Inc.,* No. 11–cv–06100–SOW, in the United States District Court for the Western District of Missouri.

In this action the United States is seeking civil penalties pursuant to Sections 113(b) and 608(c) of the Clean Air Act (CAA), 42 U.S.C. 7413(b) & 7671g(c), against BIV for violations that occurred at BIV's St. Joseph, Missouri, facility. The United States alleges in its complaint that the defendant failed to comply with regulations issued pursuant to Section 608 of the CAA, at 40 CFR part 82, Subpart F, that address the venting and release of Class I and Class II refrigerants into the environment. The proposed consent decree will resolve the United States' claims against the defendant under Section 608(c) of the CAA, 42 U.S.C. 7671g(c). Under the terms of the proposed consent decree, defendant BIV will make a cash payment of $300,000 to the United States and perform a Supplemental Environmental Project that will cost approximately $662,000. The Supplemental Environmental Project will be the decommissioning of equipment at a BIV facility in Fort Dodge, Iowa, that contains chlorofluorocarbons (CFCs) and replacement with equipment that does not contain CFCs.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In either case, the comments should refer to the proposed consent decree with defendant BIV in *United States* v.

Boehringer Ingelheim Vetmedica, Inc., D.J. Ref. 90–5–2–1–09876.

The proposed consent decree may be examined at the office of the United States Attorney, 400 East Ninth Street, Kansas City, Missouri 64106.During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.* A paper copy of the Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a paper copy by mail, please enclose a check in the amount of $10.00 (25 cents per page reproduction costs), payable to the U.S. Treasury. When requesting a paper copy if by e-mail or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–27489 Filed 10–24–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0017]

Agency Information Collection Activities; Proposed Collection, Comments Requested: Annual Firearms Manufacturing and Exportation Report

ACTION: 30-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 158, page 50758, on August 16, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 25, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Thomas DiDomenico, 304–616–4548 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Summary of Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.11. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government, State, local, or Tribal government.

Need for Collection

The Annual Firearms Manufacturing and Exportation Report (AFMER) primary purpose is to collect and disseminate data regarding the number of firearms produced by licensed manufacturers within one calendar year. The information from the AFMER report is used compile statistics on the manufacture and exportation of firearms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 4,300 respondents, who will complete the form within approximately 20 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,433 total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–27494 Filed 10–24–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0047]

Agency Information Collection Activities; Proposed Collection, Comments Requested: Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine; DEA Form 488

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and

Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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.

Overview of information collection 1117–0047:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Form 488.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: Title 21 U.S.C. 952 and 21 CFR 1315.34 require that persons who desire to import the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine during the next calendar year shall apply on DEA Form 488 for import quota for such List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 22 persons complete 52 DEA Forms 488 annually for this collection at 1 hour per form, for an annual burden of 52 hours. Respondents complete a separate DEA Form 488 for each List I chemical for which quota is sought.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 52 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–27493 Filed 10–24–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0015]

Agency Information Collection Activities; Proposed Collection, Comments Requested: Application for Registration and Application for Registration Renewal DEA Forms 363 and 363a

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 27, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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.

Overview of information collection 1117–0015

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration and Application for Registration Renewal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA forms 363 and 363a.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit institutions; State, local, and tribal governments.

Abstract: Narcotic treatment programs that dispense narcotic drugs to individuals for maintenance or detoxification treatment must register annually with DEA. Registration is needed for control measures and helps to prevent diversion by ensuring a closed system of distribution of controlled substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA–363 is submitted on an as-needed basis by persons seeking to become registered; DEA–363a is submitted on an annual basis thereafter to renew existing registrations.

	Number of annual respondents	Average time per response	Total annual hours
DEA–363 (paper)	24	0.5 hours (30 minutes)	12
DEA–363 (electronic)	80	0.13 hours (8 minutes)	10.66
DEA–363a (paper)	179	0.5 hours (30 minutes)	89.5
DEA–363a (electronic)	1,201	0.13 hours (8 minutes)	160.13
Total	1,484		272.29

(6) An estimate of the total public burden (in hours) associated with the collection: It is estimated that there are 273 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–27516 Filed 10–24–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0317]

Agency Information Collection Activities; Proposed Collection, Comments Requested: Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired, Identity Theft Supplement (ITS) to the National Crime Victimization Survey (NCVS)

ACTION: 30-day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 158, pages 50758–50759 on August, 15, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 25, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact Lynn Langton, Statistician, Bureau of Justice Statistics, Office of Justice Program, Department of Justice, 810 7th Street, NW., Washington, DC 20530 or facsimile (202) 307–1463, or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Identity Theft Supplement (ITS) to the National Crime Victimization Survey.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* ITS–1. Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Persons 16 years or older in NCVS sampled households in the United States. The Identity Theft Supplement (ITS) to the National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the prevalence, economic cost, and consequences of identity theft on victims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Approximately 79,400 persons 16 years of age or older will complete an ITS interview. The majority of respondents, approximately 75,500 will be administered only the screening portion of the ITS which is designed to filter out those people who have not been victims of identity theft during the past year and therefore are not eligible to continue with the remainder of the supplement questions. We estimate the average length of the ITS interview for these individuals will be 0.08 hours (five minutes). Based on findings from the 2008 ITS, we estimate that approximately 5% of respondents will have experienced at least one incident of identity theft during the prior year. For these victims, we estimate each interview will take 0.25 hours (15 minutes) to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 7,029 hours.

If additional information is required, contact: Mrs. Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and

Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–27495 Filed 10–24–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Request for Comments Under Executive Order 12898

AGENCY: Office of the Assistant Secretary of Policy, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL or Department) is committed to Environmental Justice (EJ). President Obama has renewed agencies' environmental justice planning by reinvigorating Executive Order 12898 (EO 12898), which tasked several Federal agencies with making environmental justice part of their mission. The agencies were directed to do so by identifying and addressing, as appropriate, the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. In August 2011, agencies listed in EO 12898 signed a Memorandum of Understanding (EJ MOU), which, among other things, commits agencies to develop a final Environmental Justice Strategy. The purpose of this notice is to invite public comment on how the Department of Labor can address environmental justice through its programs, policies, regulations or reporting requirements.

DATES: Comments must be received on or before November 18, 2011.

ADDRESSES: You may submit comments through *http://dolenvironmentaljustice.ideascale.com/.*

All comments will be available for public inspection at *http://dolenvironmentaljustice.ideascale.com/.*

FOR FURTHER INFORMATION CONTACT: E. Christi Cunningham, Associate Assistant Secretary for Regulatory Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2312, Washington, DC 20210, *cunningham.christi@dol.gov,* (202) 693–5959; (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: Executive Order 12898 did not create a new legal remedy. As an internal management tool of the Executive Branch, the Order directs Federal agencies to put in place procedures and take actions to make achieving environmental justice part of their basic mission. Former President Clinton explained that Federal agencies have the responsibility to promote nondiscrimination in Federal programs substantially affecting human health and the environment. Accordingly, agencies must implement actions to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations and federally-recognized Indian tribes. The Department views Environmental Justice from a workplace training, health and safety perspective. The Department is developing an Environmental Justice Strategy that is in line with the mission of the Department and Secretary Solis' vision for the future: good jobs for everyone. The vision of good jobs for everyone includes ensuring that workplaces are safe and healthy; helping workers who are in low-wage jobs or out of the labor market find a path into middle-class jobs; and helping middle-class families remain in the middle-class. The Department's Environmental Justice Strategy focuses on agencies directly involved with worker training (the Employment Training Administration (ETA)), and health and safety issues (the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA)).

Request for Comments: As part of our development of the DOL Environmental Justice Strategy, we are soliciting public comment. Your input is important to us. Please provide responses that are supported with specific examples and data, where possible.

This request for public input will inform development of the Department of Labor's draft Environmental Justice Strategy. To facilitate receipt of the information, the Department has created an Internet portal specifically designed to capture your input and suggestions, *http://dolenvironmentaljustice.ideascale.com/.* The portal contains a series of questions designed to gather information on how DOL can best meet the requirements of the Executive Order. The portal is open to receive comments through November 18, 2011.

Questions for the Public: The Department of Labor intends the questions on the portal to represent a starting point for discussion of the draft Strategic Plan. The questions are meant to initiate public dialogue, and are not intended to restrict the issues that may be raised or addressed. The questions were developed with the intent to probe a range of areas.

When addressing these questions, the Department of Labor requests that commenters identify with specificity the program, policy, regulation or reporting requirement at issue, providing legal citation(s) where available. The Department also requests that submitters provide, in as much detail as possible, an explanation of why a program, policy, regulation or reporting requirement should be modified, streamlined, expanded, or repealed as well as specific suggestions of ways the Department of Labor can better achieve environmental justice. Whenever possible, please provide empirical evidence and data to support your response.

The Department of Labor is issuing this request solely to seek useful information as it develops its plan. While responses to this request do not bind the Department of Labor to any further actions related to the response, all submissions will be made available to the public on *http://dolenvironmentaljustice.ideascale.com/.*

Authority: Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' February 11, 1994. 59 FR 7629 (Feb. 16, 1994).

Dated: October 12, 2011.

William E. Spriggs,

Assistant Secretary for Policy.

[FR Doc. 2011–27505 Filed 10–24–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0057]

Telecommunications; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirement contained in the Standard on Telecommunications (29 CFR 1910.268). The purpose of this requirement is to ensure that workers have been trained as required by the Standard to prevent risk of death or serious injury.

DATES: Comments must be submitted (postmarked, sent, or received) by December 27, 2011.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0057, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0057). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Under the paperwork requirement specified by paragraph (c) of the Standard, an employer must certify that his or her workers have been trained as specified by the training provision of the Standard. Specifically, employers must prepare a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The information collected would be used by employers as well as compliance officers to determine whether employees have been trained according to the requirements set forth in 29 CFR 1910.268(c).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirement contained in the Standard on Telecommunications (29 CFR 1910.268). In the existing ICR, the Agency calculated burden hours and cost for the training certification record for *all* workers in the telecommunications industry. The burden hours have decreased based on the number of telecommunication workers installing and repairing lines and equipment. Therefore, OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirement specified by the Standard from 1,087 hours to 1,077 hours, a total difference of 10 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Telecommunications (29 CFR 1910.268).

OMB Number: 1218–0225.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 659.

Frequency of Response: On occasion.

Average Time per Response: Two (2) minutes for an establishment to disclose training records and 2 minutes for the training record to be generated.

Estimated Total Burden Hours: 1,077.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0057). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an

electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number, so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on October 20, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–27538 Filed 10–24–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit modifications issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 19, 2011, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 20, 2011 to:

Sam Feola Permit No. 2012–008.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–27549 Filed 10–24–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0245]

Access Authorization Program for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to Regulatory Guide 5.66, ''Access Authorization Program for Nuclear Power Plants.'' This guide describes a method that NRC staff considers acceptable to implement the requirements related to an access authorization program.

ADDRESSES: You can access publicly available documents related to this regulatory guide using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The regulatory guide is available electronically under ADAMS Accession Number ML112060028. The regulatory analysis may be found in ADAMS under Accession Number ML112060032.

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

FOR FURTHER INFORMATION CONTACT: Richard Jervey, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–215–7404; e-mail: *Richard.Jervey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The NRC typically seeks public comment on a draft version of a regulatory guide by announcing its availability for comment in the **Federal Register**. However, the NRC may directly issue a final regulatory guide without a draft version or public comment period if the changes to the regulatory guide are non-substantive, including changes to the Regulatory Position section of the regulatory guide. Issuance of regulatory guides using this direct final process reduces processing time and review costs. A regulatory guide revised using this process is called an Administratively Changed Guide (ACG).

Revision 2 of RG 5.66 is being issued directly as a final regulatory guide because the changes between Revision 2 and Revision 1 are non-substantive. Regulatory Guide (RG) 5.66 was written to provide guidance to licensees for the access authorization programs required by Title 10 of the Code of Federal Regulations (10 CFR), section 73.56, ''Personnel Access Authorization Requirements for Nuclear Power Plants,'' and 10 CFR part 26, ''Fitness for Duty Programs.'' The RG was

previously updated to include enhanced requirements that had been provided in orders to nuclear power plant license holders following the terrorist attacks of September 11, 2001. The access authorization program required by the rule consists of a background investigation with periodic reinvestigations, a psychological assessment with periodic reassessments for enumerated critical personnel, a behavior observation program that includes self-reporting requirements, and determinations of trustworthiness and reliability for contractors who support licensees in meeting these rule requirements. In 10 CFR 73.56, the NRC requires that each applicant for an operating license under the provisions of 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' and each holder of a combined license under the provisions of 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' establish, maintain, and implement, in part, the requirements of 10 CFR 73.56 before fuel is allowed on site (in a protected area). These requirements have been established to provide high assurance that individuals granted unescorted access and those certified for unescorted access authorization are trustworthy and reliable and do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.

Access authorization programs are similar between nuclear power plants as there is a large transient workforce requiring access between different power plant sites. In a joint effort between the NRC and the Nuclear Energy Institute (NEI), a program was developed to provide consistency between plant sites. NEI 03–01, ''Nuclear Power Plant Access Authorization Program,'' Revision 3, was issued in May 2009 as a standard model for license holders. Revision 1 to RG 5.66 endorsed NEI 03–01 as an acceptable approach to meet the requirements of 10 CFR 73.56 and 10 CFR Part 26. However, NEI 03–01, as well as an attachment to Revision 1 of RG 5.66, contain security-related information in accordance with 10 CFR 2.390(d)(1), and therefore are not publicly available. Revision 2 of RG 5.66 is being issued to provide information to the public regarding the NRC's guidance for meeting the requirements of 10 CFR 73.56 and 10 CFR part 26.

II. Further Information

Although Revision 2 of RG 5.66 was not issued for public comment, comments are welcome for all regulatory guides at any time. The input from the public and stakeholders will be considered in planning resources for the further update and enhancement of the regulatory guide series. You may submit comments by contacting Richard Jervey, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–215–7404; e-mail: *RegulatoryGuideDevelopmentBranch.Resource@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of October, 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

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

[FR Doc. 2011–27462 Filed 10–24–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 50–280 and 50–281; NRC–2011–0242]

Facility Operating License Amendment From Virginia Electric and Power Company, Surry Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment; request for comment and hearing, and Order.

DATES: Submit comments by November 25, 2011. A request for a hearing must be filed by December 27, 2011. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by November 4, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0242 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0242. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Fax comments to: RADB at 301–492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The application for amendment, dated July 28, 2011, is available electronically under ADAMS Accession No. ML11215A058. An attachment to the application, dated July 28, 2011, contains SUNSI and, accordingly, this portion is being withheld from public disclosure. A redacted version of the attachment to the application, dated July 28, 2011, is

available electronically under ADAMS Accession No. ML11215A059.

• Federal Rulemaking Web Site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0242.

FOR FURTHER INFORMATION CONTACT: Karen Cotton, Project Manager, Plant Licensing Branch 2–I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1438, e-mail: *Karen.Cotton@nrc.gov.*

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License Nos. DRP–32 and DRP–37 issued to Virginia Electric and Power Company (the licensee) for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia.

The proposed amendment would permanently revise Technical Specification (TS) 6.4.Q, ''Steam Generator (SG) Program,'' to exclude portions of the SG tube below the top of the SG tubesheet from periodic inspections.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection/repair criteria and the steam generator inspection reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the steam generator tube inspection and repair criteria are the steam generator tube rupture (SGTR) event and the steam line break (SLB) postulated accidents.

During the SGTR event, the required structural integrity margins of the steam generator tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the tube-to-tubesheet joint. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes,'' are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural integrity of the steam generator tubes and does not affect other systems, structures, components, or operational features. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from primary water stress corrosion cracking below the proposed limited inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary to secondary leakage flow during the event. However, primary to secondary leakage flow through a postulated broken tube is not affected by the proposed changes since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically expanded outside diameter.

Therefore, the proposed changes do not result in a significant increase in the consequences of a SGTR.

The probability of a SLB is unaffected by the potential failure of a steam generator tube as the failure of the tube is not an initiator for a SLB event. The consequences of a steam line break (SLB) are also not significantly affected by the proposed changes. During a SLB accident, the reduction in pressure above the tubesheet on the shell side of the steam generator creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary to secondary leakage. Primary to secondary leakage from tube degradation in the tubesheet area during the limiting accident (i.e., a SLB) is limited by flow restrictions. These restrictions result from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications.

As shown in Table 9–7 of WCAP–17092–P, for Surry for a postulated SLB, a leakage factor of 1.80 has been calculated. For the condition monitoring assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 1.80 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the operational assessment, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 1.80 and compared to the observed operational leakage. The accident induced primary to secondary leak rate limit is 470 gpd (0.33 gpm) per SG. The TS operational primary to secondary leak rate limit of 150 gpd (0.1 gpm) times 1.80 provides significant margin between accident leakage and allowable operational leakage.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change that alters the steam generator inspection/repair criteria and the steam generator inspection reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change that alters the steam generator inspection/repair criteria and the steam generator inspection reporting criteria maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97–06, Revision 2, ''Steam Generator Program Guidelines,'' and RG 1.121 are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting

GDC 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, the H* analysis, documented in Section 4.0 of the license amendment request, defines a length of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received by November 25, 2011 will be considered in making any final determination. You may submit comments using any of the methods discussed in the **ADDRESSES** Section of this document.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

II. Opportunity to Request a Hearing; Petitions for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, Petitions to intervene, Requirements for standing, and Contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. You may also call the PDR at 1–800–397–4209 or 301–415–4737. The NRC regulations are accessible electronically from the NRC Web site at *http://www.nrc.gov.*

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the requestor or petitioner and specifically explain the reasons why the intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must include a concise statement of the alleged facts or expert opinions which support the position of the requestor/petitioner and on which the requestor/petitioner intends to rely at the hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board (the Licensing Board) will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by December 27, 2011. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section,

except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by December 27, 2011.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

III. Electronic Submissions (E-Filing)

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding

officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from October 25, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street; Richmond, VA 23219.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 19th day of October 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in this Proceeding

Day	Event/Activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	The Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (The NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If the NRC staff makes the finding of need for SUNSI and likelihood of standing, the NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If the NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; the NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If the NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for the NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If the NRC staff finds standing and need for SUNSI, deadline for the NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–27547 Filed 10–24–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission, [NRC–2011–0006].

DATE: Weeks of October 24, 31, November 7, 14, 21, 28, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 24, 2011

There are no meetings scheduled for the week of October 24, 2011.

Week of October 31, 2011—Tentative

Tuesday, November 1, 2011 9 a.m. Briefing on the Fuel Cycle Oversight Program (Public Meeting) (Contact: Margie Kotzalas, 301–492–3550) This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 7, 2011—Tentative

There are no meetings scheduled for the week of November 7, 2011.

Week of November 14, 2011—Tentative

There are no meetings scheduled for the week of November 14, 2011.

Week of November 21, 2011—Tentative

There are no meetings scheduled for the week of November 21, 2011.

Week of November 28, 2011—Tentative

Tuesday, November 29, 2011 9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Tanny Santos, 301–415–7270) This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, *TDD:* 301–415–2100, or by e-mail at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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October 20, 2011.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–27684 Filed 10–21–11; 4:15 pm]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Student Beneficiary Monitoring; OMB 3220–0123

Under provisions of the Railroad Retirement Act (RRA), there are two types of benefits whose payment is based upon the status of a child being in full-time elementary or secondary school attendance at age 18–19; a survivor child's annuity benefit under Section 2(d)(2)(iii) and an increase in the employee retirement annuity under the Special Guaranty computation as prescribed in section 3(f)(3).

The survivor student annuity is usually paid by direct deposit at a financial institution to the student's checking or savings account or a joint bank account with the parent. The requirements for eligibility as a student are prescribed in 20 CFR 216.74, and include students in independent study or home schooling.

The RRB requires evidence of full-time school attendance in order to determine that a child is entitled to student benefits. The RRB utilizes the following forms to conduct its student monitoring program. Form G–315, Student Questionnaire, obtains certification of a student's full-time school attendance. It also obtains information on a student's marital status, Social Security benefits, and employment which are needed to determine entitlement or continued entitlement to benefits under the RRA. Form G–315a, Statement of School Official, is used to obtain verification from a school that a student attends school full-time and provides their expected graduation date. Form G–315a.1, School Officials Notice of Cessation of Full-Time Attendance, is used by a school to notify the RRB that a student has ceased full-time school attendance. Completion is required to obtain or retain benefits. The RRB proposes no changes to the forms.

The estimated annual respondent burden is as follows:

Form(s): G–315, G–315a and G–315a.1.

Estimate of Annual Responses: 900 (860 Form G–315's, 20 Form G–315a's and 20 Form G–315a.1's).

Estimated Completion Time: The completion time for Form G–315 is estimated at 15 minutes per response. The completion time for Form G–315a is estimated at 3 minutes per response. The completion time for Form G–315a.1 is estimated at 2 minutes.

Estimated Annual Burden: 217 hours.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.*

Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Patricia.Henaghan@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011–27488 Filed 10–24–11; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29840; 812–13755]

RiverPark Advisors, LLC, et al.; Notice of Application

October 19, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: RiverPark Advisors, LLC (''RiverPark''), RiverPark Funds Trust (the ''Trust'') and ALPS Distributors, Inc. (the ''Distributor'').

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Series of certain actively managed open-end management investment companies to issue exchange-traded shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

FILING DATES: The application was filed on February 17, 2010, and amended on July 29, 2010, December 22, 2010, March 1, 2011, April 26, 2011, September 30, 2011 and October 18, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 14, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: RiverPark and the Trust, 156 West 56th Street, New York, NY 10019; the Distributor, c/o Thomas A. Carter, 1290 Broadway #1100, Denver, CO .

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust will initially create and operate four series of actively-managed portfolios that offer Shares: RiverPark Large Growth ETF, RiverPark/Wedgewood ETF, RiverPark Small Cap Growth ETF and RiverPark Short Term High Yield ETF (together, the ''Initial Funds''). The investment objectives of RiverPark Large Growth ETF, RiverPark/Wedgewood ETF and RiverPark Small Cap Growth ETF will be to seek long-term capital appreciation. The investment objective of RiverPark Short Term High Yield ETF will be to seek high current income and capital appreciation consistent with the preservation of capital.

2. Applicants request that the order apply to the Initial Funds and any future series of the Trust and other future open-end management companies or series thereof that may utilize active management investment strategies (''Future Funds''). Any Future Fund will (a) Advised by RiverPark or an entity controlling, controlled by, or under common control with RiverPark (together with RiverPark, an ''Advisor''), and (b) comply with the terms and conditions of the application.[1] The Initial Funds and Future Funds together are the ''Funds''. Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies (''Portfolio Instruments'').[2] Funds may also invest in ''Depositary Receipts''.[3] A Fund will not invest in any Depositary Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available. Each Fund will operate as an actively managed exchange-traded fund (''ETF''). The Future Funds might include one or more ETFs which invest in other open-end and/or closed-end investment companies and/or ETFs.

3. RiverPark, a Delaware corporation, will be the investment advisor to the Initial Funds. Each Advisor is or will be registered as an ''investment adviser'' under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Advisor may retain investment advisers as sub-advisers in connection with the Funds (each, a ''Subadvisor''). Any Subadvisor will be registered under the Advisers Act. A registered broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act''), which may be an affiliate of the Advisor, will act as the distributor and principal underwriter of the Funds. ALPS Distributors, Inc. will serve as the initial Distributor.

4. Applicants anticipate that a Creation Unit will consist of at least 50,000 Shares and that the price of a Share will range from $20 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Trust (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) A broker or dealer registered under the Exchange Act (''Broker'') or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (such participant, ''DTC Participant''). The Initial Funds and most Future Funds will generally be purchased in Creation Units in exchange for the ''in-kind'' deposit of specified instruments (''Deposit Instruments'') and will generally be redeemed in-kind for specified Portfolio Instruments (''Redemption Instruments''). In-kind purchases and in-kind redemptions will be accompanied by an amount of cash specified by the Advisor (''Cash Balancing Amount''). The Deposit Instruments and the Cash Balancing Amount collectively are referred to as the ''Creation Deposit.'' The Cash Balancing Amount is a cash payment designed to ensure that the net asset value of a Creation Deposit is identical to the net asset value of the Creation Unit it is used to purchase. Certain Future Funds may be purchased entirely for cash (''All-Cash Payment'') and will generally be redeemed in-kind.[4] However, the Trust reserves the right to accept and deliver Creation Units of such Future Funds by means of an in-kind tender of specified Deposit Instruments) and to permit cash redemptions for any Fund.[5]

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company. Each Fund will comply with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

[2] Neither the Initial Funds nor any Future Fund will invest in options contracts, futures contracts or swap agreements.

[3] Depositary Receipts are typically issued by a financial institution, a ''depositary'', and evidence ownership in a security or pool of securities that have been deposited with the depositary. No affiliated persons of applicants will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] On each Business Day (as defined below), prior to the opening of trading on the Stock Exchange (as defined below), the estimated All-Cash Payment for each Fund or a list of the required Deposit Instruments to be included in the Creation Deposit for each Fund, as applicable, the previous day's Cash Balancing Amount, and the estimated Cash Balancing Amount for the current day, will be made available. The Stock Exchange will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments.

[5] Applicants state that in determining whether a particular Fund will be selling or redeeming

Continued

5. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[6] All orders to purchase Creation Units will be placed with the Distributor and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

6. Shares will be listed and traded at negotiated prices on a national securities exchange as defined in section 2(a)(26) of the Act (the ''Stock Exchange'') and traded in the secondary market. Applicants expect that exchange market makers (''Exchange Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include arbitrageurs. Exchange Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[7] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[8] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their net asset value should ensure that the Shares will not trade at a material discount or premium in relation to net asset value per individual share (''NAV'').

8. Shares may be redeemed only if tendered in Creation Units. Redemption requests must be placed by or through an Authorized Participant. Applicants currently contemplate that Creation Units of the Initial Funds will be redeemed principally in-kind (together with a Cash Balancing Amount).[9] To the extent a Fund utilizes in-kind redemptions, Shares in Creation Units will be redeemable on any Business Day, which is defined to include any day that the Trust is open for business as required by section 22(e) of the Act, for the Redemption Instruments, which will be the same as the Deposit Instruments deposited by investors purchasing Creation Units on the same day, except for the limited exceptions noted below. The redeeming investor will also usually pay to the Fund a Transaction Fee.

9. Applicants state that in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, the Funds must comply with the federal securities laws, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act.[10] To the extent in-kind purchases and redemptions are utilized, the Deposit Instruments and Redemption Instruments will correspond *pro rata* to the Fund portfolio, except that there may be minor differences between a basket of Deposit Instruments or Redemption Instruments and a true pro rata slice of a Fund's portfolio solely when (a) It is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement or, (b) in the case of equity securities, rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots. With respect to the Funds that hold short positions, Deposit Instruments and Redemption Instruments will correspond pro rata to the long Portfolio Securities of the relevant Fund. There may be minor differences between a basket of Deposit Instruments or Redemption Instruments and a true pro rata slice of the long Portfolio Securities solely to the extent necessary (a) Because it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement, or (b) because, in the case of equity securities, rounding is necessary to eliminate fractional shares or lots that are not tradable round lots.[11] Because they cannot be transferred in-kind, short positions will not be included in the Deposit Securities and Redemption Securities for a Fund.

10. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' Any advertising material where features of obtaining, buying or selling Creation Units are described or where there is reference to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

11. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments and other assets held by the Fund that will form the basis for the

Creation Units on a cash or in-kind basis, the key consideration will be the benefit which would accrue to Fund investors. In many cases, particularly to the extent the Deposit Instruments are less liquid, investors may benefit by the use of all cash creations because the Advisor would execute trades rather than Exchange Market Makers (as defined below). Applicants believe that the Advisor may be able to obtain better execution for certain Portfolio Instruments due to its size, experience and relationships in the markets. With respect to redemptions, tax considerations may warrant in-kind redemptions which do not result in a taxable event for the Fund.

[6] Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments.

[7] Applicants state that unlike other Stock Exchanges where a lead market maker may oversee trading in Shares, on NASDAQ, numerous Exchange Market Makers may buy and sell shares for their own account. If Shares are listed on NASDAQ, and no designated liquidity provider has been selected, then under NASDAQ's listing requirements, two or more Exchange Market Makers will be registered in Shares and required to make a continuous, two-sided market or face regulatory sanctions.

[8] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[9] To the extent consistent with other investment limitations, the Funds may invest in mortgage- or asset-backed securities, including a ''to-be-announced transaction'' or ''TBA Transactions''. Each Fund intends to substitute a cash-in-lieu amount to replace any Deposit Instrument or Redemption Instrument that is a TBA Transaction. A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA Transactions will be equivalent to the value of the TBA Transaction listed as a Deposit Instrument or Redemption Instrument.

[10] In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[11] A tradeable round lot for an equity security will be the standard unit of trading in that particular type of security in its primary market.

Fund's calculation of NAV at the end of the Business Day.[12]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) Prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from Brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) Secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Funds holding non-U.S. investments (''Global Funds'') is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit. With respect to Future Funds that are Global Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application. Except as disclosed in the SAI for a Fund, deliveries of redemption proceeds for Global Funds are expected to be made within seven days.[13]

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment

[12] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[13] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade date. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that they have under rule 15c6–1.

of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund.

9. Applicants are not seeking relief from section 22(e) with respect to Global Funds that do not effect creations or redemptions in-kind.

Section 12(d)(1) of the Act

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request relief to permit Investing Funds (as defined below) to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Brokers to sell Shares to Investing Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants request that these exemptions apply to: (a) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Funds within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Funds and any Brokers selling Shares of a Fund to an Investing Fund; and (b) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies are referred to herein as ''Investing Management Companies,'' such unit investment trusts are referred to herein as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together are referred to herein as ''Investing Funds'').[14] Investing Funds do not include the Funds. Each Investing Trust will have a sponsor (''Sponsor'') and each Investing Management Company will have an investment adviser within the meaning of section 2(a)(20)(A) of the Act (''Investing Fund Advisor'') that does not control, is not controlled by or under common control with the Advisor. Each Investing Management Company may also have one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, an ''Investing Fund Sub-Advisor''). Each Investing Fund Advisor and any Investing Fund Sub-Advisor will be registered as an investment adviser under the Advisers Act.

12. Applicants submit that the proposed conditions to the requested relief are designed to address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

13. Applicants propose a condition to prohibit an Investing Fund or Investing Fund Affiliate[15] from causing an investment by an Investing Fund in a Fund to influence the terms of services or transactions between an Investing Fund or an Investing Fund Affiliate and the Fund or Fund Affiliate. Applicants propose a condition to limit the ability of the Investing Fund Advisor, or Sponsor, any person controlling, controlled by or under common control with such Advisor or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor, the Sponsor, or any person controlling, controlled by, or under common control with such Advisor or Sponsor (''Investing Fund's Advisory Group'') from (individually or in the aggregate) controlling a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Sub-Advisor, any person controlling, controlled by, or under common control with the Investing Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Advisor or any person controlling, controlled by or under common control with the Investing Fund Sub-Advisor (''Investing Fund's Sub-Advisory Group'').

14. Applicants propose other conditions to limit the potential for an Investing Fund and certain affiliates of an Investing Fund (including Underwriting Affiliates) to exercise undue influence over a Fund and certain of its affiliates, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Sub-Advisor, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor or Investing Fund Sub-Advisor, employee or Sponsor is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to the Fund is covered by section 10(f) of the Act.

15. Applicants propose several conditions to address the concerns regarding layering of fees and expenses. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, an Investing Fund Advisor, trustee of an Investing Trust

[14] Applicants anticipate that there may be Investing Funds that are not part of the same group of investment companies as the Funds but may be subadvised by an Advisor.

[15] An ''Investing Fund Affiliate'' is defined as the Investing Fund Advisor, Investing Fund Sub-Advisor, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. A ''Fund Affiliate'' is defined as an investment adviser, promoter or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

(''Trustee'') or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, Trustee or Sponsor or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, Trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Investing Fund in the Fund. Applicants also propose a condition to prevent any sales charges or service fees on shares of an Investing Fund from exceeding the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[16]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

17. To ensure that the Investing Funds understand and comply with the terms and conditions of the requested order, any Investing Fund that intends to invest in a Fund in reliance on the requested order will be required to enter into a participation agreement (''FOF Participation Agreement'') with the Fund. The FOF Participation Agreement will include an acknowledgment from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

18. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Advisor (an ''Affiliated Fund'').

19. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[17] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or a second-tier affiliates.[18]

20. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchases and redeemers, respectively, and will correspond *pro rata* to the Fund's portfolio instruments. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be effected in exactly the same manner for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds. Therefore, applicants state that the in-kind purchases and redemptions create no opportunity for affiliated persons or the Applicants to effect a transaction detrimental to other holders of Shares of that Fund. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

21. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[19] Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchases and redeemers, respectively, and will correspond *pro rata* to the Fund's portfolio instruments. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions:

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively-Managed Exchange-Traded Fund Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of

[16] Any references to NASD Conduct Rule 2830 include any successor or replacement rule to NASD Conduct Rule that may be adopted by FINRA.

[17] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[18] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is also intended to cover the in-kind transactions that may accompany such sales and redemptions.

[19] Applicants acknowledge that the receipt of compensation by (a) An affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Advisor or any Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Advisor or a person controlling, controlled by or under common control with the Investing Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Advisor and any Investing Fund Sub-Advisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Advisor will waive fees otherwise payable to the Investing Fund Sub-Advisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Advisor, or an affiliated person of the Investing Fund Sub-Advisor, other than any advisory fees paid to the Investing Fund Sub-Advisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Advisor. In the event that the Investing Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and

preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27531 Filed 10–24–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold an Open Meeting on Monday, October 31, 2011, in the Multipurpose Room, L–006. The meeting will begin at 9 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

On October 7, 2011, the Commission published notice of the Committee meeting (Release No. 33–9266), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes opening remarks, introduction of Committee members, discussion of the Committee's agenda and organization, and discussion of capital formation issues relevant to small and emerging companies.

For further information, please contact the Office of the Secretary at (202) 551–5400.

October 21, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27750 Filed 10–21–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 65592; File No. SR–BX–2011–046]

In the Matter of NASDAQ OMX BX, Inc.: Order Denying NASDAQ OMX BX, Inc.'s Petition for Review of Division of Trading and Markets Suspension of and Institution of Proceedings by Delegated Authority of SR–BX–2011–046; Lifting the Automatic Stay; and Notice of Designation of a Longer Comment Period for the Proceedings

Before the Securities and Exchange Commission October 19, 2011.

Pursuant to Rule 431(b)(2) of the Rules of Practice,[1] *It is ordered* that the petition [2] of Boston Options Exchange Group LLC, an options trading facility of NASDAQ OMX BX, Inc., (''BOX'') for review of the temporary suspension and institution of proceedings by the Division of Trading and Markets (the ''Division'') by delegated authority of SR–BX–2011–046 [3] is hereby denied. *It is further ordered* that the automatic stay of delegated action pursuant to Rule 431(e) of the Rules of Practice [4] is hereby lifted.

The Commission hereby is also extending the length of the period for market participants to submit comments related to SR–BX–2011–046 until November 17, 2011 and the length of the period for submission of rebuttal comments until December 14, 2011.

On July 15, 2011, NASDAQ OMX BX, Inc. filed, pursuant to Section 19(b)(1) of the Exchange Act [5] and Rule 19b–4 thereunder, [6] a proposed rule change that amended the BOX Fee Schedule to increase the credits and fees for certain transactions in the BOX Price Improvement Period (''PIP'').[7]

[1] 17 CFR 201.431(b)(2).

[2] Petition for Review of Action by Delegated Authority from BOX, dated September 27, 2011 (''BOX Petition'').

[3] *See* Securities Exchange Act Release No. 65330 (September 13, 2011), 76 FR 58065 (September 19, 2011) (''Suspension Order'').

[4] 17 CFR 201.431(e).

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] The PIP is a mechanism in which members submit an agency order on behalf of a customer for price improvement over the BOX BBO, paired with a contra-order guaranteeing execution of the agency order at or better than the NBBO. The contra-order could be for the account of the member, or an order solicited from someone else. The agency order is exposed for a 1-second auction in which members may submit competing interest at the same price or better. The initiating member is guaranteed 40% of the order (after public customers) at the final price for the PIP order, assuming it is at the best price. *See* Chapter V, Section 18 of the BOX Rules.

The Division, pursuant to delegated authority,[8] published BOX's proposed rule change for notice and comment on August 3, 2011.[9] The Commission received four comment letters on the proposal, three urging the Commission to suspend the proposal and institute proceedings, and one urging the Commission not to take such action.[10] BOX filed a response to comments.[11] As evidenced by these letters, market participants have differing views on the impact of the proposal and whether it is consistent with the Act. In recognition of the issues raised by commenters and in view of the significant legal and policy issues raised by the proposal, on September 13, 2011, the Division, pursuant to delegated authority,[12] temporarily suspended BOX's proposal and simultaneously instituted proceedings to determine whether to approve or disapprove the proposal.[13]

In the Suspension Order, the Division, pursuant to delegated authority, states its belief that it is appropriate to evaluate the effect of the proposed rule change on competition among different types of market participants and on market quality, and that it intends to assess whether the potential fee disparity between BOX Participants who initiate a PIP auction (''PIP Initiators'') and BOX Participants who respond to a PIP auction (''PIP Responders'') is consistent with the statutory requirements applicable to a national securities exchange under the Act,[14] in particular the standards requiring, among other things, that exchange rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[15] The Suspension Order finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act to temporarily suspend the proposed rule change and that it is appropriate in the public interest to institute disapproval proceedings in view of the significant legal and policy issues raised by the proposal.[16]

On September 20, 2011, BOX filed a notice of intention to petition for review from BOX stating that, pursuant to the Commission Rule of Practice 430(b),[17] BOX appeals to the Commission the Division's action to institute proceedings by delegated authority. Pursuant to Rule of Practice 431(e), a notice of intention to petition for review results in an automatic stay of the action by delegated authority.[18] On September 27, 2011, BOX filed a petition to review the Division's action by delegated authority instituting proceedings to determine whether to approve or disapprove the filing.[19]

In considering whether to accept or reject the BOX Petition, Rule 411(b)(2) of the Rules of Practice[20] requires that the Commission determine whether:

(i) A prejudicial error was committed by the Division in the conduct of the proceeding; or

(ii) The Division's decision embodies:

(A) A finding or conclusion of material fact that is clearly erroneous; or

(B) A conclusion of law that is erroneous; or

(C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

For the reasons discussed below, the Commission finds that BOX has not made a reasonable showing that the Division committed a prejudicial error or that the Division's delegated action involved an error of fact or law that would provide an appropriate basis for Commission review.

First, the BOX Petition does not allege that the Division committed any prejudicial error in the conduct of the proceedings, including the decision to temporarily suspend and institute proceedings to determine whether to approve or disapprove the proposal. The Commission recognizes the issues raised as to the impact of the fee change and the differing views of market participants outlined in the comments received. The Division's action through the Suspension Order provides an opportunity for the Commission to receive more focused comment and data on the issues raised, as well as an opportunity for the Commission to more fully assess the issues raised and whether the filing is consistent with the Act. Based on the proposed rule change as filed, the comments received, and BOX's response to comments, the Commission finds that the Division acted appropriately in finding that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act to temporarily suspend the filing.[21] Accordingly, the Commission finds that the Division did not commit any prejudicial error in temporarily suspending and instituting proceedings with respect to BOX's proposed rule change.

Second, the Division's action to suspend the filing and institute proceedings is an interim step in the Commission's consideration of substantive issues raised by the filing, and one that did not embody a finding of material fact. The Suspension Order therefore is incapable of embodying a finding or conclusion of material fact that is erroneous. Although BOX notes that it provided the Division with data relating to six weeks of trading in the BOX PIP that BOX believes supports a finding that its fees are consistent with

[8] 17 CFR 200.30–3(a)(12).

[9] *See* Securities Exchange Act Release No. 64981 (July 28, 2011), 76 FR 46858 (August 3, 2011).

[10] *See* letters to Elizabeth Murphy, Secretary, Commission, from John C. Nagel, Managing Director and General Counsel, Citadel Securities LLC (''Citadel''), dated August 12, 2011 (''Citadel Letter''); Andrew Stevens, Legal Counsel, IMC Financial Markets (''IMC''), dated August 15, 2011 (''IMC Letter''); Michael J. Simon, Secretary, International Securities Exchange (''ISE''), dated August 22, 2011 (''ISE Letter''), and Christopher Nagy, Managing Director Order Strategy, TD Ameritrade, Inc. (''TD Ameritrade''), dated September 12, 2011 (''TD Ameritrade Letter'').

[11] *See* letter to Elizabeth Murphy, Secretary, Commission, from Anthony D. McCormick, Chief Executive Officer, BOX, dated September 9, 2011 (''BOX Letter''). BOX filed its response to comments on Friday, September 9, 2011, two business days prior to the end of the 60 day period during which the Commission could act to suspend the filing and institute proceedings, and 16 days after the close of the original comment period for the filing.

[12] 17 CFR 200.30–3(a)(57) and (58).

[13] *See* Suspension Order, *supra* note 3. Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), provides the statutory standard by which the Commission may temporarily suspend an immediately effective proposed rule change. Specifically, Section 19(b)(3)(C) provides that the Commission may take such action ''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].'' 15 U.S.C. 78s(b)(3)(C). If the Commission temporarily suspends a rule change, it must institute proceedings under Section 19(b)(2)(B) of the Act. *See* 15 U.S.C. 78s(b)(3)(C).

[14] *See* Suspension Order, *supra* note 3, at 58067. Under the proposed rule change, the Exchange would charge both the PIP Initiator and the PIP Responder the same fee for executing an order in the PIP. However, if the PIP Initiator also submits the agency order into the PIP, the PIP Initiator receives the rebate paid to the agency order that is auctioned in the PIP. As a result, if the fee the PIP Initiator pays is aggregated with the rebate the PIP Initiator receives for the agency order (*i.e.,* a ''net'' fee), the PIP Initiator would pay a lower net fee compared to PIP Responders. The disparity between the net fees charged to a PIP Initiator and those charged to a PIP Responder could be as high at $0.90 per contract. *See id.* at 58066–58067.

[15] *See id.* at 58067.

[16] *See id.*

[17] 17 CFR 201.430(b).

[18] 17 CFR 201.431(e).

[19] *See* BOX Petition, *supra* note 2.

[20] 17 CFR 201.411(b)(2).

[21] Pursuant to the provisions of Section 19(b)(3)(C) of the Act, the Commission must institute proceedings to determine whether to approve or disapprove an immediately effective rule change if it suspends such rule change. *See* 15 U.S.C. 78s(b)(3)(C).

the Act,[22] the Division also received data from a commenter purporting to show a decline in average price improvement and average percentage of contracts price improved in the PIP.[23] The Suspension Order states that the Commission has not reached any conclusions with respect to the issues involved.[24] To the contrary, the Suspension Order seeks additional comment and data with respect to the issues raised by the filing,[25] and the institution of proceedings will provide the Commission the opportunity to more fully assess the issues raised, including a further assessment of the facts underlying the issues.

Third, the Division's action pursuant to delegated authority to suspend the filing and institute proceedings is an interim step that does not involve a conclusion of law that is clearly erroneous. The Suspension Order states that the Commission has not reached any conclusions with respect to the issues involved,[26] and no finding as to whether the proposed rule change is consistent with the Act was made in the Suspension Order. To the contrary, the Suspension Order seeks additional comment and data with respect to the issues raised by the filing, which will help the Commission further assess the proposed rule change and inform its ultimate decision as to whether the proposed rule change is consistent with the Act. Based on the proposed rule change as filed, the comments received, and BOX's response to comments, the Commission finds that the Division acted appropriately in finding that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act to temporarily suspend the filing.[27]

Fourth, the BOX Petition does not specifically allege that the Division's action pursuant to delegated authority was an exercise of discretion or decision of law or policy that is important and that the Commission should review pursuant to the standard of Rule 431(b)(2). For purposes of determining whether to grant de novo review of the Division's exercise of delegated authority with respect to the Suspension Order, the Commission does not believe that the act of suspending and instituting proceedings in this filing embodies an exercise of discretion or a decision of law or policy that is important and that the Commission should review. The Commission believes that the Division acted appropriately, based on the record, in determining that the underlying BOX proposed rule change does merit additional opportunity for comment and Commission consideration. The Division's Suspension Order is the proper statutory mechanism to commence that process and conduct such review.

Finally, in its petition, BOX requests, if the Commission does determine to institute proceedings to determine whether to approve or disapprove the proposal, that the Commission not stay the effectiveness of the PIP fee during the course of the proceedings.[28] BOX notes its belief that the proposed fees allow it to compete with larger options exchanges that charge payment for order flow fees that, in BOX's view, are substantially similar to the proposed fees and that suspension of the fees would cause unfair harm to BOX.[29] However, under Section 19(b)(3)(C) of the Act,[30] the Commission cannot institute proceedings to determine whether to approve or disapprove an immediately effective rule change unless it first suspends the rule change. The Commission does not find a sufficient basis in the BOX Petition to diverge from the process contemplated in the statute in this case by lifting the suspension of the BOX PIP fee while it conducts the proceedings to determine whether to approve or disapprove BOX's proposed rule change. Importantly, commenters have raised material concerns (including one who presented supporting data) that call into question whether BOX's proposal unduly burdens competition and whether it is consistent with the Act. Among other things, the Commission will consider these issues, as well as BOX's assertion that its proposed fees are comparable to fees in effect at other options exchanges, during the conduct of the proceedings on BOX's proposal.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27517 Filed 10–24–11; 8:45 am]

BILLING CODE 8011–01–P

[22] The Division noted this data in the Suspension Order. *See* Suspension Order, *supra* note 3, at 58067.

[23] *See* Citadel Letter, *supra* note 10, at 3.

[24] *See* Suspension Order, *supra* note 3, at 58067.

[25] *See id.* at 58067–68.

[26] *See id.* at 58067.

[27] Pursuant to the provisions of Section 19(b)(3)(C) of the Act, the Commission must institute proceedings to determine whether to approve or disapprove an immediately effective rule change if it suspends such rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[28] *See* BOX Petition, *supra* note 2, at 10.

[29] *See id.* at 9–10.

[30] *See* 15 U.S.C. 78s(b)(3)(C).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65590; File No. SR–NYSEAmex–2011–80]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Retire a Pilot Program and Harmonize the Exchange's rules Regarding Listing Expirations with the Existing Rules of Other Exchanges

October 19, 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 October 13, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Options Rule 903 (Series of Options Open for Trading) and Commentary .11 thereto to retire a pilot program and harmonize the Exchange's rules regarding listing expirations with the existing rules of other exchanges. The text of the proposed rule change is available at the Exchange, at *http://www.nyse.com*, at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to retire the Additional Expiration Months Pilot Program (''Pilot Program'') and to amend the Exchange's rules regarding listing expirations. This filing is based on the existing rules of the NASDAQ Options Market (''NOM'') [3] and NASDAQ OMX PHLX LLC (''PHLX'').[4]

NYSE Amex Options Rules Governing Listing of Expirations

Pursuant to NYSE Amex Rule 903, the Exchange typically opens four expiration months for each class of options open for trading on the Exchange: The first two being the two nearest months, regardless of the quarterly cycle on which that class trades, and the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific class. For competitive reasons, in 2010 the Exchange established the Pilot Program pursuant to which it could list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on the Exchange.[5] The filing to establish the Pilot Program was substantially similar in all material respects to a proposal of the International Securities Exchange, LLC (''ISE'').[6]

After NYSE Amex and ISE established their respective Pilot Programs, ISE submitted a filing in response to a PHLX filing regarding the listing of expirations.[7] In the PHLX filing, PHLX amended its rules that so that it could open ''at least one expiration month'' for each class of standard options open for trading on PHLX.[8] PHLX stated in its filing that this amendment was ''based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8 of NOM.''[9] Since PHLX's rules did not hard code an upper limit on the maximum number of expirations that could be listed per class, ISE believed that PHLX (and NOM) had the ability to list expirations that ISE would not be able to then list under its rules. As a result, ISE amended its rules by adding new Supplementary Material .10 to ISE Rule 504 and Supplementary Material .04 to ISE Rule 2009 to permit ISE to list additional expiration months on options classes opened for trading on ISE if such expiration months are opened for trading on at least one other national securities exchange.[10]

Because the Exchange had adopted a Pilot Program similar to ISE's, the Exchange adopted new Commentary .14 to Rule 903 that permits the Exchange to list additional expiration months on options classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other national securities exchange.[11]

Retire Additional Expiration Months Pilot and Adopt Amended Rules

The Exchange established the Pilot Program for competitive reasons. Now that the Exchange has the ability to match the expiration listings of other exchanges [12] (that may exceed six expirations and may occur on a regular basis) the Exchange believes that the Pilot Program is no longer necessary and is proposing to retire it. To effect this change, the Exchange is proposing to delete the text of Commentary .11 to Rule 903, which sets forth the terms of the Pilot Program, which is currently scheduled to expire on October 31, 2011.[13]

As noted, the Exchange's ability to match the expirations listed by other exchanges is set forth in Commentary .14 to Rule 903. This provision, however, only provides the Exchange with the ability to match expirations initiated by other options exchanges. To encourage competition and to place the Exchange on a level playing field, the Exchange should have the same ability as PHLX and NOM to initiate expirations. Therefore, the Exchange is proposing to harmonize its rules with the rules of PHLX and NOM by clarifying that NYSE Amex will open at least one expiration month and one series for each class open for trading on the Exchange. To effect this change, the Exchange is proposing to amend the text of Rule 903(b) and (c) to track the rule text of NOM Chapter IV, Section 6 and PHLX Rule 1012.

Finally, the Exchange is proposing to slightly modify Rule 903 regarding the opening of additional series. Specifically, the Exchange proposes to amend Rule 903(c) to permit the listing of additional series when (among other reasons) the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices.[14] Currently, Rule 903(c) permits the listing of additional series when the market price of the underlying stock moves substantially from the initial exercise price or prices. This proposed rule change again tracks PHLX and NOM's existing rule text.

The Exchange believes the proposed rule change is proper, and indeed necessary, in light of the need to have rules that do not put the Exchange at a competitive disadvantage. The Exchange's proposal puts the Exchange in the same position as PHLX and NOM and provides the Exchange with the same ability to initiate and match identical expirations across exchanges for products that are multiply-listed and fungible with one another. The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are initiated by the Exchange and listed and traded on other exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change would permit the Exchange to accommodate requests made by ATP Holders and other market participants to list additional expiration months and thus encourages

[3] *See* NOM Chapter IV, Section 6 (Series of Options Contracts Open for Trading). *See also* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080).

[4] *See* PHLX Rule 1012 (Series of Options Open for Trading). *See also* Securities Exchange Act Release No. 63700 (January 11, 2011), 76 FR 2931 (January 18, 2011) (SR–Phlx–2011–04). The PHLX filing was based on NOM's existing rules.

[5] *See* Securities Exchange Act Release No. 63170 (October 25, 2010), 75 FR 66818 (October 29, 2010) (SR–NYSEAmex–2010–99).

[6] *See* Securities Exchange Act Release No. 63104 (October 14, 2010), 75 FR 64773 (October 20, 2010) (SR–ISE–2010–91).

[7] *See* Securities Exchange Act Release No. 64343 (April 26, 2011), 76 FR 24546 (May 2, 2011) (SR–ISE–2011–26). *See also supra* note 4.

[8] *See supra* note 4 at 2932.

[9] *Id.*

[10] *See supra* note 7 at 24547.

[11] *See* Securities Exchange Act Release No. 64519 (May 19, 2011), 76 FR 30411 (May 25, 2011) (SR–NYSEAmex–2011–33).

[12] *See* Commentary .14 to Rule 903.

[13] The Exchange proposes to mark Commentary .11 to Rule 903 as ''Reserved.''

[14] Rule 903(d) also permits the Exchange to add additional series of options of the same class when the Exchange deems it necessary to maintain an orderly market and to meet customer demand. These ''additional series'' provisions are similar to existing provisions in NOM Chapter IV, Section 6 and PHLX Rule 1012.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

competition without harming investors or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 [17] and Rule 19b–4(f)(6) thereunder.[18]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal should promote competition by allowing the Exchange, without undue delay, to incorporate rules that previously have been adopted by other exchanges and thereby to list and trade option series that are trading on those other options exchanges. Therefore, the Commission designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2011–80 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–2011–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–80 and should be submitted on or before November 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27520 Filed 10–24–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65591; File No. SR–NYSEArca–2011–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Retire a Pilot Program and Harmonize the Exchange's Rules Regarding Listing Expirations With the Existing Rules of Other Exchanges

October 19, 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 October 13, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Options Rule 6.4 (Series of Options Open for Trading) and Commentary .09 thereto to retire a pilot program and harmonize the Exchange's rules regarding listing expirations with the existing rules of other exchanges. The text of the proposed rule change is available at the Exchange, at *http://www.nyse.com,* at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

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 purpose of the proposed rule change is to retire the Additional Expiration Months Pilot Program (''Pilot Program'') and to amend the Exchange's rules regarding listing expirations. This filing is based on the existing rules of the NASDAQ Options Market (''NOM'') [3] and NASDAQ OMX PHLX LLC (''PHLX'').[4]

NYSE Arca Options Rules Governing Listing of Expirations

Pursuant to NYSE Arca Rule 6.4, the Exchange typically opens four expiration months for each class of options open for trading on the Exchange: the first two being the two nearest months, regardless of the quarterly cycle on which that class trades, and the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific class. For competitive reasons, in 2010 the Exchange established the Pilot Program pursuant to which it could list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on the Exchange.[5] The filing to establish the Pilot Program was substantially similar in all material respects to a proposal of the International Securities Exchange, LLC (''ISE'').[6]

After NYSE Arca and ISE established their respective Pilot Programs, ISE submitted a filing in response to a PHLX filing regarding the listing of expirations.[7] In the PHLX filing, PHLX amended its rules that so that it could open ''at least one expiration month'' for each class of standard options open for trading on PHLX.[8] PHLX stated in its filing that this amendment was ''based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8 of NOM.'' [9] Since PHLX's rules did not hard code an upper limit on the maximum number of expirations that could be listed per class, ISE believed that PHLX (and NOM) had the ability to list expirations that ISE would not be able to then list under its rules. As a result, ISE amended its rules by adding new Supplementary Material .10 to ISE Rule 504 and Supplementary Material .04 to ISE Rule 2009 to permit ISE to list additional expiration months on options classes opened for trading on ISE if such expiration months are opened for trading on at least one other national securities exchange.[10]

Because the Exchange had adopted a Pilot Program similar to ISE's, the Exchange adopted new Commentary .12 to Rule 6.4 that permits the Exchange to list additional expiration months on options classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other national securities exchange.[11]

Retire Additional Expiration Months Pilot and Adopt Amended Rules

The Exchange established the Pilot Program for competitive reasons. Now that the Exchange has the ability to match the expiration listings of other exchanges [12] (that may exceed six expirations and may occur on a regular basis) the Exchange believes that the Pilot Program is no longer necessary and is proposing to retire it. To effect this change, the Exchange is proposing to delete the text of Commentary .09 to Rule 6.4, which sets forth the terms of the Pilot Program, which is currently scheduled to expire on October 31, 2011.[13]

As noted, the Exchange's ability to match the expirations listed by other exchanges is set forth in Commentary .12 to Rule 6.4. This provision, however, only provides the Exchange with the ability to match expirations *initiated* by other options exchanges. To encourage competition and to place the Exchange on a level playing field, the Exchange should have the same ability as PHLX and NOM to initiate expirations. Therefore, the Exchange is proposing to harmonize its rules with the rules of PHLX and NOM by clarifying that NYSE Arca will open at least one expiration month and one series for each class open for trading on the Exchange. To effect this change, the Exchange is proposing to amend the text of Rule 6.4(a) to track the rule text of NOM Chapter IV, Section 6 and PHLX Rule 1012.

Finally, the Exchange is proposing to slightly modify Rule 6.4 regarding the opening of additional series. Specifically, the Exchange proposes to amend Rule 6.4(a) to permit the listing of additional series when (among other reasons) the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices.[14] Currently, Rule 6.4(a) permits the listing of additional series when the market price of the underlying stock moves substantially from the initial exercise price or prices. This proposed rule change again tracks PHLX and NOM's existing rule text.

The Exchange believes the proposed rule change is proper, and indeed necessary, in light of the need to have rules that do not put the Exchange at a competitive disadvantage. The Exchange's proposal puts the Exchange in the same position as PHLX and NOM and provides the Exchange with the same ability to initiate and match identical expirations across exchanges for products that are multiply-listed and fungible with one another. The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are initiated by the Exchange and listed and traded on other exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent withSection 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] inparticular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in

[3] *See* NOM Chapter IV, Section 6 (Series of Options Contracts Open for Trading). *See also* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080).

[4] *See* PHLX Rule 1012 (Series of Options Open for Trading). *See also* Securities Exchange Act Release No. 63700 (January 11, 2011), 76 FR 2931 (January 18, 2011) (SR–Phlx–2011–04). The PHLX filing was based on NOM's existing rules.

[5] *See* Securities Exchange Act Release No. 63133 (October 19, 2010), 75 FR 65545 (October 25, 2010) (SR–NYSEArca–2010–93).

[6] *See* Securities Exchange Act Release No. 63104 (October 14, 2010), 75 FR 64773 (October 20, 2010) (SR–ISE–2010–91).

[7] *See* Securities Exchange Act Release No. 64343 (April 26, 2011), 76 FR 24546 (May 2, 2011) (SR–ISE–2011–26). *See also supra* note 4.

[8] *See supra* note 4 at 2932.

[9] *Id.*

[10] *See supra* note 7 at 24547.

[11] *See* Securities Exchange Act Release No. 64518 (May 19, 2011), 76 FR 30409 (May 25, 2011) (SR–NYSEArca–2011–28).

[12] *See* Commentary .12 to Rule 6.4.

[13] The Exchange proposes to mark Commentary .09 to Rule 6.4 as ''Reserved.''

[14] Rule 6.4(a) would also be amended to permit the Exchange to add additional series of options of the same class when the Exchange deems it necessary to maintain an orderly market and to meet customer demand. These ''additional series'' provisions are similar to existing provisions in NOM Chapter IV, Section 6 and PHLX Rule 1012.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. In particular, the proposed rule change would permit the Exchange to accommodate requests made by OTP Holders and other market participants to list additional expiration months and thus encourages competition without harming investors or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 [17] and Rule 19b-4(f)(6) thereunder.[18]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal should promote competition by allowing the Exchange, without undue delay, to incorporate rules that previously have been adopted by other exchanges and thereby to list and trade option series that are trading on those other options exchanges. Therefore, the Commission designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2011–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2011–73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2011–73 and should be submitted on or before November 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27521 Filed 10–24–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12848 and #12849]

Texas Disaster Number TX–00382

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 Texas (FEMA—4029—DR), dated 09/21/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

Effective Date: 10/13/2011.

Physical Loan Application Deadline Date: 11/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 09/21/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Anderson, Henderson, Hill, Marion, Smith, Upshur.

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. 2011–27478 Filed 10–24–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12822 and #12823]

Pennsylvania Disaster Number PA–00044

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA—4030—DR), dated 09/12/2011.

Incident: Tropical Storm Lee.

Incident Period: 09/03/2011 through 10/15/2011.

Effective Date: 10/15/2011.

Physical Loan Application Deadline Date: 11/14/2011.

EIDL *Loan Application Deadline Date:* 06/12/2012.

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 Commonwealth of PENNSYLVANIA, dated 09/12/2011 is hereby amended to establish the incident period for this disaster as beginning 09/03/2011 and continuing through 10/15/2011.

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. 2011–27510 Filed 10–24–11; 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 7.

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: 10/17/2011.

Physical Loan Application Deadline Date: 11/30/2011.

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 extend the deadline for filing applications for physical damages as a result of this disaster to 11/30/2011.

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. 2011–27492 Filed 10–24–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12879 and #12880]

Pennsylvania Disaster Number PA–00045

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 Commonwealth of Pennsylvania (FEMA–4030–DR), dated 10/07/2011.

Incident: Tropical Storm Lee.

Incident Period: 09/03/2011 through 10/15/2011.

Effective Date: 10/15/2011.

Physical Loan Application Deadline Date: 12/06/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 07/09/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Pennsylvania, dated 10/07/2011, is hereby amended to establish the incident period for this disaster as beginning 09/03/2011 and continuing through 10/15/2011.

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. 2011–27481 Filed 10–24–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12879 and #12880]

Pennsylvania Disaster Number PA–00045

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 Pennsylvania (FEMA–4030–DR), dated 10/07/2011.

Incident: Tropical Storm Lee.

Incident Period: 09/03/2011 and continuing.

Effective Date: 10/14/2011.

Physical Loan Application Deadline Date: 12/06/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 07/09/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Pennsylvania, dated 10/07/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bedford, Bucks, Huntingdon, Montgomery, Northumberland, Perry, Tioga, Union, Wayne, York.

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. 2011–27483 Filed 10–24–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12858 and #12859]

New York Disaster Number NY–00113

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4031–DR), dated 09/23/2011.

Incident: Remnants of Tropical Storm Lee.

Incident Period: 09/07/2011 through 09/11/2011.

Effective Date: 10/13/2011.

Physical Loan Application Deadline Date: 11/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2012.

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 09/23/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Montgomery.

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. 2011–27487 Filed 10–24–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12891 and #12892]

New Jersey Disaster #NJ–00028

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 New Jersey (FEMA–4039–DR), dated 10/14/2011.

Incident: Remnants of Tropical Storm Lee.

Incident Period: 09/06/2011 through 09/11/2011.

Effective Date: 10/14/2011.

Physical Loan Application Deadline Date: 12/13/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 07/16/2012.

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 10/14/2011, 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: Hunterdon, Mercer, Passaic, Sussex, Warren.

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 128918 and for economic injury is 128928.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–27491 Filed 10–24–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0075]

Cost-of-Living Increase and Other Determinations for 2012

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: Under title II of the Social Security Act (Act), there will be a 3.6 percent cost-of-living increase in Social Security benefits effective December 2011. As a result of this increase, the following items will increase for 2012:

(1) The maximum Federal Supplemental Security Income (SSI) monthly benefit amounts for 2012 under title XVI of the Act will be $698 for an eligible individual, $1,048 for an eligible individual with an eligible spouse, and $350 for an essential person;

(2) The special benefit amount under title VIII of the Act for certain World War II veterans will be $523.50 for 2012;

(3) The student earned income exclusion under title XVI of the Act will be $1,700 per month in 2012, but not more than $6,840 for all of 2012;

(4) The dollar fee limit for services performed as a representative payee will be $38 per month ($75 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2012; and

(5) The dollar limit on the administrative-cost assessment charged to attorneys representing claimants will be $86 in 2012.

The national average wage index for 2010 is $41,673.83. This index affects the following amounts:

(1) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base will be $110,100 for remuneration paid in 2012 and self-employment income earned in taxable years beginning in 2012;

(2) The monthly exempt amounts under the OASDI retirement earnings test for taxable years ending in calendar year 2012 will be $1,220, for years prior to the year in which a person attains his or her Normal Retirement Age (NRA) and $3,240, for the year in which a person attains his or her NRA;

(3) The dollar amounts (''bend points'') used in the primary insurance amount (PIA) benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2012 will be $767 and $4,624;

(4) The bend points used in the formula for computing maximum family benefits for workers who become

eligible for benefits, or who die before becoming eligible, in 2012 will be $980, $1,415, and $1,845;

(5) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2012 will be $1,130;

(6) The ''old-law'' contribution and benefit base under title II of the Act will be $81,900 for 2012;

(7) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2012 will be $1,690, and the corresponding amount for non-blind disabled persons will be $1,010;

(8) The earnings threshold establishing a month as a part of a trial work period will be $720 for 2012; and

(9) Coverage thresholds for 2012 will be $1,800 for domestic workers and $1,500 for election officials and election workers.

FOR FURTHER INFORMATION CONTACT: Susan C. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3000. Information relating to this announcement is available on our Internet site at *http://www.socialsecurity.gov/oact/cola/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Act, we must publish within 45 days after the close of the third calendar quarter of 2011 the benefit increase percentage and the revised table of ''special minimum'' benefits (section 215(i)(2)(D)). Also, we must publish on or before November 1 the national average wage index for 2010 (section 215(a)(1)(D)), the OASDI fund ratio for 2011 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2012 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2012 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2012 (section 203(f)(8)(A)), the formula for computing a PIA for workers who first become eligible for benefits or die in 2012 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2012 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The cost-of-living increase is 3.6 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 3.6 percent for individuals eligible for December 2011 benefits, payable in January 2012. This increase is based on the authority contained in section 215(i) of the Act.

Pursuant to section 1617 of the Act, Federal SSI payment levels will also increase by 3.6 percent effective for payments made for the month of January 2012 but paid on December 30, 2011.

Computation

Section 215(i)(1)(B) of the Act defines a ''computation quarter'' to be a third calendar quarter in which the average Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers exceeded the average CPI in the previous computation quarter. The last cost-of-living increase, effective for those eligible to receive title II benefits for December 2008, was based on the CPI increase from the third quarter of 2007 to the third quarter of 2008. Accordingly, the last computation quarter is the third quarter of 2008. The law stipulates that a cost-of-living increase for benefits is determined based on the percentage increase, if any, in the CPI from the last computation quarter to the third quarter of the current year. Therefore, we compute the increase in the CPI from the third quarter of 2008 to the third quarter of 2011.

Section 215(i)(1) of the Act provides that the CPI for a cost-of-living computation quarter is the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2008, is: For July 2008, 216.304; for August 2008, 215.247; and for September 2008, 214.935. The arithmetic mean for that calendar quarter is 215.495. The corresponding CPI for each month in the quarter ending September 30, 2011, is: For July 2011, 222.686; for August 2011, 223.326; and for September 2011, 223.688. The arithmetic mean for this calendar quarter is 223.233. The CPI for the calendar quarter ending September 30, 2011, exceeds that for the calendar quarter ending September 30, 2008 by 3.6 percent (rounded to the nearest 0.1), beginning December 2011. Therefore, a cost-of-living benefit increase of 3.6 percent is effective for benefits under title II of the Act.

Section 215(i) also specifies that a benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the OASDI fund ratio for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. For 2011, the OASDI fund ratio is assets of $2,608,950 million divided by estimated expenditures of $738,528 million, or 353.3 percent. Because the 353.3 percent OASDI fund ratio exceeds 20.0 percent, the benefit increase for December 2011 is not limited.

Program Amounts That Change Based on the Cost-of-Living Increase

The following program amounts change based on the cost-of-living increase: (1) Title II; (2) title XVI; (3) title VIII; (4) the student earned income exclusion; (5) the fee for services performed by a representative payee; and (6) the attorney assessment fee.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, for workers and family members for whom eligibility for benefits (*i.e.,* the worker's attainment of age 62, or disability or death before age 62) occurred before 2012, benefits will increase by 3.6 percent beginning with benefits for December 2011 which are payable in January 2012. In the case of first eligibility after 2011, the 3.6 percent increase will not apply.

For eligibility after 1978, benefits are generally determined using a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by means of a benefit table. The table is available on the Internet at *http://www.socialsecurity.gov/oact/progdata/tableForm.html* or by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act requires that, when we determine an increase in Social Security benefits, we will publish in the **Federal Register** a revision of the range of the PIAs and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits

as special minimum benefits. These benefits are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 years of coverage. To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the ''old-law'' contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of PIAs and corresponding maximum family benefit amounts after the 3.6 percent benefit increase.

SPECIAL MINIMUM PIAS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2011

Number of years of coverage	Primary insurance amount	Maximum family benefit
11	$38.20	$58.10
12	77.80	117.70
13	117.60	177.10
14	157.00	236.30
15	196.20	295.40
16	236.00	355.10
17	275.60	414.90
18	315.20	474.00
19	354.70	533.50
20	394.40	592.50
21	434.10	652.40
22	473.40	711.70
23	513.60	771.90
24	553.10	830.80
25	592.50	889.60
26	632.70	950.10
27	671.80	1,009.30
28	711.50	1,068.50
29	751.10	1,128.30
30	790.60	1,187.00

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, maximum Federal SSI benefit amounts for the aged, blind, and disabled will increase by 3.6 percent effective January 2012. For 2011, we derived the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$674, $1,011, and $338, respectively—from corresponding yearly unrounded Federal SSI benefit amounts of $8,095.32, $12,141.61, and $4,056.93. For 2012, these yearly unrounded amounts increase by 3.6 percent to $8,386.75, $12,578.71, and $4,202.98, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2012, are $8,376, $12,576, and $4,200. Dividing the yearly amounts by 12 gives the corresponding monthly amounts for 2012—$698, $1,048, and $350, respectively. In the case of an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII Benefit Amount

Title VIII of the Act provides for special benefits to certain World War II veterans residing outside the United States. Section 805 provides that ''[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month.'' Accordingly, the monthly benefit for 2012 under this provision is 75 percent of $698, or $523.50.

Student Earned Income Exclusion

A blind or disabled child who is a student regularly attending school, college, university, or a course of vocational or technical training can have limited earnings that are not counted against his or her SSI benefits. The maximum amount of such income that may be excluded in 2011 is $1,640 per month, but not more than $6,600 in all of 2011. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2012, we increase the corresponding unrounded amount for 2011 by the latest cost-of-living increase. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2011 is $1,637.89. We increase this amount by 3.6 percent to $1,696.85, which we then round to $1,700. Similarly, we increase the unrounded yearly amount for 2011, $6,602.32, by 3.6 percent to $6,840.00 and round this to $6,840. Accordingly, the maximum amount of the income exclusion applicable to a student in 2012 is $1,700 per month but not more than $6,840 in all of 2012.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from a beneficiary a monthly fee for expenses incurred in providing services performed as such beneficiary's representative payee. Currently the fee is limited to the lesser of: (1) 10 Percent of the monthly benefit involved; or (2) $37 per month ($72 per month in any case in which the beneficiary is entitled to disability benefits and has an alcoholism or drug addiction condition that makes the individual incapable of managing such benefits). The dollar fee limits are subject to increase by the cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Accordingly, we increase the current amounts by 3.6 percent to $38 and $75 for 2012.

Attorney Assessment Fee

Under sections 206(d) and 1631(d) of the Act, whenever we pay fees to an attorney who has represented a claimant, we must impose on the attorney an assessment to cover administrative costs. Such assessment is no more than 6.3 percent of the attorney's fee or, if lower, a dollar amount that is subject to increase by the cost-of-living increase. We derive the dollar limit for December 2011 by increasing the unrounded limit for December 2010, $83.85, by 3.6 percent, which is $86.87. We then round $86.87 to the next lower multiple of $1. The dollar limit effective for December 2011 is, therefore, $86.

National Average Wage Index for 2010

Computation

We determined the national average wage index for calendar year 2010 based on the 2009 national average wage index of $40,711.61, announced in the **Federal Register** on November 30, 2010 (75 FR 74123), along with the percentage increase in average wages from 2009 to 2010, as measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $39,036.67 and $39,959.30 for 2009 and 2010, respectively. Note that the average amount of wages for 2009 is different from the amount shown in last year's **Federal Register** announcement because it reflects our improved data edits for this calculation. To determine the national average wage index for 2010 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2009 national average wage index of $40,711.61 by the percentage increase in average wages from 2009 to 2010 (based on SSA-tabulated wage data) as follows, with the result rounded to the nearest cent.

Amount

Multiplying the national average wage index for 2009 ($40,711.61) by the ratio of the average wage for 2010 ($39,959.30) to that for 2009 ($39,036.67) produces the 2010 index, $41,673.83. The national average wage index for calendar year 2010 is about 2.36 percent higher than the 2009 index.

Program Amounts That Change Based on the National Average Wage Index Under various provisions of the Act, the following amounts change with annual changes in the national average wage index: (1) The OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar amounts, or ''bend points,'' in the PIA; (4) the bend points in the maximum family benefit formula; (5) the amount of earnings required for a worker to be credited with a quarter of coverage; (6) the ''old-law'' contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (7) the substantial gainful activity amount applicable to statutorily blind individuals; and (8) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

In addition to the amounts required by statute, two amounts increase under regulatory requirements—the substantial gainful activity amount applicable to non-blind disabled persons, and the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $110,100 for remuneration paid in 2012 and self-employment income earned in taxable years beginning in 2012. The OASDI contribution and benefit base serves as the maximum annual amount of earnings on which OASDI taxes are paid. It is also the maximum annual amount of earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2012 is the larger of: (1) The 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2010 to that for 1992; or (2) the current base ($106,800). If the resulting amount is not a multiple of $300, it is rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 OASDI contribution and benefit base amount ($60,600) by the ratio of the national average wage index for 2010 ($41,673.83 as determined above) to that for 1992 ($22,935.42) produces the amount of $110,110.65. We round this amount to $110,100. Because $110,100 exceeds the current base amount of $106,800, the OASDI contribution and benefit base is $110,100 for 2012.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the normal retirement age (NRA) has earnings in excess of the applicable retirement earnings test exempt amount. NRA is the age of initial benefit entitlement for which the benefit, before rounding, is equal to the worker's PIA. The NRA is age 66 for those born in 1943–55, and it gradually increases reaching age 67 for those born in 1960 or later. A higher exempt amount applies in the year in which a person attains his or her NRA, but only with respect to earnings in months prior to such attainment, and a lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act, as amended by section 102 of Public Law 104–121, provides formulas for determining the monthly exempt amounts. The corresponding annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries attaining NRA in the year, we withhold $1 in benefits for every $3 of earnings in excess of the annual exempt amount for months prior to such attainment. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula applicable to beneficiaries who are under NRA and who will not attain NRA in 2012, the lower monthly exempt amount for 2012 is the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2010 to that for 1992; or (2) the 2011 monthly exempt amount ($1,180). If the resulting amount is not a multiple of $10, it is rounded to the nearest multiple of $10.

Under the formula applicable to beneficiaries attaining NRA in 2012, the higher monthly exempt amount for 2012 is the larger of: (1) The 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2010 to that for 2000; or (2) the 2011 monthly exempt amount ($3,140). If the resulting amount is not a multiple of $10, it is rounded to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2010 ($41,673.83) to that for 1992 ($22,935.42) produces the amount of $1,217.40. We round this to $1,220. Because $1,220 exceeds the corresponding current exempt amount of $1,180, the lower retirement earnings test monthly exempt amount is $1,220 for 2012. The corresponding lower annual exempt amount is $14,640 under the retirement earnings test.

Higher Exempt Amount

Multiplying the 2002 retirement earnings test monthly exempt amount of $2,500 by the ratio of the national average wage index for 2010 ($41,673.83) to that for 2000 ($32,154.82) produces the amount of $3,240.09. We round this to $3,240. Because $3,240 exceeds the corresponding current exempt amount of $3,140, the higher retirement earnings test monthly exempt amount is $3,240 for 2012. The corresponding higher annual exempt amount is $38,880 under the retirement earnings test.

Primary Insurance Amount (PIA) Benefit Formula

General

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's average indexed monthly earnings (AIME) to compute the PIA. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or index, a worker's earnings to reflect the change in the general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the AIME, we first determine the required number of years of earnings. We then select the number of years with the highest indexed earnings, add the indexed earnings for those

years, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the AIME.

Computing the PIA

The PIA is the sum of three separate percentages of portions of the AIME. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the AIME the ''bend points'' of the formula. Therefore, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2012, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2010 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2010 ($41,673.83) to that for 1977 ($9,779.44) produces the amounts of $767.05 and $4,623.59. We round these to $767 and $4,624. Accordingly, the portions of the AIME to be used in 2012 are the first $767, the amount between $767 and $4,624, and the amount over $4,624.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2012, or who die in 2012 before becoming eligible for benefits, their PIA will be the sum of:

(a) 90 percent of the first $767 of their AIME, plus.

(b) 32 percent of their AIME over $767 and through $4,624, plus.

(c) 15 percent of their AIME over $4,624.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act.

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long-established policy of limiting the total monthly benefits that a worker's family may receive based on his or her PIA. Those amendments also continued the then-existing relationship between maximum family benefits and PIAs but changed the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980 or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the PIA. It involves computing the sum of four separate percentages of portions of the worker's PIA. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the ''bend points'' of the family-maximum formula.

To obtain the bend points for 2012, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2010 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2010 ($41,673.83) to that for 1977 ($9,779.44) produces the amounts of $980.12, $1,414.78, and $1,845.17. We round these amounts to $980, $1,415, and $1,845. Accordingly, the portions of the PIAs to be used in 2012 are the first $980, the amount between $980 and $1,415, the amount between $1,415 and $1,845, and the amount over $1,845.

Consequently, for the family of a worker who becomes age 62 or dies in 2012 before age 62, we will compute the total amount of benefits payable to them so that it does not exceed:

(a) 150 percent of the first $980 of the worker's PIA, plus.

(b) 272 percent of the worker's PIA over $980 through $1,415, plus.

(c) 134 percent of the worker's PIA over $1,415 through $1,845, plus.

(d) 175 percent of the worker's PIA over $1,845.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act.

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2012 is $1,130. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2012 is the larger of (1) The 1978 amount of $250 multiplied by the ratio of the national average wage index for 2010 to that for 1976; or (2) the current amount of $1,120. Section 213(d) provides that if the resulting amount is not a multiple of $10, it is rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2010 ($41,673.83) to that for 1976 ($9,226.48) produces the amount of $1,129.19. We then round this amount to $1,130. Because $1,130 exceeds the current amount of $1,120, the quarter of coverage amount is $1,130 for 2012.

''Old-Law'' Contribution and Benefit Base

General

The ''old-law'' contribution and benefit base for 2012 is $81,900. This base would have been effective under the Act without the enactment of the 1977 amendments.

The ''old-law'' contribution and benefit base is used by:

(a) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments that correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum

amount of pension guaranteed under the Employee Retirement Income Security Act (section 230(d) of the Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the ''old-law'' base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The ''old-law'' contribution and benefit base is the larger of: (1) The 1994 ''old-law'' base ($45,000) multiplied by the ratio of the national average wage index for 2010 to that for 1992; or (2) the current ''old-law'' base ($79,200). If the resulting amount is not a multiple of $300, it is rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 ''old-law'' contribution and benefit base amount ($45,000) by the ratio of the national average wage index for 2010 ($41,673.83) to that for 1992 ($22,935.42) produces the amount of $81,765.34. We round this amount to $81,900. Because $81,900 exceeds the current amount of $79,200, the ''old-law'' contribution and benefit base is $81,900 for 2012.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in substantial gainful activity (SGA). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals under title II while Federal regulations (20 CFR 404.1574 and 416.974) specify a lower SGA amount for non-blind individuals.

Computation

The monthly SGA amount for statutorily blind individuals under title II for 2012 is the larger of: (1) Such amount for 1994 multiplied by the ratio of the national average wage index for 2010 to that for 1992; or (2) such amount for 2011. The monthly SGA amount for non-blind disabled individuals for 2012 is the larger of: (1) Such amount for 2000 multiplied by the ratio of the national average wage index for 2010 to that for 1998; or (2) such amount for 2011. In either case, if the resulting amount is not a multiple of $10, it is rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2010 ($41,673.83) to that for 1992 ($22,935.42) produces the amount of $1,689.82. We then round this amount to $1,690. Because $1,690 exceeds the current amount of $1,640, the monthly SGA amount for statutorily blind individuals is $1,690 for 2012.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2010 ($41,673.83) to that for 1998 ($28,861.44) produces the amount of $1,010.75. We then round this amount to $1,010. Because $1,010 exceeds the current amount of $1,000, the monthly SGA amount for non-blind disabled individuals is $1,010 for 2012.

Trial Work Period Earnings Threshold

General

During a trial work period of 9 months in a rolling 60-month period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still receive monthly benefit payments. To be considered a trial work period month, earnings must be over a certain level. In 2012, any month in which earnings exceed $720 is considered a month of services for an individual's trial work period.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2012, used to determine whether a month is part of a trial work period, is such amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2010 to that for 1999 or, if larger, such amount for 2011. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2010 ($41,673.83) to that for 1999 ($30,469.84) produces the amount of $724.88. We then round this amount to $720. Because $720 equals the current amount of $720, the monthly earnings threshold is $720 for 2012.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2012, this threshold is $1,800. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2012 is equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2010 to that for 1993. If the resulting amount is not a multiple of $100, it is rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2010 ($41,673.83) to that for 1993 ($23,132.67) produces the amount of $1,801.51. We then round this amount to $1,800. Accordingly, the domestic employee coverage threshold amount is $1,800 for 2012.

Election Official and Election Worker Coverage Threshold

General

The minimum amount an election official and election worker must earn so that such earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2012, this threshold is $1,500. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election official and election worker coverage threshold amount for 2012 is equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2010 to that for 1997. If the amount so determined is not a multiple of $100, it is rounded to the nearest multiple of $100.

Election Worker Coverage Threshold Amount

Multiplying the 1999 election worker coverage threshold amount ($1,000) by

the ratio of the national average wage index for 2010 ($41,673.83) to that for 1997 ($27,426.00) produces the amount of $1,519.50. We then round this amount to $1,500. Accordingly, the election worker coverage threshold amount is $1,500 for 2012.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2011–27496 Filed 10–24–11; 8:45 am]

BILLING CODE 4191–02–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in ''**DATES**.''

DATES: August 1, 2011, through September 30, 2011.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. Talisman Energy USA Inc., Pad ID: 05 098 Younger, ABR–201108001, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 1, 2011.

2. Talisman Energy USA Inc., Pad ID: 02 010 DCNR 587, ABR–201108002, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 1, 2011.

3. Talisman Energy USA Inc., Pad ID: 03 113 Vanblarcom, ABR–201108003, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 1, 2011.

4. Talisman Energy USA Inc., Pad ID: 03 110 Barlow, ABR–201108004, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 1, 2011.

5. Cabot Oil & Gas Corporation, Pad ID: Mogridge P1, ABR–201108005, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 1, 2011.

6. EXCO Resources, (PA), LLC, Pad ID: Lamborne Pad 195, ABR–201108006, Jordan Township, Clearfield County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 1, 2011.

7. Southwestern Energy Production Company, Pad ID: Cramer Pad, ABR–201108007, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 4, 2011.

8. Seneca Resources Corporation, Pad ID: Rich Valley Pad B, ABR–201108008, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 8, 2011.

9. Talisman Energy USA Inc., Pad ID: 03 111 Stephani, ABR–201108009, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 8, 2011.

10. Talisman Energy USA Inc., Pad ID: 05 229 Acres, ABR–201108010, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 8, 2011.

11. EXCO Resources (PA), LLC, Pad ID: Remley Drilling Pad #1, ABR–201012035.1, Jackson Township, Columbia County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 8, 2011.

12. EXCO Resources (PA), LLC, Pad ID: Hess Drilling Pad #1, ABR–201012037.1, Jackson Township, Columbia County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 8, 2011.

13. Southwestern Energy Production Company, Pad ID: Shively Pad, ABR–201108011, Lenox Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 8, 2011.

14. Carrizo (Marcellus), LLC, Pad ID: Frystak Central Pad, ABR–201108012, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: August 8, 2011.

15. Chesapeake Appalachia, LLC, Pad ID: CSB, ABR–201108013, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 8, 2011.

16. Chesapeake Appalachia, LLC, Pad ID: Joe, ABR–201108014, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 8, 2011.

17. Chesapeake Appalachia, LLC, Pad ID: Rock Ridge, ABR–201108015, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 8, 2011.

18. J–W Operating Company, Pad ID: Pardee-F, ABR–201108016, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: August 9, 2011.

19. Anadarko E&P Company LP, Pad ID: COP Tract 356 Pad G, ABR–201108017, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 10, 2011.

20. Chief Oil & Gas LLC, Pad ID: Savage Drilling Pad #1, ABR–20118018, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: August 10, 2011.

21. EXCO Resources (PA), LLC, Pad ID: Sterner Drilling Pad #1, ABR–201012036.1, Jackson Township, Columbia County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 12, 2011.

22. Chesapeake Appalachia, LLC, Pad ID: Colcam, ABR–201108019, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 12, 2011.

23. Southwestern Energy Production Company, Pad ID: Roman Pad, ABR–201108020, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 15, 2011.

24. Chesapeake Appalachia, LLC, Pad ID: Mad Dog, ABR–201108021, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 15, 2011.

25. Southwestern Energy Production Company, Pad ID: Alexander Pad, ABR–201108022, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 15, 2011.

26. Southwestern Energy Production Company, Pad ID: Grizzanti Pad, ABR–201108023, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 15, 2011.

27. EXCO Resources (PA), LLC, Pad ID: Marquardt Drilling Pad #1, ABR–201008008.1, Davidson Township, Sullivan County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 15, 2011.

28. EXCO Resources (PA), LLC, Pad ID: Quava Drilling Pad #1, ABR–201009068.1, Davidson Township, Sullivan County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 15, 2011.

29. EXCO Resources (PA), LLC, Pad ID: Wistar-Shaffer Tracts Drilling Pad #1, ABR–201009071.1, Shrewsbury Township, Sullivan County, Pa.; Consumptive Use of up to 8.000 mgd; Approval Date: August 15, 2011.

30. EQT Production Company, Pad ID: Phoenix I, ABR–201108024, Duncan Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: August 16, 2011.

31. Seneca Resources Corporation, Pad ID: DCNR 595 Pad E 70V, ABR–201108025, Blossburg Borough, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 19, 2011.

32. Talisman Energy USA Inc., Pad ID: 05 008 Michnich, ABR–201108026, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2011.

33. Talisman Energy USA Inc., Pad ID: 05 057 Michnich, ABR–201108027, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2011.

34. Talisman Energy USA Inc., Pad ID: 05 257 Lombardo J, ABR–201108028, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2011.

35. Southwestern Energy Production Company, Pad ID: Zeffer Pad, ABR–201108029, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 19, 2011.

36. Southwestern Energy Production Company, Pad ID: Scott Pad, ABR–201108030, New Milford Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: August 19, 2011.

37. Chesapeake Appalachia, LLC, Pad ID: Alexander, ABR–201108031, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 19, 2011.

38. Seneca Resources Corporation, Pad ID: DCNR 100 Pad G, ABR–201108032, McIntyre Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 19, 2011.

39. Seneca Resources Corporation, Pad ID: DCNR 595 Pad L, ABR–201108033, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 19, 2011.

40. Chesapeake Appalachia, LLC, Pad ID: Tyler, ABR–201108034, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2011.

41. Chesapeake Appalachia, LLC, Pad ID: Hillis, ABR–201108035, Herrick and Wyalusing Townships, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2011.

42. Chesapeake Appalachia, LLC, Pad ID: Susan, ABR–201108036, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2011.

43. Talisman Energy USA Inc., Pad ID: 03 074 Haralambous, ABR–201108037, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 24, 2011.

44. Chesapeake Appalachia, LLC, Pad ID: Adams, ABR–201108038, Windham Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 24, 2011.

45. Talisman Energy USA Inc., Pad ID: 02 105 Berguson J, ABR–201108039, Hamilton Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 25, 2011.

46. XTO Energy, Pad ID: PA Tract Unit I, ABR–201108040, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 26, 2011.

47. XTO Energy, Pad ID: PA Tract Unit E, ABR–201108041, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: August 26, 2011.

48. Talisman Energy USA Inc., Pad ID: 03 034 Roy B, ABR–201108042, Wells Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 29, 2011.

49. Talisman Energy USA Inc., Pad ID: 02 114 Shanley R, ABR–201108043, Union Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 29, 2011.

50. Talisman Energy USA Inc., Pad ID: 05 104 Rennekamp R, ABR–201108044, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 29, 2011.

51. Talisman Energy USA Inc., Pad ID: 02 121 Pine Hill Inc., ABR–201108045, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 29, 2011.

52. Talisman Energy USA Inc., Pad ID: 02 109 Frederick L, ABR–201108046, Hamilton Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 30, 2011.

53. Chesapeake Appalachia, LLC, Pad ID: Merryall, ABR–201108047, Wyalusing Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 30, 2011.

54. Chesapeake Appalachia, LLC, Pad ID: Albertson, ABR–201108048, Athens Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: August 30, 2011.

55. Cabot Oil & Gas Corporation, Pad ID: CorbinJ P1, ABR–201108049, Brooklyn Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: August 30, 2011.

56. Talisman Energy USA Inc., Pad ID: 05 123 Rinker J, ABR–201108050, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 31, 2011.

57. Talisman Energy USA Inc., Pad ID: 05 235 Rogers H, ABR–201108051, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 31, 2011.

58. Talisman Energy USA Inc., Pad ID: 05 174 Carlsen C, ABR–201108052, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: August 31, 2011.

59. Talisman Energy USA Inc., Pad ID: 05 203 Race, ABR–201109001, Windham Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 6, 2011.

60. Chesapeake Appalachia, LLC, Pad ID: Jag, ABR–201109002, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 6, 2011.

61. Anadarko E&P Company, LP, Pad ID: Lycoming H&FC Pad C, ABR–201109003, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 6, 2011.

62. Talisman Energy USA Inc., Pad ID: 02 113 Reinfried C, ABR–201109004, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 14, 2011.

63. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 293 Pad G, ABR–201109005, McHenry Township, Lycoming County, Pa.; Consumptive Use of up to 3.500 mgd; Approval Date: September 14, 2011.

64. Williams Production Appalachia LLC, Pad ID: Carty—Wisemen Well Pad, ABR–201109006, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 15, 2011.

65. Williams Production Appalachia LLC, Pad ID: Kass North Well Pad, ABR–201109007, Liberty Township,

Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 15, 2011.

66. Talisman Energy USA Inc., Pad ID: 05 068 PNMT and Associates Inc, ABR–201109008, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 16, 2011.

67. Williams Production Appalachia LLC, Pad ID: Robinson Well Pad, ABR–201109009, Liberty Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 16, 2011.

68. Talisman Energy USA Inc., Pad ID: 05 109 Ostrander R, ABR–201109010, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 19, 2011.

69. Talisman Energy USA Inc., Pad ID: 05 152 Brown D, ABR–201109011, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 19, 2011.

70. Chesapeake Appalachia, LLC, Pad ID: McGroarty, ABR–201109012, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 19, 2011.

71. Chesapeake Appalachia, LLC, Pad ID: Manella Acres, ABR–201109013, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 19, 2011.

72. Chesapeake Appalachia, LLC, Pad ID: LKM, ABR–201109014, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 19, 2011.

73. Talisman Energy USA Inc., Pad ID: 07 018 Bennett R, ABR–201109015, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 20, 2011.

74. Anadarko E&P Company, LP, Pad ID: COP Tract 731 Pad C, ABR–201109016, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 20, 2011.

75. Anadarko E&P Company, LP, Pad ID: COP Tract 731 Pad D, ABR–201109017, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 20, 2011.

76. XTO Energy Incorporated, Pad ID: PA Tract Unit G, ABR–201109018, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 23, 2011.

77. Talisman Energy USA Inc., Pad ID: 02 110 Martin G, ABR–201109019, Ward Township, Tioga County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: September 23, 2011.

78. Chief Oil & Gas LLC, Pad ID: Yonkin Drilling Pad #1, ABR–201109020, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 23, 2011.

79. Anadarko E&P Company, LP, Pad ID: COP Tract 731 Pad E, ABR–201109021, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 26, 2011.

80. Anadarko E&P Company, LP, Pad ID: COP Tract 685 Pad B, ABR–201109022, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 26, 2011.

81. Anadarko E&P Company, LP, Pad ID: Lycoming H&FC Pad A, ABR–201109023, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 26, 2011.

82. Anadarko E&P Company, LP, Pad ID: Lycoming H&FC Pad D, ABR–201109024, Cogan House Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 26, 2011.

83. Cabot Oil & Gas Corporation, Pad ID: HeitzenroderA P1, ABR–201109025, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 26, 2011.

84. Cabot Oil & Gas Corporation, Pad ID: BurtsL P1, ABR–201109026, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 26, 2011.

85. Cabot Oil & Gas Corporation, Pad ID: FrystakC P1, ABR–201109027, Bridgewater Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: September 26, 2011.

86. Carrizo (Marcellus), LLC, Pad ID: Bush Pad, ABR–201109028, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of up to 2.100 mgd; Approval Date: September 27, 2011.

87. Enerplus Resources (USA) Corporation, Pad ID: Winner 2 Well Pad, ABR–201109029, East Keating Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 27, 2011.

88. Chief Oil & Gas LLC, Pad ID: Elliott B Drilling Pad #1, ABR–201109030, Monroe Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 27, 2011.

89. Chief Oil & Gas LLC, Pad ID: Kerr B Drilling Pad #1, ABR–201109031, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: September 27, 2011.

90. Chesapeake Appalachia, LLC, Pad ID: Smurkoski, ABR–201109032, Meshoppen Township, Wyoming County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 30, 2011.

91. Chesapeake Appalachia, LLC, Pad ID: Circle H, ABR–201109033, Wilmot Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 30, 2011.

92. Seneca Resources Corporation, Pad ID: DCNR 595 Pad N, ABR–20119034, Bloss Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: September 30, 2011.

93. Chesapeake Appalachia, LLC, Pad ID: Stone, ABR–201109035, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: September 30, 2011.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: October 11, 2011.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2011–27603 Filed 10–24–11; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0270]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The FMCSA requests approval to revise an ICR entitled, ''Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers,'' that requires Mexico-domiciled for-hire and private motor carriers to file an application Form OP–2 if they wish to register to transport property only

within municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities. On July 22, 2011, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. No comments were received.

DATES: Please send your comments by November 25, 2011. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2011–0270. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Vivian Oliver, Transportation Specialist, Office of Information Technology, IT Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Ave., SE., Washington DC 20590. *Telephone Number:* (202) 366–2974; *E-mail Address: vivian.oliver@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: *Title:* Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.

OMB Control Number: 2126–0019.

Type of Request: Revision of a currently-approved information collection.

Respondents: Foreign motor carriers and commercial motor vehicle drivers.

Estimated Number of Respondents: 400.

Estimated Time per Response: 4 hours to complete Form OP–2.

Expiration Date: February 29, 2012.

Frequency of Response: Other (Once).

Estimated Total Annual Burden: 1,600 hours [400 responses × 4 hours to complete Form OP–2 = 1,600].

Background: Title 49 U.S.C. 13902(c) contains basic licensing procedures for registering foreign motor carriers to operate across the U.S.-Mexico border into the United States. Part 368 of title 49, CFR, contains the regulations that require Mexico-domiciled motor carriers to apply to the FMCSA for a Certificate of Registration to provide interstate transportation in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities as defined in 49 U.S.C. 13902(c)(4)(A). The FMCSA carries out this registration program under authority delegated by the Secretary of Transportation.

Foreign (Mexico-based) motor carriers use Form OP–2 to apply for Certificate of Registration authority at the FMCSA. The form requests information on the foreign motor carrier's name, address, U.S. DOT Number, form of business (*e.g.,* corporation, sole proprietorship, partnership), locations where the applicant plans to operate, types of registration requested (*e.g.,* for-hire motor carrier, motor private carrier), insurance, safety certifications, household goods arbitration certifications, and compliance certifications.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: October 12, 2011.

Kelly Leone,

Associate Administrator, Research and Information Technology.

[FR Doc. 2011–27475 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0278]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 18 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 25, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0278 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://www.edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 18 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Lennie D. Cook

Mr. Cook, age 52, has had ITDM since 2007. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cook understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cook meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

David R. Cornelius

Mr. Cornelius, 49, has had ITDM since approximately 2008. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cornelius understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a Commercial Motor Vehicle (CMV) safely. Mr. Cornelius meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Illinois.

John R. Crowder

Mr. Crowder, 54, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Crowder understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crowder meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

Scott A. Edwards

Mr. Edwards, 47, has had ITDM since 1991. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Edwards understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Edwards meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Ronald J. Ezell

Mr. Ezell, 49, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ezell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ezell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Marcus M. Gagne

Mr. Gagne, 40, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gagne understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gagne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Maine.

David P. Govero

Mr. Govero, 56, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Govero understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Govero meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Dale R. Herren

Mr. Herren, 67, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Herren understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Herren meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Tony C. Johnson

Mr. Johnson, 56, has had ITDM since 2004. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arkansas.

Christopher A. Jones

Mr. Jones, 32, has had ITDM since 1997. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wyoming.

Imre Kasza

Mr. Kasza, 58, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kasza understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kasza meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Donald R. McClure, Jr.

Mr. McClure, 56, has had ITDM since 1978. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McClure understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McClure meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Jeffrey C. Minehart

Mr. Minehart, 62, has had ITDM since 2005. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Minehart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Minehart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Helen M. O'Malley

Ms. O'Malley, 59, has had ITDM since 2010. Her endocrinologist examined her in 2011 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. O'Malley understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. O'Malley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2011 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from New Jersey.

Nathan J. Postema

Mr. Postema, 32, has had ITDM since 2006. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Postema understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Postema meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Clyde G. Rishel

Mr. Rishel, 48, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rishel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Rishel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Kurt Schneider

Mr. Schneider, 57, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schneider understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schneider meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Vermont.

Douglas O. Sundby

Mr. Sundby, 49, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sundby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sundby meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441) [1]. The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring, and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring, and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Dated: Issued on: October 17, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–27506 Filed 10–24–11; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule,'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15892; FMCSA–2007–27897; FMCSA–2009–0206]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 20 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective November 6, 2011. Comments must be received on or before November 25, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2003–15892; FMCSA–2007–27897; FMCSA–2009–0206, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-

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Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://www.edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 20 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 20 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

They are:

Martin R. Anaya
Charles E. Castle
James E. Fix
Dean A. Gary
James P. Greene
Larry L. Harris
Roger D. Kloss
Mark D. Kraft
Steven E. Letchenberg
Oscar N. Lefferts
Joseph L. Mast
Jesse E. McClary, Sr.
Steven S. O'Donnell
Benjamin R. Sauder
Mark L. Simmons
Don W. Smith
Robert E. Smith
Jerry W. Stanfill
Roger L. Unser
Virgil E. Walker

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 17 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (68 FR 52811; 70 FR 61165; 72 FR 39879; 72 FR 52419; 72 FR 54971; 72 FR 58359; 74 FR 419171; 74 FR 43217; FR 74 FR 49069; 74 FR 53581; 74 FR 57551). Each of these 20 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 25, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 20 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Dated: Issued on: October 17, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–27504 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0079]

Petition for Waiver of Compliance

In accordance with part 211 of title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 13, 2011, the Union Pacific Railroad (UP) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition Docket Number FRA–2011–0079.

UP seeks relief from the provisions of 49 CFR Section 236.110(a) as it pertains to the signoff of the coded cab signal (CCS) departure test form (UP Form Number 25023). UP requests the ability to have employees either affix their signature or enter their unique employee identification number on the CCS departure test form per 49 CFR 236.587. UP proposes that allowing an employee to sign the CCS departure test form with their employee identification number would comply with the requirements set forth in 49 CFR 236.110(a)(1), ''Signed by the employee making the test * * *.'' UP feels that by allowing an employee to use their unique employee identification number when signing a CCS departure test form will not only make it easier to identify which employee performed the CCS departure test, it will also enhance the safety of UP operations and allow for a more consistent sign off method regarding routine inspection and departure processes.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 9, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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

Issued in Washington, DC, on October 19, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–27501 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0074]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 2, 2011, BNSF Railway (BNSF) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232. FRA has assigned the petition Docket Number FRA–2011–0074.

BNSF seeks relief from certain provisions of 49 CFR part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices.* Specifically, BNSF is proposing to use Web-based software to satisfy the ''hands-on'' portion of training required by 49 CFR Section 232.203(e), in connection with periodic refresher training. Refresher training is required at intervals not to exceed 3 years, and shall consist of classroom and hands-on training, as well as testing.

BNSF states it created a Web-based software application that it characterizes as Air Brake System Virtual Training Environment (ABSVTE), which conceptually closely parallels Locomotive Engineer simulator training. ABSVTE places the employee as an avatar in a realistic 3D virtual scenario. The employee must maneuver the avatar in the virtual setting and perform all inspection tasks. The employee communicates on a virtual radio, listens for the proper brake responses, and visually inspects each car in the scenario using a combination of mouse and key strokes. During the simulation, the employee must properly identify any unusual conditions and take corrective action. The software has the ability for the trainer to control the environment and preprogram different scenarios and conditions, covering a variety of air brake systems and associated air brake components an employee might encounter in the field. BNSF asserts that ABSVTE will enhance employee decision-making by testing his or her ability to identify and correct malfunctions that are difficult to demonstrate during operational testing. FRA permits operational testing to satisfy the hands-on portion of periodic refresher training, provided the tests are documented.

BNSF will require 100-percent proficiency to receive virtual hands-on credit. Employees failing to achieve 100-percent proficiency will be allowed to retake the virtual test. If the employee again fails to achieve 100-percent proficiency, he or she will receive remedial training from a supervisor or trainer.

In summary, BNSF respectfully requests that ABSVTE be considered as an additional option to satisfy the ''hands-on'' portion of periodic refresher training required by 49 CFR 232.203(e). BNSF states that incorporating ABSVTE into their portfolio of traditional training delivery mechanisms will result in an overall increase in the frequency of air brake training and evaluation for BNSF employees.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in

connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 9, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

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

Dated: Issued in Washington, DC, on October 19, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–27503 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0022]

Notice of Public Hearing

The Central Oregon and Pacific Railroad (CORP) has petitioned the Federal Railroad Administration (FRA) seeking the approval of the proposed discontinuance and removal of automatic block signal systems on three sections of the Roseburg Subdivision and on one section of the Siskiyou Subdivision.

This proceeding is identified as FRA block signal application Docket Number FRA–2011–0022. A copy of CORP's full petition is available for review online at *http://www.regulations.gov.*

FRA has conducted a field investigation in this matter and has issued a public notice seeking comments from interested parties (*See* 75 **Federal Register** 21943 (April 19, 2011)). After examining the carrier's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal. Accordingly, FRA invites all interested persons to participate in a public hearing on December 1, 2011. The hearing will be conducted at the Douglas County Courthouse, Room 310, 1036 Southeast Douglas Avenue, Roseburg, Oregon 97470. The hearing will begin at 9 a.m. Interested parties are invited to present oral statements at the hearing. For information on facilities or services for persons with disabilities or to request special assistance at the hearing, contact FRA's Docket Clerk Jerome Melis-Tull by telephone, email, or in writing, at least 5 business days before the date of the hearing. Mr. Melis-Tull's contact information is as follows: FRA, Office of Chief Counsel, Mail Stop 10, 1200 New Jersey Avenue, SE., Washington, DC 20590; *telephone:* 202–493–6058; and *e-mail: Jerome.Melis-tull@dot.gov.*

The hearing will be informal and conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 Code of Federal Regulations Section 211.25) by a representative designated by FRA. The hearing will be a nonadversary proceeding; therefore, there will be no cross-examination of persons presenting statements. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on October 19, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–27508 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 15, 2011, and comments were due by September 13, 2011. No comments were received.

DATES: Comments must be submitted on or before November 25, 2011.

FOR FURTHER INFORMATION CONTACT: Michael Yarrington, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–1915; or e-mail: *michael.yarrington@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Procedures for Determining Vessel Services Categories for Purposes of the Cargo Preference Act.

OMB Control Number: 2133–0540.

Type Of Request: Extension of currently approved collection.

Affected Public: Owners or operators of U.S.-registered vessels and foreign-registered vessels.

Forms: None.

Abstract: The purpose is to provide information to be used in the designation of service categories of individual vessels for purposes of compliance with the Cargo Preference Act under a Memorandum of Understanding entered into by the U.S. Department of Agriculture, U.S. Agency for International Development, and the Maritime Administration. The Maritime Administration will use the data submitted by vessel operators to create a list of Vessel Self-Designations and determine whether the Agency agrees or disagrees with a vessel owner's designation of a vessel.

Annual Estimated Burden Hours: 800 hours.

Addressees: Send comments regarding these information collections

to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov*.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: October 13, 2011.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2011–27618 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–81–Ps

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 15, 2011, and comments were due by September 13, 2011. No comments were received.

DATES: Comments should be submitted on or before November 25, 2011.

FOR FURTHER INFORMATION CONTACT: Dennis Brennan, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–1029; or e-mail: *dennis.brennan@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Monthly Report of Ocean Shipments Moving under Export-Import Bank Financing.

OMB Control Number: 2133–0013.

Type of Request: Extension of currently approved collection.

Affected Public: Shippers subject to Export/Import Bank Financing.

Form Numbers: MA–518.

Abstract: 46 U.S.C. 55304, requires MARAD to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (EXIMBANK) to foreign borrowers. Public Resolution 17 requires that shipments financed by Eximbank and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

Annual Estimated Burden Hours: 169 hours.

Addresses: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

By the Order of the Maritime Administrator.

Dated: October 13, 2011.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2011–27615 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0126]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CAP II; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before November 25, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0126. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CAP II is:

Intended Commercial Use of Vessel: ''CAP II is a charter vessel used for pleasure sailing only.''

Geographic Region: ''CAP II may be visiting ports in the following states: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Illinois, Indiana, Wisconsin and Michigan.''

The complete application is given in DOT docket MARAD–2011–0126 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

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

By Order of the Maritime Administrator.

Dated: October 13, 2011.

Christine Gurland,

Acting Secretary,

Maritime Administration.

[FR Doc. 2011–27619 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0106; Notice 2]

CFMOTO Powersports, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Denial of petition for inconsequential noncompliance.

SUMMARY: CFMOTO Powersports, Inc. (CFMOTO),[1] agent for the Chunfeng Holding Group Hangshou Motorcycles Manufacturing Co., LTD. (formerly known as Zhejiang CFMOTO Power Co., Ltd. (CHG)) has determined that certain model year 2005–2009 CHG Model CF250T–3(V3) and CF250T–5(V5) motorcycles that CFMOTO imported did not fully comply with paragraph S5.2.1 of 49 CFR 571.123 Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle Controls and Displays.* CFMOTO filed an appropriate report, dated January 13, 2010, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Specifically, CFMOTO estimated that approximately 6,405 model year 2005–2009 CHG model CF250T–3(V3) and CF250T–5(V5) motorcycles, produced January 1, 2005, through December 31, 2009 are affected (hereafter referred to as ''noncompliant vehicles'').

Pursuant to 49 U.S.C. 30118(d) and 30120(h), and 49 CFR Part 556, CFMOTO has petitioned for an exemption from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act as amended and rectified, 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of CFMOTO's petition was published, with a 30-day public comment period, on August 10, 2010, in the **Federal Register** (75 FR 49020). No comments were received.

FOR FURTHER INFORMATION CONTACT: For further information on CFMOTO's petition or this decision, contact Mr. Stuart Seigel, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5287, facsimile (202) 366–7002.

SUPPLEMENTARY INFORMATION: In October 2009, OVSC tested a model year (MY) 2009 V3 CF250T to the performance requirements of FMVSS No. 122 *Motorcycle Brakes* at Transportation Research Center (VRTC) in East Liberty, Ohio. At the conclusion of the testing,[2] it was noted that the vehicle appeared to not comply with S5.2.1 Control Location and Operation requirements of FMVSS No. 123. Specifically, according to Table 1 row 11 within that standard, the control for the rear wheel brake must be a right foot control unless the vehicle is a motor-driven cycle or a scooter with an automatic clutch in which case the left handlebar actuator is to be used. As the vehicle was equipped with only a left handlebar lever for rear brake actuation, but did not meet the definition of a scooter, and with an advertised 14 horsepower motor, did not meet the definition of a motor-driven cycle,[3] a non-compliance appeared to be present. NHTSA notified CFMOTO of the apparent noncompliance in a letter dated December 4, 2009.

CFMOTO's Analysis of Noncompliance

CFMOTO provided the following arguments to support its contention that the subject noncompliance, (i.e., that the rear wheel brake control is located on the left handlebar instead of a right foot control as required by paragraph S5.2.1 FMVSS No. 123), is inconsequential to motor vehicle safety:

> The subject vehicles were manufactured and certified as scooters by CHG. CHG believed that the vehicles met all of the requirements for a scooter under FMVSS No. 123. As a result of the scooter certification the rear wheel brake was placed on the left handlebar.
>
> The placement of the rear brake on the left handlebar should be deemed by the NHTSA as an inconsequential noncompliance, based on the history and safety records of the vehicles. No consumer complaints and no warranty claims or incident reports have been received by CFMOTO or CHG that relate to the lack of a right foot actuated rear wheel brake.
>
> One of the main reasons consumers have been attracted to the subject vehicles is that they have the appearance of a motorcycle and the operation or function of a scooter. Aside from a lack of pass-through leg area, the vehicles are scooters in all technical respects. It is the scooter functionality that has been the driving force behind consumer demand for the vehicles.
>
> Individuals with disabilities prefer the left hand rear brake controls to those of a foot operated actuator. Similarly, many consumers want to upgrade from a scooter to a ''motorcycle look'' without the complexities of operating a motorcycle and therefore choose the subject vehicles.

In summation, CFMOTO believes that the described noncompliance is inconsequential to motor vehicle safety. Therefore, CFMOTO requests that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

CFMOTO also stated that CHG has corrected the problem that caused these errors so that they will not be repeated in future production.

NHTSA Decision

Background of the Requirements for a Motorcycle

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle*

[1] CFMOTO Powersports, Inc., a Minnesota Corporation, is an importer of motor vehicles.

[2] NHTSA No. C91202.

[3] CFR 49 571.3—Motor-driven cycle means a motor cycle with a motor that produces 5-brake horsepower or less.

Controls and Displays, specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays. The purpose of FMVSS No. 123 is to minimize accidents caused by operator error in responding to the motoring environment by standardizing certain motorcycle controls and displays. Among other requirements, FMVSS No. 123 (at S5.2.1, Table 1, Row 11) requires the control for a motorcycle's rear wheel brakes to be operable by a right foot control. However, if the motorcycle is a motor-driven cycle or a scooter with an automatic clutch, the rear wheel brake control must be located on the left handlebar. This requirement was delineated in a Final Rule amending FMVSS No. 123 published in the **Federal Register** (70 FR 51286) on August 30, 2005. Additionally, this notice defined the ''scooter'' style motorcycle as (1) having a platform for the operator's feet or has integrated footrests, and (2) has a step-through architecture, meaning that the part of the vehicle forward of the operator's seat and between the legs of an operator seated in the riding position is lower than the operator's seat. NHTSA has consistently held that standardization for motorcycle control locations is critical to the safe operation of these vehicles. Specifically, in order to lessen the risk of such crashes due to driver misapplication or non-application of the rear wheel brake there is an expectation by the operator that the control locations on a motorcycle with certain design characteristics, such as a scooter or a step-over traditional styled motorcycle, will for each style, be consistent from motorcycle to motorcycle. In the absence of this uniformity, the operator is at risk when operating a new or unfamiliar motorcycle.

NHTSA's Analysis of CFMOTO's Reasoning

The subject vehicles were certified as scooter style motorcycles by the CHG. CHG believed that the vehicles met all of the requirements for a scooter under FMVSS No. 123.

CHG made a fundamental error in concluding that the motorcycle was a scooter. The subject CFMOTO motorcycles in question have body cladding forward of the operators seat and have a similar step-over body configuration as a traditional motorcycle. It is quite obvious that the subject units do not have the step-thru architecture that is required for a scooter designation. It is the responsibility of the manufacturer to certify that the vehicles it manufacturers are compliant with all applicable FMVSS's and part of that process is ensuring that the vehicle is properly defined.

We will now address CHG's assertion that the placement of the rear brake on the left handlebar should be deemed by the NHTSA as an inconsequential noncompliance, based on the history and safety records of the vehicles. No consumer complaints and no warranty claims or incident reports have been received by CFMOTO or CHG that relate to the lack of a right foot actuated rear wheel brake.[4] NHTSA notes however, that the absence of this data does not necessarily indicate the lack of a potential safety problem.

CHG asserted that one of the main reasons consumers have been attracted to the subject vehicles is that they have the appearance of a motorcycle and the operation or function of a scooter. CHG asserted that aside from a lack of pass-through leg area, the vehicles are scooters in all technical respects, and that it is the scooter functionality that has been the driving force behind consumer demand for the vehicles.

In response, NHTSA notes that the subject vehicles have the appearance of a motorcycle which we interpret the petitioner as meaning the body styling of a traditional step-over motorcycle, yet the operation or function of a scooter, which we additionally interpret to mean automatic transmission and left handlebar brake and no right foot rear brake actuator. Not having the appearance of a scooter is the basis of the safety issue in question. A motorcycle that appears to be of standard configuration would be expected by operators to also have controls in the customary locations for a standard motorcycle. Thus, a safety scenario could arise as the operator riding on what they consider to be a standard motorcycle with commensurate standard control locations, during a braking event, would attempt to apply the traditional right foot brake lever when none was present, resulting in diminished braking capability and possible loss of vehicle control. CFMOTO has answered its own question as to why a motorcycle with a certain configuration yet with unexpected operational control locations presents a safety concern. Consequently, NHTSA is not persuaded by CFMOTO'S argument.

CFMOTO also asserted that individuals with disabilities prefer the left hand rear brake controls to those of a foot operated actuator, and that many consumers want to upgrade from a scooter to a motorcycle without the complexities of operating a motorcycle and therefore choose the subject vehicles.

In response, NHTSA notes CFMOTO has provided no evidence backing its assertion regarding consumer preference or marketing strategies. However, if such consumer preference is true, the requirement for the right foot rear wheel brake actuator does not preclude incorporation of a supplemental left handlebar brake lever controlling the rear brake wheel for the CFMOTO units. Per S5.2.1 of the standard, ''If a motorcycle with an automatic clutch other than a scooter is equipped with a supplemental rear brake control, the control shall be located on the left handlebar.'' Thus the motorcycles in question can continue to have the left hand brake lever provided the right foot lever is provided.

NHTSA Conclusions

The subject noncompliant vehicles do not qualify as either ''motor-driven cycle'' type or ''scooter'' style motorcycle. Because the noncompliant vehicles clearly do not resemble scooters or motor-driven cycles, an operator will very likely expect the motorcycle to be of traditional design with controls traditionally located as well. In the absence of the right foot brake lever, the operator will be precluded from the right foot rear wheel brake application thereby possibly increasing stopping distance and the likelihood of loss of vehicle control.

Lastly, CFMOTO has not produced any data to support its contention that the noncompliance does not present a significant safety risk.

Decision

After a review of CFMOTO's arguments and the final rule preamble language, NHTSA concludes that CFMOTO has not met its burden of demonstrating that the noncompliance does not present a significant safety risk. Therefore, NHTSA does not agree with CFMOTO that this specific noncompliance is inconsequential to motor vehicle safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliances described are inconsequential to motor vehicle safety. Accordingly, CFMOTO's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

[4] We note no such consumer complaints, warranty claims or incident reports have been reported to NHTSA.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 19, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–27565 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0141; Notice 2]

Mazda North American Operations, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of Petition for Decision of Inconsequential Noncompliance.

SUMMARY: Mazda North American Operations (MNAO),[1] on behalf of Mazda Motor Corporation of Hiroshima, Japan (Mazda), has determined the lens of the headlamps equipped on certain 2004 through 2009 Mazda RX–8 model passenger cars, manufactured from April 1, 2003, to May 29, 2009, and certain 2006 through 2008 MX–5 model passenger cars, built from May 17, 2005, to November 27, 2008, failed to meet the requirements of paragraph S7.2(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 108 *Lamps, Reflective Devices, and Associated Equipment.* Mazda has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports,* dated December 16, 2009.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Mazda has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on October 21, 2010 in the **Federal Register** (75 FR 65053). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number ''NHTSA–2010–0141.''

For further information on this decision, contact Mr. Michael Cole, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–2334, facsimile (202) 366–7002.

Mazda estimates approximately 123,000 2004 through 2009 Mazda RX–8 model passenger cars, manufactured from April 1, 2003 to May 29, 2009, and 2006 through 2008 MX–5 model passenger cars, built from May 17, 2005 to November 27, 2008, are affected. All of the affected vehicles were built at Mazda'a plant in Hiroshima Japan.

Mazda states that the noncompliance is that the lenses of the headlamps on the affected vehicles are not marked with the name or trademark of the manufacturer of the headlamp, the manufacturer of the vehicle, or the importer of the vehicle.

Mazda was notified by its headlamp manufacturer, Koito Manufacturing Company, Ltd. (Koito) of the apparent noncompliance. Mazda then concluded that the vehicles equipped with the affected headlamps failed to comply with paragraph S7.2(b) of FMVSS No. 108.

Mazda stated the following reasons why they believe the noncompliance is inconsequential to vehicle safety and does not present a risk to motor vehicle safety:

> The affected headlamps fulfill all the relevant performance requirements of FMVSS No. 108, except that trade name and/or trademark of the manufacturer or importer is missing on the lens. However, the affected headlamps have the trademark of the headlamp manufacturer on the rim of the headlamp housing. Thus, Mazda contends that this marking on the rim is visible with the vehicle's front hood open and states that it believes that the rim marking could assist the easy identification of the headlamp manufacturer by the users of the vehicles.
>
> Mazda has not received any complaints or claims related to the noncompliance nor is it aware of any known reports of accidents or injuries attributed to the noncompliance.

In summary, Mazda states that it believes the noncompliance is inconsequential to motor vehicle safety because the affected headlamps fulfill all other relevant requirements of FMVSS No. 108.

The company also states that it has taken steps to correct the noncompliance in future production.

Supported by the above stated reasons, Mazda believes that the subject noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, should be granted.

NHTSA Decision: NHTSA agrees with Mazda that the performance of the headlamps is not affected by the subject noncompliance. NHTSA also agrees that in this unique case that the marking of the trademark on the rim of the headlamp housing, rather than on the headlamp lens itself as required by the rule, fulfills the same function as the requirement because a vehicle user can readily determine the manufacturer of the headlamp.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the vehicles[2] that Mazda no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles.

In consideration of the foregoing, NHTSA has decided that Mazda has met its burden of persuasion that the subject FMVSS No. 108 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, Mazda's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.)

Issued on: October 19, 2011.

Claude H. Harris,

Director, Acting Associate Administrator for Enforcement.

[FR Doc. 2011–27581 Filed 10–24–11; 8:45 am]

BILLING CODE 4910–59–P

[1] Mazda Motor Corporation of Hiroshima, Japan (Mazda) is the manufacturer of the subject vehicles and Mazda North American Operations (MNAO) is the importer of the vehicles as well as the registered agent for Mazda.

[2] Mazda's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Mazda as a manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the affected vehicles. However, a decision on this petition cannot relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mazda notified them that the subject noncompliance existed.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 19, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before November 25, 2011 to be assured of consideration.

Alcohol and Tabacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0006.

Type of Review: Extension without change of a currently approved collection.

Title: Applications—Volatile Fruit-Flavor Concentrate Plants, TTB REC 5520/2.

Form: TTB F 5530.3.

Abstract: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application and keep records to support the manufacture of these concentrates. TTB uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement. TTB uses the records to ensure that the concentrates are manufactured properly.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 160.

OMB Number: 1513–0022.

Type of Review: Extension without change of a currently approved collection.

Title: Annual Report of Concentrate Manufacturers and Usual and Customary Business Records-Volatile Fruit-Flavor Concentrate, TTB REC 5520/1.

Form: TTB F 5520.2.

Abstract: Manufacturers of volatile fruit-flavor concentrate must provide reports as necessary to ensure the protection of the revenue. The report and records accounts for all concentrates manufactured, removed, or treated so as to be unfit for beverage use. The information is required to verify that alcohol is not being diverted for beverage use which would jeopardize tax revenues.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 27.

OMB Number: 1513–0030.

Type of Review: Revision of a currently approved collection.

Title: Claim—Alcohol, Tobacco, and Firearms Taxes.

Form: TTB F 5620.8.

Abstract: This form is used by taxpayers to show the basis for a credit remission and allowance of tax on loss of taxable articles, to request a refund or abatement on taxes excessively or erroneously collected, and to request a drawback of tax paid on distilled spirits used in the production on non-beverage products.

Respondents: Private Sector: Not-for-profit institutions, Businesses or other for-profits; Individuals or Households.

Estimated Total Burden Hours: 10,000.

OMB Number: 1513–0053.

Type of Review: Revision of a currently approved collection.

Title: Report of Wine Premises Operations.

Form: TTB F 5120.17.

Abstract: This report is used to monitor wine operations, ensure collection of wine tax revenue, and ensure wine is produced in accordance with law and regulations. This report also provides raw data for TTB's monthly statistical release on wine.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 35,672.

OMB Number: 1513–0055.

Type of Review: Revision of a currently approved collection.

Title: Offer in Compromise of Liability Incurred Under Federal Alcohol Administration Act, as amended.

Form: TTB F 5640.2.

Abstract: Persons who have committed violations of the FAA Act may submit an offer in compromise. The offer is a request by the party in violation to compromise penalties for the violations in lieu of civil or criminal action. TTB F 5640.2 identifies the violation(s) to be compromised by the person committing them, amount of offer, plus justification for acceptance.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 24.

OMB Number: 1513–0065.

Type of Review: Extension without change of a currently approved collection.

Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report, TTB REC 5170/2.

Abstract: An accounting tool, this record is used to show the person from whom a wholesale dealer purchased alcoholic beverages, and the person to whom the dealer sold alcoholic beverages. When required, the monthly report will provide a report of sales activities and on-hand inventory quantities.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,200.

OMB Number: 1513–0094.

Type of Review: Revision of a currently approved collection.

Title: Federal Firearms and Ammunition Quarterly Excise Tax Return.

Form: 5300.26.

Abstract: This information is needed to determine how much tax is owed for firearms and ammunition. TTB uses this information to verify that a taxpayer has correctly determined and paid tax liability on the sale or use of firearms and ammunition. Businesses, including small to large, and individuals may be required to use this form.

Respondents: Private Sector: Businesses or other for-profits; Individuals and Households.

Estimated Total Burden Hours: 33,775.

OMB Number: 1513–0102.

Type of Review: Extension without change of a currently approved collection.

Title: Tobacco Bond—Collateral and Tobacco Bond-Surety.

Form: 5200.25; 5200.26.

Abstract: TTB requires a corporate surety bond or a collateral bond to ensure payment of the excise tax on tobacco products (TP) and cigarette paper and tubes (CP&T) removed from the factory or warehouse. These TTB forms identify the agreement to pay and the person from which TTB will attempt to collect any unpaid excise tax. Manufactures of TP or CP&T, export warehouse proprietors, and corporate sureties, if applicable, are the respondents for these forms.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 25.

Clearance Officer: Gerald Isenberg, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005; (202) 453–2165.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–27519 Filed 10–24–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Travel Service Provider and Carrier Service Provider Submission

AGENCY: Office of Foreign Assets Control, 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 Office of Foreign Assets Control (''OFAC'') within the Department of the Treasury is soliciting comments concerning OFAC's Travel Service Provider and Carrier Service Provider information collection.

DATES: Written comments should be received on or before December 27, 2011 to be assured of consideration.

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

Federal eRulemaking Portal: www.regulations.gov.

Follow the instructions for submitting comments.

Fax: Attn: Request for Comments (TSP/CSP Information Collection) (202) 622–1657.

Mail: Attn: Request for Comments (TSP/CSP Information Collection), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via regulations.gov or upon request, without change and including any personal information provided.

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

SUPPLEMENTARY INFORMATION:

Title: Travel Service Provider and Carrier Service Provider Submission.

OMB Number: 1505–0168.

Abstract: The information is required of persons who have been authorized by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to handle travel arrangements to, from, and or within Cuba or to provide charter air service to Cuba. Travel service providers are required to collect information on persons traveling on direct flights to Cuba and forward that information to carrier service providers, for ultimate submission to OFAC.

Current Actions: The information collection is being revised to reflect changes in the estimated number of travelers per year and the time needed to provide the required information.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households and businesses.

Estimated Number of Respondents: 500,000.

Estimated Time per Respondent: 4 minutes per entry for travel service providers, or up to 1,000,000 minutes annually for travel service providers in the aggregate (16,667 hours); and up to 4 minutes per entry for carrier service providers, or up to 1,000,000 minutes annually for carrier service providers in the aggregate (16,667 hours).

Estimated Total Annual Burden Hours: 33,334.

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 Office of Management and Budget (''OMB'') control number. Books or records relating to a collection of information must be retained for five years.

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 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 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.

Dated: October 20, 2011.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–27557 Filed 10–24–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of three individuals and two entities whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the three individuals and two entities identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on October 19, 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 from OFAC's Web site (*http://www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On October 19, 2011, the Director of OFAC removed from the SDN List the three individuals and two entities listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals:

GAMBOA MORALES, Luis Carlos, c/o GAMBOA Y GAMBOA LTDA., Bogota, Colombia; Carrera 9 No. 70A—35 Piso 7, Bogota, Colombia; DOB 20 Dec 1957; Cedula No. 3228859 (Colombia) (individual) [SDNT]

OSORIO CADAVID, Maria Victoria, c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia; Cedula No. 31932294 (Colombia) (individual) [SDNT]

SAIEH JASSIR, Abdala, 780 NW 42nd Avenue, Suite 516, Miami, FL 33126; 780 NW Le Jeune Road, Suite 516, Miami, FL 33126; 19667 Turnberry Way A–G, North Miami Beach, FL; Carrera 56 No. 19–40 Apt. 11, Barranquilla, Colombia; c/o VILLAROSA INVESTMENTS CORPORATION, Panama City, Panama; c/o VILLAROSA INVESTMENTS FLORIDA, INC., Miami, FL; c/o URBANIZADORA ALTAVISTA INTERNACIONAL S.A., Barranquilla, Colombia; c/o MLA INVESTMENTS INC., Virgin Islands, British; c/o KATTUS CORPORATION, Barbados; c/o KAREN OVERSEAS, INC., Panama City, Panama; c/o KAREN OVERSEAS FLORIDA, INC., Miami, FL; c/o JAMCE INVESTMENTS LTD, Grand Cayman, Cayman Islands; c/o GRANADA ASSOCIATES, INC., Miami, FL; c/o ELIZABETH OVERSEAS INC., Panama City, Panama; c/o CONSTRUCTORA ALTAVISTA INTERNACIONAL S.A., Barranquilla, Colombia; c/o CONFECCIONES LORD S.A., Barranquilla, Atlantico, Colombia; c/o ALM INVESTMENT FLORIDA, INC., Miami, FL; c/o SALMAN CORAL WAY PARTNERS, Miami, FL; c/o C.W. SALMAN PARTNERS, Miami, FL; DOB 19 Dec 1919; citizen Colombia; Cedula No. 812202 (Colombia); Passport AF547128 (Colombia) (individual) [SDNT]

Entities:

BANCA DE INVERSION Y MERCADO DE CAPITALES S.A. (a.k.a. BIMERC S.A.), Avenida 6N No. 17–92 Oficina 802, Cali, Colombia; NIT # 800238316–7 (Colombia) [SDNT]

GAMBOA Y GAMBOA LTDA., Carrera 9 No. 70A–35 P. 7, Bogota, Colombia; NIT # 800013236–1 (Colombia) [SDNT]

Dated: October 19, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–27553 Filed 10–24–11; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 76 Tuesday,

No. 206 October 25, 2011

Part II

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Investment Advice; Participants and Beneficiaries; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB35

Investment Advice—Participants and Beneficiaries

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule under the Employee Retirement Income Security Act, and parallel provisions of the Internal Revenue Code of 1986, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). The final rule affects sponsors, fiduciaries, participants and beneficiaries of participant-directed individual account plans, as well as providers of investment and investment advice related services to such plans.

DATES: The final rule is effective on December 27, 2011.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(e)(3)(B) of the Internal Revenue Code of 1986 (Code) include within the definition of ''fiduciary'' a person that renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan, or has any authority or responsibility to do so.[1] The prohibited transaction provisions of ERISA and the Code prohibit a fiduciary from dealing with the assets of the plan in his own interest or for his own account and from receiving any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.[2] These statutory provisions have been interpreted as prohibiting a fiduciary from using the authority, control or responsibility that makes it a fiduciary to cause itself, or a party in which it has an interest that may affect its best judgment as a fiduciary, to receive additional fees.[3] As a result, in the absence of a statutory or administrative exemption, fiduciaries are prohibited from rendering investment advice to plan participants regarding investments that result in the payment of additional advisory and other fees to the fiduciaries or their affiliates. Section 4975 of the Code applies similarly to the rendering of investment advice to an individual retirement account (IRA) beneficiary.

With the growth of participant-directed individual account plans, there has been an increasing recognition of the importance of investment advice to participants and beneficiaries in such plans. Over the past several years, the Department of Labor (Department) has issued various forms of guidance concerning when a person would be a fiduciary by reason of rendering investment advice, and when such investment advice might result in prohibited transactions.[4] Responding to the need to afford participants and beneficiaries greater access to professional investment advice, Congress amended the prohibited transaction provisions of ERISA and the Code, as part of the Pension Protection Act of 2006 (PPA),[5] to permit a broader array of investment advice providers to offer their services to participants and beneficiaries responsible for investment of assets in their individual accounts and, accordingly, for the adequacy of their retirement savings.

Specifically, section 601 of the PPA added a statutory prohibited transaction exemption under sections 408(b)(14) and 408(g) of ERISA, with parallel provisions at Code sections 4975(d)(17) and 4975(f)(8).[6] Section 408(b)(14) sets forth the investment advice-related transactions that will be exempt from the prohibitions of ERISA section 406 if the requirements of section 408(g) are met. The transactions described in section 408(b)(14) are: the provision of investment advice to the participant or beneficiary with respect to a security or other property available as an investment under the plan; the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and the direct or indirect receipt of compensation by a fiduciary adviser or affiliate in connection with the provision of investment advice or the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the investment advice. As described more fully below, the requirements in section 408(g) are met only if advice is provided by a fiduciary adviser under an ''eligible investment advice arrangement.'' Section 408(g) provides for two general types of eligible arrangements: one based on compliance with a ''fee-leveling'' requirement (imposing limitation on fees and compensation of the fiduciary adviser); the other, based on compliance with a ''computer model'' requirement (requiring use of a certified computer model). Both types of arrangements also must meet several other requirements.

On February 2, 2007, the Department issued Field Assistance Bulletin (FAB) 2007–01 addressing certain issues presented by the new statutory exemption. This Bulletin affirmed that the enactment of sections 408(b)(14) and 408(g) did not invalidate or otherwise affect prior guidance of the Department relating to investment advice and that such guidance continues to represent the views of the Department.[7] The Bulletin also confirmed the applicability of the principles set forth in section 408(g)(10) [Exemption for plan sponsor and certain other fiduciaries] [8] to plan

[1] See also 29 CFR 2510.3–21(c) and 26 CFR 54.4975–9(c).

[2] ERISA section 406(b)(1) and (3) and Code section 4975(c)(1)(E) and (F).

[3] 29 CFR 2550.408b–2(e).

[4] See Interpretative Bulletin relating to participant investment education, 29 CFR 2509.96–1 (Interpretive Bulletin 96–1); Advisory Opinion (AO) 2005–10A (May 11, 2005); AO 2001–09A (December 14, 2001); and AO 97–15A (May 22, 1997).

[5] Public Law 109–280, 120 Stat. 780 (Aug. 17, 2006).

[6] Under Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), 5 U.S.C. App. 1, 92 Stat. 3790, the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. Therefore, the references in this notice to specific sections of ERISA should be taken as referring also to the corresponding sections of the Code.

[7] In this regard, the Department cited the following: August 3, 2006 Floor Statement of Senate Health, Education, Labor and Pensions Committee Chairman Enzi (who chaired the Conference Committee drafting legislation forming the basis of H.R. 4) regarding investment advice to participants in which he states, ''It was the goal and objective of the Members of the Conference to keep this advisory opinion [AO 2001–09A, SunAmerica Advisory Opinion] intact as well as other pre-existing advisory opinions granted by the Department. This legislation does not alter the current or future status of the plans and their many participants operating under these advisory opinions. Rather, the legislation builds upon these advisory opinions and provides alternative means for providing investment advice which is protective of the interests of plan participants and IRA owners.'' 152 Cong. Rec. S8,752 (daily ed. Aug. 3, 2006) (statement of Sen. Enzi).

[8] Section 408(g)(10) addresses the responsibility and liability of plan sponsors and other fiduciaries in the context of investment advice provided pursuant to the statutory exemption. Subject to certain requirements, section 408(g)(10) provides that a plan sponsor or other person who is a plan fiduciary, other than a fiduciary adviser, is not treated as failing to meet the fiduciary requirements

sponsors and fiduciaries who offer investment advice arrangements with respect to which relief under the statutory exemption is not required. Finally, the Bulletin addressed the scope of the fee-leveling requirement under the statutory exemption.

On January 21, 2009, the Department published in the **Federal Register** final rules implementing section 408(b)(14) and 408(g) of ERISA, and the parallel provisions in the Code.[9] The final rules also included an administrative class exemption, adopted pursuant to ERISA section 408(a), granting additional prohibited transaction relief. The effective and applicability dates of the final rules, originally set for March 23, 2009, subsequently were delayed to allow the Department to solicit and review comments from interested persons on legal and policy issues raised under the final rules.[10] Based on a consideration of the concerns raised by commenters as to whether the conditions of the class exemption would be adequate to mitigate advisers' conflicts, the Department decided to withdraw the final rule. Notice of the withdrawal of the final rule was published in the **Federal Register** on November 20, 2009 (74 FR 60156).

On March 2, 2010, the Department published in the **Federal Register** new proposed regulations that, upon adoption, implement the statutory prohibited transaction exemption under ERISA sections 408(b)(14) and 408(g), and the parallel provisions in the Code (75 FR 9360). In response to the proposal, the Department received 74 comment letters.[11]

Set forth below is an overview of the final rule and an overview of the major comments received on the proposed rule.

B. Overview of Final § 2550.408g–1 and Public Comments

1. General

In general, § 2550.408g–1 tracks the requirements under section 408(g) of ERISA that must be satisfied in order for the investment advice-related transactions described in section 408(b)(14) to be exempt from the prohibitions of section 406. Paragraph (a) describes the general scope of the statutory exemption and regulation. Paragraph (b) sets forth the requirements that must be satisfied for an arrangement to qualify as an ''eligible investment advice arrangement'' and for the exemption to apply. Paragraph (c) defines certain terms used in the regulation. Paragraph (d) sets forth the record retention requirement applicable to an eligible investment advice arrangement. Paragraph (e) describes the implications of noncompliance on the prohibited transaction relief under the statutory exemption.

The provisions in paragraph (a) of the final rule have not been changed from the proposal. Paragraph (a)(1) describes the general scope of the final rule, referencing the statutory exemption under sections 408(b)(14) and 408(g)(1) of ERISA, and under sections 4975(d)(17) and 4975(f)(8) of the Code, for certain transactions in connection with the provision of investment advice, as set forth in paragraph (b) of the final rule. It further provides that the requirements and conditions of the final rule apply solely for the relief described in the final rule, and that no inferences should be drawn with respect to the requirements applicable to the provision of investment advice not addressed by the rule.

Several comment letters raised issues with respect to the general scope of the proposal. Although a number of commenters supported the Department's decision with respect to the withdrawal of the class exemption, others requested its re-proposal. The latter group argued that increasing the availability of investment advice to plan participants and beneficiaries requires broader prohibited transaction relief than provided under the proposed regulation. Other commenters argued that plan sponsors also would benefit from increased access to investment advice, and suggested extending exemptive relief to advice provided to plan sponsors, either through the final rule or by an administrative class exemption. Another commenter requested that the final rule provide relief for management of managed accounts. These comments are beyond the scope of the proposal, which was limited to implementation of the statutory exemption for the provision of investment advice to plan participants and beneficiaries, and have not been adopted by the Department.

Two commenters observed that paragraph (a)(1) indicates that the requirements contained in the final rule should not be read as applicable to arrangements for which prohibited transaction relief is not necessary. They requested clarification that a plan sponsor's selection and monitoring responsibilities do not differ for advice provided pursuant to the regulation compared to arrangements for which prohibited transaction relief is not necessary. In response, we note that, as stated in FAB 2007–1, it is the Department's view that, except for section 408(g)(10)(A)(i) to (iii), the same fiduciary duties and responsibilities apply to the selection and monitoring of an investment adviser regardless of whether the arrangement for investment advice services is one to which the regulation applies. As further explained in that Bulletin, a plan sponsor or other fiduciary that prudently selects and monitors an investment advice provider will not be liable for the advice furnished by such provider to the plan's participants and beneficiaries, whether or not that advice is provided pursuant to the statutory exemption under section 408(b)(14).

Paragraph (a)(2) provides that nothing contained in ERISA section 408(g)(1), Code section 4975(f)(8), or the final rule imposes an obligation on a plan fiduciary or any other party to offer, provide or otherwise make available any investment advice to a participant or beneficiary. Paragraph (a)(3) provides that nothing contained in those same provisions of ERISA and the Code, or the final rule invalidates or otherwise affects prior regulations, exemptions, interpretive or other guidance issued by the Department pertaining to the provision of investment advice and the circumstances under which such advice may or may not constitute a prohibited transaction under section 406 of ERISA or section 4975 of the Code.

Several commenters suggested that, rather than merely affirming the continued applicability of pre-PPA guidance in paragraph (a)(3),[12] the Department should reconsider its past guidance in light of the safeguards contained in the statutory exemption and the proposed rule. Such an undertaking is beyond the scope of the

of ERISA solely by reason of the provision of investment advice as permitted by the statutory exemption. This provision does not exempt a plan sponsor or a plan fiduciary from fiduciary responsibility under ERISA for the prudent selection and periodic review of the selected fiduciary adviser.

[9] In connection with the development of the January 2009 final rules, the Department published two requests for information from the public (see 71 FR 70429 (Dec. 4, 2006) and 72 FR 70427; comments found at *http://www.dol.gov/ebsa/regs/cmt-Investmentadvice.html* and *http://www.dol.gov/ebsa/regs/cmt-InvestmentadviceIRA.html*); published proposed regulations and class exemption with solicitation of public comment (see 73 FR 49896 (Aug. 22, 2008) and 73 FR 49924; comments found at *http://www.dol.gov/ebsa/regs/cmt-investment-advice.html* and *http://www.dol.gov/ebsa/regs/cmt-investmentadviceexemption.html*); and held public hearings on October 21, 2008 (see 73 FR 60657 (Oct. 21, 2008) and 73 FR 60720) and July 31, 2007 (see 72 FR 34043 (June 20, 2007)).

[10] 74 FR 59092 (Nov. 17, 2009); 74 FR 23951 (May 22, 2009); 74 FR 11847 (Mar. 20, 2009). Comments can be found at: *http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html.*

[11] Comments can be found at: *http://www.dol.gov/ebsa/regs/cmt-1210-AB35.html.*

[12] See also Field Assistance Bulletin 2007–1 (Feb. 2, 2007).

current proposal, and the Department has not adopted this suggestion.

Other commenters requested a general clarification of how the final rule applies in the context of IRAs. In particular, a commenter asked if paragraph (a)(3) indicates that prior ERISA regulations are now applicable to IRAs. Code section 4975(c), similar to ERISA section 406, generally prohibits a plan fiduciary from rendering investment advice that results in the payment of additional advisory and other fees to the fiduciaries or their affiliates. A fiduciary who participates in a prohibited transaction is subject to excise taxes under Code section 4975(a) and (b).[13] The application of the Code section 4975 prohibited transaction provisions to IRAs pre-dates the enactment of the PPA.[14] The statutory exemption implemented by this rule merely provides limited conditional relief from the application of those Code provisions. Except for the relief afforded by the statutory exemption, the final rule does not change the manner or extent to which Code section 4975 applies to an IRA.[15] Nor does the final rule make ERISA's fiduciary responsibility provisions applicable to an IRA that is not covered by ERISA.

Commenters also asked questions relating to the prohibited transaction implications of making recommendations to plan participants to roll-over plan benefits into an IRA. The Department has taken the position that merely advising a plan participant to take an otherwise permissible plan distribution, even when that advice is combined with a recommendation as to how the distribution should be invested, does not constitute ''investment advice'' within the meaning of 29 CFR 2510–3.21(c).[16] The Department, however, has invited public comment on the issue as part of its review of the definition of ''fiduciary'' with regard to persons providing investment advice to plans or plan participants and beneficiaries under 29 CFR 2510.3–21(c).[17] The Department has not completed its review of those comments and, accordingly, is not addressing the issue as part of this final rule.

2. Statutory Exemption

a. General

Paragraph (b) of the final rule describes the requirements that must be satisfied in order for the investment advice-related transactions described in section 408(b)(14) to be exempt from the prohibitions of section 406. These requirements generally track the requirements in section 408(g)(1) of ERISA.

Paragraph (b)(1) of the final rule sets forth the general scope of the statutory exemption and regulation as providing relief from the prohibitions of section 406 of ERISA for transactions described in section 408(b)(14) of ERISA in connection with the provision of investment advice to a participant or a beneficiary if the investment advice is provided by a fiduciary adviser under an ''eligible investment advice arrangement.'' The transactions described in section 408(b)(14) include the provision of investment advice to a participant or beneficiary with respect to a security or other property available as an investment under the plan; the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the advice; and the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate in connection with the provision of the advice or in connection with the acquisition, holding or sale of the security or other property. Paragraph (b)(1) also notes that the Code contains parallel provisions at section 4975(d)(17) and (f)(8).

A commenter asked whether relief would be provided for extensions of credit intrinsic to investments made pursuant to investment advice rendered. It is the view of the Department that transactions in connection with the provision of investment advice described in section 3(21)(A)(ii) of ERISA include, for purposes of the statutory exemption, otherwise permissible routine transactions necessary for the efficient execution and settlement of trades of securities, such as extensions of short term credit in connection with settlements.

Commenters also requested clarification as to whether advice to a participant or beneficiary concerning the selection of an investment manager to manage some or all of the participant's or beneficiary's plan assets constitutes the provision of investment advice within the meaning of section 3(21)(A)(ii) of ERISA for purposes of the statutory exemption. As previously stated in the context of adopting the 2009 final rule, the Department has long held the view that individualized recommendations of particular investment managers to plan fiduciaries constitutes the provision of investment advice within the meaning of section 3(21)(A)(ii) in the same manner as recommendations of particular securities or other property. The fiduciary nature of such advice does not change merely because the advice is being given to a plan participant or beneficiary.[18] The Department has reaffirmed this position in connection with proposed amendments to regulations at 29 CFR 2510.3–21(c).[19]

Paragraph (b)(2) provides that, for purposes of section 408(g)(1) of ERISA and section 4975(f)(8) of the Code, an ''eligible investment advice arrangement'' is an arrangement that meets either the requirements of paragraph (b)(3) [describing investment advice arrangements that use fee-leveling] or paragraph (b)(4) [describing investment advice arrangements that use computer modeling], or both.

b. Arrangements Using Fee-Leveling

With respect to arrangements that use fee-leveling, paragraph (b)(3)(i)(A) requires that any investment advice must be based on generally accepted investment theories that take into account historic returns of different asset classes over defined periods of time, but also notes that generally accepted investment theories that take into account additional considerations are not precluded. Paragraph (b)(3)(i)(B) requires that investment advice must take into account investment management and other fees and expenses attendant to the recommended investments. These provisions have not been changed from the proposal.

Paragraph (b)(3)(i)(C) of the final rule requires that investment advice provided under a fee-leveling arrangement must take into account, to the extent furnished, information relating to age, time horizons (*e.g.,* life expectancy, retirement age), risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences of the participant or beneficiary. Despite a request for re-consideration by commenters, paragraph (b)(3)(i)(C) requires that a fiduciary adviser must request such information. These

[13] See Code section 4975(a), (b), and (e)(2)(A).

[14] Code section 4975(e)(1)(B). Public Law 93–406 section 2003(a), 88 Stat. 971.

[15] As indicated in footnote 6 above, pursuant to section 102 of Reorganization Plan No. 4 of 1978, the Secretary of Labor has authority to interpret certain provisions of Code section 4975.

[16] AO 2005–23A (Dec. 7, 2005). This opinion further states that where someone who is already a plan fiduciary responds to participant questions concerning the advisability of taking a distribution or the investment of amounts withdrawn from the plan, that fiduciary is exercising discretionary authority respecting management of the plan and must act prudently and solely in the interest of the participant.

[17] 75 FR 65263 (Oct. 22, 2010).

[18] 74 FR 3822, 3824 (Jan. 21, 2009). See also AO 84–04A (Jan. 4, 1984); AO 84–03A (Jan. 4, 1984); 29 CFR 2509.96–1(c).

[19] See footnote 17, above.

commenters noted that ERISA section 408(g)(3) does not contain a mandatory request for information, and that the Department similarly should avoid such a mandate. The Department believes that this information is sufficiently important to the provision of useful investment advice that fiduciary advisers should be required to make a request for the information. Accordingly, this requirement is retained in both the fee-leveling and computer modeling provisions of the final rule. We note that, as also reflected in paragraph (b)(3)(i)(C) of the final rule, investment advice need not take into account information requested, but not furnished by a participant or beneficiary, and a fiduciary adviser is not precluded from requesting and taking into account additional information that a plan or participant or beneficiary may provide. Furthermore, the Department does not believe that this provision, or paragraph (b)(4)(i)(D) applicable to arrangements using computer models, would preclude a fiduciary adviser or computer model, when making an information request, from also providing a participant or beneficiary with an opportunity to direct the use of information previously provided.

Paragraphs (b)(3)(i)(D) of the final rule sets forth the limitations on fees and compensation applicable to fee-leveling arrangements. As proposed, paragraph (b)(3)(i)(D) provided that no fiduciary adviser (including any employee, agent, or registered representative) that provides investment advice receives from any party (including an affiliate of the fiduciary adviser), directly or indirectly, any fee or other compensation (including commissions, salary, bonuses, awards, promotions, or other things of value) that is based in whole or in part on a participant's or beneficiary's selection of an investment option. Some commenters suggested that the fee and compensation limitation be expanded to include the affiliates of a fiduciary adviser. The Department has not adopted this suggestion. In FAB 2007–1, the Department concluded that the requirement in ERISA section 408(g)(2)(A)(i) that fees not vary depending on the basis of any investment option selected applies only to a fiduciary adviser, and does not extend to affiliates of the fiduciary adviser unless the affiliate also is a provider of investment advice. In reaching this conclusion, the Department explained that, consistent with its previous guidance, if the fees and compensation received by an affiliate of a fiduciary that provides investment advice do not vary or are offset against those received by the fiduciary for the provision of investment advice, no prohibited transaction will result solely by reason of providing investment advice, and prohibited transaction relief, such as provided under sections 408(b)(14) and 408(g), is not necessary.[20]

Several commenters suggested that the Department revise the language in paragraph (b)(3)(i)(D) that refers to fees or compensation that is ''*based* in whole or in part'' on a participant's investment selection to conform to the statutory provision, and make clear that the regulation only proscribes fees or compensation that vary based on investment selections. As an example, a commenter explained that if commissions paid with respect to each plan investment option are the same, the commission could nonetheless be considered ''based on'' an investment selection because it is paid only if an investment is made, and therefore would appear to violate the proposal. Such a result, it is argued, is inconsistent with the section 408(g)(2)(A)(i), which only requires that ''any fees (including any *commission* or other compensation) received by the fiduciary adviser * * * do not *vary* depending on the basis of any investment option selected.'' (Emphasis added) Another commenter cautioned that the proposal could be misinterpreted as proscribing only those payments that a payor intends to act as an incentive, whereas the statutory provision appears to address receipt of any varying payment that has the effect of creating an incentive, without regard to the payor's intent.[21] This commenter also recommended that the proposal should be revised to conform to the statutory language.

The Department agrees with the observations of the commenters and, accordingly, has revised the provision in response to these comments. Paragraph (b)(3)(i)(D) of the final rule requires that no fiduciary adviser (including any employee, agent, or registered representative) that provides investment advice receives from any party (including an affiliate of the fiduciary adviser), directly or indirectly, any fee or other compensation (including commissions, salary, bonuses, awards, promotions, or other things of value) that varies depending on the basis of a participant's or beneficiary's selection of a particular investment option. Consistent with the statute, this provision proscribes the receipt of fees or compensation that vary based on investment options selected, and therefore could have the effect of creating an incentive for a fiduciary adviser, or any individual employed by the adviser, to favor certain investments.

A commenter expressed the view that by encompassing bonuses, awards, promotions, or other things of value, the fee-leveling requirement may be unnecessarily broad. Some commenters asked whether particular compensation arrangements or structures described in their comment letters would meet the fee-leveling requirement. Others similarly sought confirmation that bonuses, where it can be established that plan and IRA components are excluded from, or constitute a negligible portion of, the calculation, would not violate the fee-leveling requirement. The Department intends the fee-leveling requirement to be broadly applied in order to ensure the objectivity of the investment advice recommendations to plan participants and beneficiaries is not compromised by the advice provider's own financial interest in the outcome. For purposes of applying the provision, the Department would consider things of value to include trips, gifts and other things that, while having a value, are not given in the form of cash. Accordingly, almost every form of remuneration that takes into account the investments selected by participants and beneficiaries would likely violate the fee-leveling requirement of the final rule. On the other hand, a compensation or bonus arrangement that is based on the overall profitability of an organization may be permissible if the individual account plan and IRA investment advice and investment option components are excluded from, or constituted a negligible portion of, the calculation of the organization's profitability. The Department believes, however, that whether any particular salary, bonus, awards, promotions or commissions program meets or fails the fee-leveling requirement ultimately depends on the details of the program. In this regard, the Department notes that, under paragraph (b)(6), the details of such programs will be the subject of both a review and a report by an independent auditor as a condition for relief under the statutory exemption.

In addition to the foregoing, under paragraph (b)(3)(ii), fiduciary advisers utilizing investment advice

[20] See AO 97–15A and AO 2005–10A.

[21] The commenter focused on the Department's preamble explanation that, even though an affiliate of a fiduciary adviser would be permitted to receive fees that vary depending on investment options selected, any provision of financial or economic incentives by an affiliate (or any other party) to a fiduciary adviser or person employed by such fiduciary adviser to favor certain investments would be impermissible under the proposal. 75 FR 9361

arrangements that employ fee-leveling must comply with the requirements of paragraphs (b)(5) [authorization by plan fiduciary], (b)(6) [audits], (b)(7) [disclosure to participants], (b)(8) [disclosure to authorizing fiduciary], (b)(9) [miscellaneous], and (d) [maintenance of records] of the final rule, each of which is discussed in more detail below.

c. Arrangements Using Computer Models

Paragraph (b)(4) addresses the requirements applicable to investment advice arrangements that rely on use of computer models under the statutory exemption. To qualify as an eligible investment advice arrangement, the only investment advice provided under the arrangement must be advice generated by a computer model described in paragraph (b)(4)(i) [computer model design and operation] and (ii) [computer model certification], and the arrangement must meet the requirements of paragraphs (b)(5) through (9) and paragraph (d), each of which is discussed in more detail below.

1. Computer Model Design and Operation

In general, the computer model design and operation provisions in the proposal were based on section 408(g)(3)(B)(i)–(v) of ERISA. They also reflected comments received during development of the January 2009 final rule. However, the proposal also included a new provision, at paragraph (b)(4)(i)(E)(*3*), requiring that a computer model must be designed and operated to avoid investment recommendations that inappropriately distinguish among investment options within a single asset class on the basis of a factor that cannot confidently be expected to persist in the future. The Department added this provision to enhance the rule's protections against the potential that the adviser's conflicts might taint advice given under the exemption. To further explore the merits of enhancing the rule's protections by providing more specific computer model standards, the Department solicited comment on a number of questions involving computer models. These questions related to matters such as the identification and application of, and practices consistent with, generally accepted investment theories; use of historical data (such as past performance) of asset classes and plan investments; and criteria appropriate for consideration in developing asset allocation recommendations consisting of plan investments.

As in the proposal, paragraph (b)(4)(i)(A) of the final rule relates to the application of generally accepted investment theories that take into account the historic risks and returns of different asset classes over defined periods of time. In response to the Department's solicitation, commenters indicated that generally accepted investment theories is a term defined by wide usage and acceptance by investment experts and academics, and is subject to change over time. Most did not believe, however, that the Department should specifically define or identify generally accepted investment theories, or prescribe particular practices or computer model parameters. These commenters explained that economic and investment theories and practices continuously evolve over time in response to changes and developments in academic and expert thinking, technology, and financial markets. Commenters cautioned that defining generally accepted theories and practices through the final rule would reflect a determination made at a particular point in time, and that such a determination might limit the ability of advisers to select and apply investment theories and methodologies they believe to be appropriate, and cause them to apply theories and methodologies that they otherwise might determine to be outdated. They also suggested that establishing a specific standard might inhibit innovation in participant-oriented investment advice. Commenters further noted that the proposal's computer model provisions, without modification, would be sufficient to protect against use of specious or highly unorthodox methods, or inappropriate consideration of factors such as recent performance of plan investment options. These commenters therefore suggested that specifying theories and practices is not necessary to protect participants, and furthermore may impede the development of advice that is in their best interests.

Other commenters suggested that more specific standards might be helpful. One commenter stated that lack of guidance on what constitutes a generally accepted investment theory may present difficulties in performing the rule's required computer model certifications. The commenter recommended that the Department revise the rule to include a process for determining whether a theory is generally accepted, which could include submission to a panel of experts for determination and publication of an acceptable list of theories. Another commenter suggested that the final rule contain non-exclusive ''safe harbor'' computer model parameters. Another commenter requested clarification that a computer model must apply generally accepted investment theories that take into account the other considerations described in the regulation's computer model provisions (*e.g.,* information about a participants age and time horizon).

Virtually all commenters who addressed this issue indicated that use of historical performance data is required by generally accepted investment theories, but only in ways that recognize statistical uncertainty. Most noted that defining ''historical'' differently can have a tremendous impact on the resulting data and investment recommendations, and generally agreed that long-term performance information is preferable to short-term performance information. Some opined that historical performance data must reflect at least one market or economic cycle, but provided different timeframes (*e.g.,* at least 5, 10, or 20 years) that they believe would meet this standard. Some also suggested that use of historical performance data should be limited to estimating future performance for an entire asset class, rather than as a predictor for individual investments within an asset class.

After careful consideration of all the comments on the issue, the Department does not believe it has a sufficient basis for determining appropriate changes to the generally accepted investment theory standard. While several commenters described theories and practices they believe to be generally accepted, there did not appear to be any consensus among them, with the exception of modern portfolio theory,[22] which the Department believes is already reflected in the rule's reference to investment theories that take into account the historic returns of different asset classes over defined periods of time. Moreover, the Department is concerned that attempting to provide further clarification or additional specificity in this area may have potentially significant unintended consequences—such as limiting advisers' ability to select, apply or make further innovations in participant-oriented investment advice—that could potentially lower the quality of

[22] This is consistent with a survey of literature on generally accepted investment theories prepared for the Department. See Deloitte Financial Advisory Services LLP, *Generally Accepted Investment Theories* (July 11, 2007) (unpublished, on file with the Department of Labor).

investment advice received by participants and reduce the economic benefit of the statutory exemption. The Department also is persuaded that, without additional specificity, the final rule's computer model requirements are sufficient to safeguard participants from inappropriate application of investment theories. As the party seeking prohibited transaction relief under the exemption, the fiduciary adviser has the burden of demonstrating satisfaction of all applicable requirements of the exemption. A fiduciary adviser relying on use of computer models therefore must be able to demonstrate that the computer model is designed and operated to apply generally-accepted investment theories. Furthermore, as with the other computer model requirements in paragraph (b)(4)(i), application of generally-accepted investment theories is subject to certification by an eligible investment expert under paragraph (b)(4)(ii). This provides significant additional procedural and substantive safeguards, as the expert must be independent of the fiduciary adviser as described in paragraph (b)(4)(ii), and must following its evaluation of a computer model prepare a written certification report. Paragraph (d) of the final rule, in turn, requires the fiduciary adviser to retain for a period of no less than 6 years any records necessary for determining whether the applicable requirements of the regulation have been met.

Accordingly, paragraph (b)(4)(i)(A) of the final rule has not been changed from the proposal. This provision requires that a computer model must be designed and operated to apply generally accepted investment theories that take into account the historic risks and returns of different asset classes over defined periods of time, but also makes clear that the provision does not preclude a computer model from applying generally accepted investment theories that take into account additional considerations.

Paragraph (b)(4)(i)(B) of the final rule requires that a computer model must take into account investment management and other fees and expenses attendant to the recommended investments. No substantive comments were received on this provision, and it is being adopted unchanged from the proposal.

Paragraph (b)(4)(i)(C) of the final rule, as described below, reflects the requirement that was contained in paragraph (b)(4)(i)(E)(*3*) of the proposal.

Paragraph (b)(4)(i)(D) of the final rule, as with paragraph (b)(4)(i)(C) of the proposal, requires a computer model to request from a participant or beneficiary and, to the extent furnished, utilize information relating to age, time horizons, risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences. The provision further makes clear, however, that a computer model is not precluded from requesting, and utilizing, other information from a participant or beneficiary. As discussed above in the description of paragraph (b)(3)(i)(C) (applicable to arrangements that use fee-leveling), the Department has not adopted commenter requests to remove the regulation's mandatory request for information from participants and beneficiaries. A few commenters also suggested that the Department revise the regulation to provide additional factors that must be considered in computer models, such as participant contribution rates and liquidity needs. Although paragraph (b)(4)(i)(D) has not been modified to reflect these factors, the Department notes that there is nothing in the final rule that expressly precludes a computer model from requesting and taking into account additional factors to the extent the model otherwise complies with the requirements of the regulation.

Paragraph (b)(4)(i)(D) of the proposal requires that a computer model must be designed and operated to utilize appropriate objective criteria to provide asset allocation portfolios comprised of investment options available under the plan. Paragraph (b)(4)(i)(E) of the proposal further requires that a computer model be designed and operated to avoid investment recommendations that inappropriately favor investment options offered by the fiduciary adviser or certain other persons, over other investment options, if any, available under the plan (paragraph (b)(4)(i)(E)(*1*)); inappropriately favor investment options that may generate greater income for the fiduciary adviser or certain other persons (paragraph (b)(4)(i)(E)(*2*)); or inappropriately distinguish among investment options within a single asset class on the basis of a factor that cannot confidently be expected to persist in the future (paragraph (b)(4)(i)(E)(*3*)). With respect to paragraph (b)(4)(i)(E)(*3*), the Department explained that while some differences between investment options within a single asset class, such as differences in fees and expenses or management style, are likely to persist in the future and therefore to constitute appropriate criteria for asset allocation, other differences, such as differences in historical performance, are less likely to persist and therefore less likely to constitute appropriate criteria for asset allocation; asset classes, in contrast, can more often be distinguished from one another on the basis of differences in their historical risk and return characteristics.

The Department did not receive any substantive comments with respect to paragraphs (b)(4)(i)(D), (b)(4)(i)(E)(*1*) and (*2*), and therefore is adopting these provisions as proposed, now at paragraphs (b)(4)(i)(E), (b)(4)(i)(F)(*1*) and (*2*) of the final rule. A number of commenters requested that the Department consider removing paragraph (b)(4)(i)(E)(*3*) of the proposal. Some opined that the test contained in that provision—which applies on an asset-class by asset-class basis—lacks sufficient clarity because it fails to define the essential term ''asset class.'' A commenter further noted that a rules-based definition of asset class, and the necessary confidence of future persistence, likely would be too vague or too restrictive. Some commenters also requested removal of this provision unless the Department clarifies that it would be acceptable for a computer model to take into account historical performance data. According to these commenters, the proposal's discussion of paragraph (b)(4)(i)(E)(*3*) and related computer model questions has been construed as strictly prohibiting, or strongly cautioning against, any consideration of historical performance data, even if considered in conjunction with other information. These commenters opined that a complete disregard of historical performance data would be inconsistent with generally accepted investment theories, as discussed above. Furthermore, some cautioned that, by limiting consideration to only those factors that can confidently be expected to persist in the future, a computer model might be limited to distinguishing between investment options solely on the basis of fees and expenses. A commenter noted that, other than fees, it could not identify any other factor with the necessary likelihood of persistence it believed would be required under the proposal. Although commenters generally agreed that fees are an important consideration, most recognized they should not be the only factor taken into account.

Several commenters indicated that, while the rule is limited to implementation of the statutory exemption for investment advice, any views the Department expresses with respect to investment theories and practices might be read as applying more generally to any fiduciary decision

relating to investments. Thus, a number of commenters expressed concern that the proposal, with its focus on historical performance data, superior past performance and fees, appeared to suggest that it would be impermissible under any circumstances for a plan fiduciary to pursue an active management style, or that a plan fiduciary would bear a very high burden of justification. Commenters also stated that the Department's proposal appeared to demonstrate a clear bias in favor of passive investment styles over active styles, which they believe to be premature because it is the subject of ongoing debate among investment experts.

Other commenters, however, questioned the utility of historical performance data beyond estimating future performance of an entire asset class. They further noted that, because the regulation permits a fiduciary adviser to provide investment recommendations to plan participants when the adviser has an interest in the investment options being recommended, there is the potential that the computer model might be designed to favor certain options by giving undue weight to historical performance data. They therefore stressed the importance of scrutinizing the use of historical performance data and supported the inclusion of paragraph (b)(4)(i)(E)(*3*) of the proposal.

Paragraph (b)(4)(i)(E)(*3*) of the proposal incorporated the generally-recognized premise that an investment option's historical performance on its own is not an adequate predictor of such investment option's future performance. The provision was not intended to prohibit a computer model from any consideration of an investment option's historical performance, as some commenters interpreted. Rather, as some commenters recognized, the provision is intended to ensure that in evaluating investment options for asset allocation, it would be appropriate and consistent with generally accepted investment theories for a computer model to take into account multiple factors, including historical performance, attaching weights to those factors based on surrounding facts and circumstances. As with the consideration of fees and expenses attendant to investment options, commenters generally recognized the importance of ensuring that historical performance of options is not given inappropriate weight. The Department is not persuaded by the comments received that the provision should be eliminated, however, to avoid further misinterpretation of the provision, the requirement has been clarified and moved to paragraph (b)(4)(i)(C) of the final rule. This provision requires that a computer model must be designed and operated to appropriately weight the factors used in estimating future returns of investment options.

Paragraph (b)(4)(i)(G)(*1*) of the final rule, like paragraph (b)(4)(i)(F)(*1*) of the proposal, requires a computer model to take into account all ''designated investment options'' available under the plan without giving inappropriate weight to any investment option. The term ''designated investment option'' is defined in paragraph (c)(1) of the final rule to mean any investment option designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term ''designated investment option'' does not include ''brokerage windows,'' ''self-directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

As with paragraph (b)(4)(i)(F)(*2*) of the proposal, paragraph (b)(4)(i)(G)(*2*) of the final rule provides that a computer model will not be treated as failing to meet paragraph (b)(4)(i)(G)(*1*) merely because it does not make recommendations relating to the acquisition, holding or sale of certain types of investment options. Under the proposal, this exception applied to: qualifying employer securities; an investment that allocates the invested assets of a participant or beneficiary to achieve varying degrees of long-term appreciation and capital preservation through equity and fixed income exposures, based on a defined time horizon or level of risk of the participant or beneficiary; and an annuity option with respect to which a participant or beneficiary may allocate assets toward the purchase of a stream of retirement income payments guaranteed by an insurance company.

Several commenters suggested removal of one or more of these exceptions. Commenters noted that requiring computer models to be capable of providing recommendations with respect to employer securities could help participants avoid risks associated with overconcentrated investments in equity securities of a single company. As to asset allocation funds (*e.g.,* lifecycle, or target date, funds), commenters noted that, if a computer model does not include recommendations on these popular investments, then interested participants would need to conduct their own research beyond the general explanation required under the proposal.[23] With respect to in-plan annuity options, several commenters noted that these newly-developing options can help participants address longevity risk and improve retirement security, and that permitting their exclusion from computer model advice could result in low utilization by participants. A commenter also expressed confidence that, in the time since the Department's 2009 final rule, computer modeling technology has become sufficiently sophisticated to take in-plan annuity options into account.

The Department has decided to remove qualifying employer securities and asset allocations funds from the list of excepted options in paragraph (b)(4)(i)(G)(*2*). The Department believes that it is feasible to develop a computer model capable of addressing investments in qualifying employer securities, and that plan participants may significantly benefit from this advice. The Department also believes that participants who seek investment advice as they manage their plan investments would benefit from advice that takes into account asset allocation funds, if available under the plan. Based on recent experience in examining target date funds and similar investments, the Department believes it is feasible to design computer models with this capability.[24]

The Department, however, is less certain that computer models are able to give adequate consideration to in-plan annuity products, which permit a participant to allocate a portion of the assets in his or her plan account towards the purchase of an annuitized retirement benefit. In the absence of a better understanding of the computer modeling issues raised by in-plan annuities, the Department is hesitant to mandate their inclusion in a computer

[23] Under paragraph (b)(4)(i)(F)(*2*)(*ii*) of the proposal, the limitation for these types of funds was subject to the condition that the participant, contemporaneous with the provision of the computer-generated advice, would be furnished with a general description of the fund and how they operate.

[24] In 2009, the Department and the U.S. Securities and Exchange Commission (SEC) held a joint public hearing to examine issues related to the design and operation of target date funds and similar investments. See *http://www.dol.gov/ebsa/regs/cmt-targetdatefundshearing.html*. In 2010, the agencies jointly provided an Investor Bulletin to help investors and plan participants better understand the operations and risks of target date fund investments. See *http://www.dol.gov/ebsa/pdf/TDFinvestorbulletin.pdf*. The Department is in the process of developing regulations to address disclosures related to target date funds, 75 FR 73987 (Nov. 30, 2010), and also is currently developing guidance to assist plan sponsors in the selection and monitoring of target date funds for their plans.

model. The Department therefore is retaining the exception for in-plan annuity options. Thus, paragraph (b)(4)(i)(G)(*2*)(*i*) of the final rule provides that a computer model will not fail to satisfy paragraph (b)(4)(i)(G)(*1*) merely because it does not make recommendations relating to the acquisition, holding, or sale of an annuity option with respect to which a participant or beneficiary may allocate assets toward the purchase of a stream of retirement income payments guaranteed by an insurance company, provided that, contemporaneous with the provision of investment advice generated by the computer model, the participant or beneficiary is also furnished a general description of such options and how they operate. The Department notes, however, that even though paragraph (b)(4)(i)(G)(*2*)(*i*) permits a computer model to not make recommendations to allocate amounts to an in-plan annuity, amounts that a participant or beneficiary have already allocated to such an annuity must be taken into account by the computer model in developing the recommendation with respect to the investment of the participant's remaining available assets. The Department further notes that, while not mandated, there is nothing in the regulation that precludes a computer model from being designed to make recommendations to allocate amounts to an in-plan annuity, subject to the other conditions of the regulation being satisfied.

Also, the Department has added a new provision to reflect the interaction between paragraph (b)(4)(i)(G)(*1*) and paragraph (b)(4)(i)(C), which requires a computer model to request and, to the extent furnished, take into account a participant's investment preferences. This new provision, paragraph (b)(4)(i)(G)(*2*)(*ii*) of the final rule, provides that a computer model will not fail to satisfy paragraph (b)(4)(i)(G)(*1*) merely because it does not provide a recommendation with respect to an investment option that a participant or beneficiary requests to be excluded from consideration in such recommendations.

A commenter requested clarification as to whether an IRA with an unlimited universe of investment options would be treated similar to a brokerage window or self-directed brokerage account for purposes of this provision. Another commenter indicated that some IRAs permit beneficiaries to make investments in a limited universe of options, while also permitting them to hold other investments that are not offered by the IRA, and asked if paragraph (b)(4)(i)(G)(*1*) would be violated if a computer model provides ''buy'' ''hold'' and ''sell'' recommendations with respect to the limited universe of options, while accommodating ''hold'' and ''sell'' recommendations for the investments not available through the IRA. While the Department believes that computer models should, with few exceptions, be required to model all investment options available under a plan or through an IRA, the Department does not believe that it is reasonable to expect that all computer models be capable of modeling the universe of investment options, rather than just those investment alternatives designated as available investments through the IRA. Accordingly, it is the view of the Department that a computer model would not fail to meet the requirements of paragraph (b)(4)(i)(G)(*1*) merely because it limits buy recommendations only to those investment options that can be bought through the plan or IRA, even if the model is capable of modeling hold and sell recommendations with respect to investments not available through the plan or IRA, provided, of course, that the plan participant or beneficiary or IRA beneficiary is fully informed of the model's limitations in advance of the recommendations, thereby enabling the recipient of advice to assess the usefulness of the recommendations.

2. Computer Model Certification

Paragraph (b)(4)(ii) of the final rule, like the proposal, requires that, prior to utilization of the computer model, the fiduciary adviser must obtain a written certification that the computer model meets the requirements of paragraph (b)(4)(i), discussed above. If the model is subsequently modified in a manner that may affect its ability to meet the requirements of paragraph (b)(4)(i), the fiduciary adviser, prior to utilization of the modified model, must obtain a new certification. The required certification must be made by an ''eligible investment expert,'' within the meaning of paragraph (b)(4)(iii), and must be made in accordance with the requirements of paragraph (b)(4)(iv).

Paragraph (b)(4)(iii) of the final rule, like the proposal, defines an ''eligible investment expert'' to mean a person that, through employees or otherwise, has the appropriate technical training or experience and proficiency to analyze, determine and certify, in a manner consistent with paragraph (b)(4)(iv), whether a computer model meets the requirements of paragraph (b)(4)(i). Consistent with section 408(g)(3)(C)(iii) of ERISA, paragraph (b)(4)(iii) further limits this definition by excluding certain parties that would not have sufficient independence from an arrangement to certify a computer model for compliance with the regulation. The proposal provided that the term ''eligible investment expert'' does not include any person that has any material affiliation or material contractual relationship with the fiduciary adviser, with a person with a material affiliation or material contractual relationship with the fiduciary adviser, or with any employee, agent, or registered representative of the foregoing.

Several commenters asked for additional guidance on the credentials necessary to serve as an ''eligible investment expert.'' The Department previously attempted to define with greater specificity the qualifications of the eligible investment expert. It received public comments on this issue in response to a specific request for information published in 2006 and to similar proposed rules published in 2008.[25] At that time, it concluded that it could not define a specific set of academic or other credentials for an eligible investment expert. The Department continues to believe it would be very difficult to do so, and the comments received with respect to this most recent proposal did not provide significant additional information for consideration. As a result, no changes have been made to this aspect of the final rule. The Department notes, however, that as provided in paragraph (b)(4)(v) of the final rule, the fiduciary adviser's selection of the eligible investment expert is a fiduciary act governed by section 404(a)(1) of ERISA. Therefore, a fiduciary adviser must act prudently in its selection. Moreover, as the party seeking prohibited transaction relief under the exemption, the fiduciary adviser has the burden of demonstrating that all applicable requirements of the exemption are satisfied with respect to its arrangement.

Commenters raised general questions as to whether the provision of certain types of services for a fiduciary adviser would disqualify a person from acting as the ''eligible investment expert'' required under paragraph (b)(4) or as the independent auditor required under paragraph (b)(6).[26] With respect to the eligible investment expert, the Department believes that the 10% gross revenue test in the definition of the term ''material contractual relationship,''

[25] See footnote 9, above.

[26] The Department's response as it relates to the independent auditor is contained in the discussion of the audit provisions, below.

which contemplates that there may be instances in which a person might be performing other services for a fiduciary adviser or affiliates, generally is sufficient to minimize any influence on the part of the fiduciary adviser by virtue of service relationships that might compromise the independence of the person in performing the certification under the regulation. However, the Department does not believe that a person who develops a computer model should be considered sufficiently independent to conduct a certification of the same model.[27] The exclusionary language of paragraph (b)(4)(iii) of the final rule has been modified accordingly, and provides that the term ''eligible investment expert'' does not include any person that: Has any material affiliation or material contractual relationship with the fiduciary adviser, with a person with a material affiliation or material contractual relationship with the fiduciary adviser, or with any employee, agent, or registered representative of the foregoing; or develops the computer model utilized by the fiduciary adviser to satisfy paragraph (b)(4).

One commenter asked whether the eligible investment expert must be bonded for purposes of section 412 of ERISA. In the view of the Department, an eligible investment expert, in performing the computer model certification described in the final rule, would neither be acting as a fiduciary under ERISA, nor be ''handling'' plan assets such that the bonding requirements would be applicable to the eligible investment expert.

Paragraph (b)(4)(iv) of the final rule provides that a certification by an eligible investment expert shall be in writing and contain the following: An identification of the methodology or methodologies applied in determining whether the computer model meets the requirements of paragraph (b)(4)(i) of the final rule; an explanation of how the applied methodology or methodologies demonstrated that the computer model met the requirements of paragraph (b)(4)(i); and a description of any limitations that were imposed by any person on the eligible investment expert's selection or application of methodologies for determining whether the computer model meets the requirements of paragraph (b)(4)(i). In addition, the certification is required to contain a representation that the methodology or methodologies were applied by a person or persons with the educational background, technical training or experience necessary to analyze and determine whether the computer model meets the requirements of paragraph (b)(4)(i); and a statement certifying that the eligible investment expert has determined that the computer model meets the requirements of paragraph (b)(4)(i). Finally the certification must be signed by the eligible investment expert. The Department received no comments on this provision and, accordingly, has adopted the provision as proposed.

Paragraph (b)(4)(v) of the final rule provides that the selection of an eligible investment expert as required by the regulation is a fiduciary act governed by section 404(a)(1) of ERISA. A commenter recommended that the eligible investment expert should be treated as a fiduciary under ERISA. The Department does not believe it would be appropriate, as part of this final rule, without further notice and comment to adopt such a potentially significant change. Accordingly, the Department has not adopted this recommendation.

d. Authorization by a Plan Fiduciary

Paragraph (b)(5)(i) of the final rule requires that, except as provided in paragraph (b)(5)(ii), the arrangement pursuant to which investment advice is provided to participants and beneficiaries must be expressly authorized by a plan fiduciary (or, in the case of an IRA, the IRA beneficiary) other than: The person offering the arrangement; any person providing designated investment options under the plan; or any affiliate of either. For purposes of this authorization, an IRA beneficiary will not be treated as an affiliate of a person solely by reason of being an employee of such person. Therefore, an IRA beneficiary is not precluded from providing the authorization required under paragraph (b)(5)(i) merely because the IRA beneficiary is an employee of the fiduciary adviser. Paragraph (b)(5)(iii) provides that a plan sponsor is not treated as a person providing a designated investment option under the plan merely because one of the designated investment options of the plan is an option that permits investment in securities of the plan sponsor or an affiliate. Therefore, a plan sponsor-fiduciary is not precluded from providing the authorization required by paragraph (b)(5)(i) merely because the plan includes qualifying employer securities as a designated investment option.

Paragraph (b)(5)(ii) addresses authorization in connection with the adviser's own plan. This provision accommodates a fiduciary adviser's provision of investment advice to its own employees (or employees of an affiliate) pursuant to an arrangement under the final rule, provided that the fiduciary adviser or affiliate offers the same arrangement to participants and beneficiaries of unaffiliated plans in the ordinary course of its business. The Department notes, however, that the statutory exemption does not provide relief for the selection of the fiduciary adviser or the arrangement pursuant to which advice will be provided. Accordingly, a plan fiduciary must nonetheless be prudent in its selection and may not, in contravention of ERISA section 406(b), use its position to benefit itself or a person in which such fiduciary has an interest that may affect the exercise of such fiduciary's best judgment as a fiduciary. In this regard, the Department has indicated that if a fiduciary provides services to a plan without the receipt of compensation or other consideration (other than reimbursement of direct expenses properly and actually incurred in the performance of such services) the provision of such services does not, in and of itself, constitute an act described in section 406(b).[28]

One commenter asked whether paragraph (b)(5) requires authorization by the employer or the IRA beneficiary with respect to an employer-sponsored SIMPLE IRA. Savings Incentive Match Plan for Employees (SIMPLE) IRA plans and Simplified Employee Pension (SEP) plans are relatively uncomplicated IRA-based retirement savings vehicles that allow contributions to be made on a tax-favored basis to individual retirement accounts and individual retirement annuities (IRAs) owned by the employees. Although generally a SEP or SIMPLE IRA is a plan subject to Title I of ERISA, many of the rules applicable to other ERISA-covered employer sponsored pension plans do not apply to SIMPLE IRA and SEP plans.[29] For example, SIMPLE IRA and SEP plans are subject to minimal reporting and disclosure requirements.[30] Many employers that sponsor these IRA-based plans that are intended to be

[27] For example, a person who develops a computer model used under the exemption generally is treated as a fiduciary adviser under paragraph (c)(2)(ii) of the final rule. However, the fiduciary election described in Sec. 2550.408g–2 permits another person to be treated as fiduciary adviser.

[28] See 29 CFR 2550.408b–2(e)(3).

[29] See ERISA sections 101(h) (application of reporting requirements) and 404(c)(2) (application of fiduciary responsibility requirements). The Department treats SEP and SIMPLE IRA plans differently from other ERISA-covered pension plans in other contexts. See 29 CFR 2550.404a–5 (disclosures to participants in participant-directed individual account plans) and 2550.408b–2(c)(1) (disclosures to fiduciaries of pension plans).

[30] 29 CFR 2520.104–48 and 2520.104–49.

uncomplicated to establish and administer may not be willing to assume the duty to authorize an investment advice provider under the regulation, even one selected by an IRA beneficiary. This could limit access to fiduciary investment advice under the regulation for the participants and beneficiaries of such IRA-based plans. Under these circumstances, the Department has defined the term ''IRA'' in this regulation to include a ''simplified employee pension'' described in section 408(k) of the Code, and a ''simple retirement account'' described in section 408(p) of the Code. Thus, SIMPLE IRA plans and SEP plans would be treated like IRAs under the requirements of the final regulation, and the required authorization would be given by the participant or beneficiary to whom the account belongs and who receives the advice. The Department is interested in continuing to receive public input on the operation of the regulation in the context of SIMPLE IRA plans and SEP plans, especially the experience of participants and beneficiaries and, to the extent public input suggests that changes in this context are necessary, the Department may consider further adjustments to the regulation in the future.

e. Annual Audit

Paragraph (b)(6) of the final rule sets forth the annual audit requirements for the statutory exemption.[31] Paragraph (b)(6)(i), like the proposal, provides that the fiduciary adviser shall, at least annually, engage an independent auditor, who has appropriate technical training or experience and proficiency, and so represents in writing to the fiduciary adviser, to conduct an audit of the adviser's investment advice arrangements for compliance with the requirements of the regulation and, within 60 days following completion of the audit, to issue a written report to the fiduciary adviser and, except with respect to an arrangement with an IRA, to each fiduciary who authorized the use of the investment advice arrangement. The written report must set forth the specific findings of the auditor regarding compliance of the arrangement with the requirements of the regulation (paragraph (b)(6)(i)(B)(*4*)). However, as discussed below, because of the importance of the annual audit in helping an authorizing fiduciary monitor compliance of the arrangement, paragraph (b)(6)(i)(B) of the final rule, unlike the proposal, also enumerates certain basic information about the audited arrangement that must be included in the audit report. Specifically, the report must identify the fiduciary adviser and the type of arrangement (*i.e.,* fee leveling, computer models, or both) (paragraphs (b)(6)(i)(B)(*1*) and (*2*)). Further, if the arrangement uses computer models, or both computer models and fee leveling, the report must also indicate the date of the most recent computer model certification, and identify the eligible investment expert that provided the certification (paragraph (b)(6)(i)(B)(*3*)). The Department believes that this basic information will benefit the authorizing fiduciary or IRA beneficiary in understanding the arrangement without imposing a significant burden on the auditor, which ordinarily will have such information.

Given the significant number of reports that an auditor would be required to send if the written report was required to be furnished to all IRA beneficiaries, the Department framed an alternative requirement for investment advice arrangements with IRAs. This alternative is set forth in paragraph (b)(6)(ii) of the proposal and the final rule. Under this provision, the fiduciary adviser must, within 30 days following receipt of the report from the auditor as required under paragraph (b)(6)(i)(B), furnish a copy of the report to the IRA beneficiary or make such report available on its Web site, provided that such beneficiaries are provided information, along with other required participant disclosures (see paragraph (b)(7) of the final rule), concerning the purpose of the report, and how and where to locate the report applicable to their account. The Department believes that making reports available on a Web site in this manner to IRA beneficiaries satisfies the requirement of section 104(d)(1) of the Electronic Signatures in Global and National Commerce Act (E–SIGN)[32] that any exemption from the consumer consent requirements of section 101(c) of E–SIGN must be necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers. The Department solicited comments on this finding in connection with the prior proposal, and received no comments in response.[33]

Obtaining consent from each IRA holder or participant before publication on the Web site would be a tremendous burden on the plan or IRA provider. This element, along with the broad availability of Internet access and the lack of any direct consequences to any particular participant for a failure to review the audit for the participants and beneficiaries, supports these findings.

As with the proposal, paragraph (b)(6)(ii) of the final rule also provides with respect to an arrangement with an IRA that, if the report of the auditor identifies noncompliance with the requirements of the regulation, then the fiduciary adviser must send a copy of the report to the Department. The final rule, like the proposal, requires that the fiduciary adviser submit the report to the Department within 30 days following receipt of the report from the auditor. This report will enable the Department to monitor compliance with the statutory exemption.

Some commenters expressed concern with the requirement in paragraph (b)(6)(ii)(B) that the fiduciary adviser must send a copy of the auditor's report to the Department if that report identifies instances of noncompliance. They recommended that reports only be required to be filed with the Department when there is ''material'' noncompliance. Other commenters recommended that fiduciary advisers be afforded a period within which to self-correct prior to the reporting of noncompliance. This filing requirement will enable the Department to monitor compliance with the exemption in those instances where there is no authorizing ERISA plan fiduciary to carry out that function. While it recognizes that not every instance of noncompliance would, itself, affect the quality of the advice provided to an IRA beneficiary, the Department believes that, given the overall significance of the audit as a protection for advice recipients, all reports that identify noncompliance in this area should be furnished to the Department for review, thereby giving it the opportunity to evaluate the significance of the noncompliance, the function that an authorizing plan fiduciary would carry out for its plan. Accordingly, the Department is adopting the filing requirement as proposed without substantive change. We note, however, that language has been added to paragraph (b)(6)(ii)(B) to provide a means for electronic submission to the Department.

A commenter suggested that plan participants should be informed of audit results. The Department does not believe it is appropriate as part of the final rule, without further notice and comment, to adopt such a requirement, which could involve a significant number of audit reports being furnished to plan participants. The Department believes that the furnishing of the audit report to the authorizing plan fiduciary, who must act prudently and solely in

[31] The audit provisions are set forth in section 408(g)(6) of ERISA.

[32] 15 U.S.C. 7004(d)(1) (2000).

[33] See 74 FR 3829 (Jan. 21, 2009).

the interest of plan participants, is sufficient to protect the interests of participants and beneficiaries. The fiduciary should examine the audit report furnished and, if noncompliance is identified, take appropriate steps. Because of the importance of the audit report, the Department has included a new provision, at paragraph (b)(8), which requires that the fiduciary adviser provide the authorizing fiduciary with written notification that the fiduciary adviser intends to comply with the statutory exemption and the regulations and that the fiduciary adviser's investment advice arrangement will be audited annually by an independent auditor for compliance, and that the auditor will furnish the authorizing fiduciary with a copy of that auditor's findings within 60 days of its completion of the audit. This disclosure serves to place the authorizing fiduciary on notice that an audit will be conducted annually and that a report of that audit will be furnished. The Department would expect the authorizing fiduciary to take reasonable steps if the report is not furnished in a timely manner, such as making inquiries with the auditor, the fiduciary adviser, or both.

With regard to the person who conducts the audit, one commenter recommended that the auditor should be treated as a fiduciary. Others asked if the audit must be conducted by a certified public accountant. Another requested that the final rule provide additional guidance with respect to necessary credentials to conduct an audit, such as minimum standards of experience, education, or professional certification or licensing. As with the requirements for an ''eligible investment expert,'' the Department does not believe there is necessarily one set of credentials, such as being a certified public accountant, auditor, or lawyer, that qualifies an individual to conduct the required audits. In addition to any licenses, certifications or other evidence of professional or technical training, a fiduciary adviser will want to consider the relevance of that training to the required audit, as well as the individual's or organization's experience and proficiency in conducting similar types of audits. In this regard, because the selection of an auditor is a fiduciary act (see paragraph (b)(6)(v)), a fiduciary adviser's selection must be carried out in a manner consistent with the prudence requirements of section 404(a)(1), taking into account the nature and scope of the audit and the expertise and experience necessary to conduct such an audit.

Paragraph (b)(6)(iii) describes the circumstances under which an auditor will be considered independent for purposes of paragraph (b)(6). As proposed, this paragraph required that the auditor not have a material affiliation or material contractual relationship with the person offering the investment advice arrangement to the plan or any designated investment options under the plan. The terms ''material affiliation'' and ''material contractual relationship'' are defined in paragraphs (c)(6) and (7) of the final rule, respectively. Some commenters asked whether an auditor's provision of certain services (*e.g.,* computer model certification required under the regulation) would disqualify the auditor. The Department believes that the 10% gross revenue test in the definition of the term ''material contractual relationship,'' which contemplates that there may be instances in which an auditor might be performing other services for a fiduciary adviser or affiliates, generally is sufficient to minimize any influence on the part of the fiduciary adviser by virtue of service relationships that would serve to compromise the independence of the auditor. However, if an auditor participates in the development of a fiduciary adviser's investment advice arrangement, then the auditor would appear to be in a position of auditing its own work for compliance with the exemption. The Department does not believe such an auditor is sufficiently independent for purposes of the regulation. Similarly, in the case of an investment advice arrangement that uses computer modeling, because an auditor would be in the position of determining whether the person who certifies a computer model, as required by paragraph (b)(4)(ii), has any relationship that would preclude it from acting as an ''eligible investment expert'' as defined in paragraph (b)(4)(iii), the Department does not believe an auditor may also act as the computer model certifier. Paragraph (b)(6)(iii) has been modified accordingly.

With regard to the scope of the audit, paragraph (b)(6)(iv) of the final rule provides that the auditor shall review sufficient relevant information to formulate an opinion as to whether the investment advice arrangements, and the advice provided pursuant thereto, offered by the fiduciary adviser during the audit period were in compliance with the regulation. Paragraph (b)(6)(iv) further provides that it is not intended to preclude an auditor from using information obtained by sampling, as reasonably determined appropriate by the auditor, investment advice arrangements, and the advice pursuant thereto, during the audit period. The final rule, like the proposal, does not require an audit of every investment advice arrangement at the plan or fiduciary adviser-level or of all the advice that is provided under the exemption. In general, the final rule appropriately leaves to the auditor the determination of how to conduct its review, including the extent to which it can rely on representative samples for determining compliance with the exemption.

A number of comments requested clarification with respect to the conduct and scope of the audit. Several commenters asked whether each plan, IRA, and participant and beneficiary must be included. A commenter also asked whether the audit could be performed by only reviewing documentation of compliance with the fiduciary adviser's internal compliance policies and procedures. As discussed above, the audit provisions of the final rule require that the auditor review sufficient information to formulate an opinion as to whether the investment advice arrangements, and the advice provided pursuant thereto, are in compliance with the final rule. Accordingly, the methods used to conduct the audit are to be determined by the auditor. The Department does note, however, that nothing in these provisions precludes the auditor from using sampling, as determined reasonably appropriate by the auditor, of investment advice arrangements and investment advice. The Department expects that the sample used by an auditor will depend on the facts and circumstances encountered. For example, an auditor may initially believe that the most appropriate way to make the required findings is to construct a sample that represents a subset of all advice arrangements of a fiduciary adviser, and advice provided. In testing the sample, however, the auditor should look for, and may find, patterns of compliance failures that indicate that certain areas are more prone to compliance failures than others. If such patterns appear, the auditor may need to expand the sample to more accurately assess the extent and causes of noncompliance. While the Department believes that internal policies and procedures, if reasonably designed and followed, can be helpful to a fiduciary adviser to ensure compliance with the requirements of the regulation, the Department does not believe it would be appropriate for an

auditor to limit, in any way, the conduct of its audit to an examination of compliance with those policies and procedures.

Another commenter appeared to suggest development of audit alternatives for fiduciary advisers that are regulated and subject to periodic examination by other agencies. This commenter, however, did not include sufficient information for further consideration. The Department notes, moreover, that section 408(g)(6) of ERISA requires an annual audit for compliance with the exemption.

Paragraph (b)(6)(v) of the final rule, like the proposal, provides that for purposes of the statutory exemption, the selection of an auditor is a fiduciary act governed by section 404(a)(1) of ERISA. In response to a question from a commenter, the Department notes that, in its view, the performance of an audit under the final rule would not, by itself, cause an auditor to be a fiduciary under ERISA.

f. Disclosure to Participants

As in the proposal, paragraph (b)(7) of the final rule sets forth a number of requirements involving disclosures to participants and beneficiaries that are based on, and generally track, the disclosure requirements contained in section 408(g)(6).

Paragraph (b)(7)(i) generally requires that the fiduciary adviser provide to participants and beneficiaries without charge, prior to the initial provision of investment advice with regard to any security or other property offered as an investment option, a written notification describing: the role of any party that has a material affiliation or material contractual relationship with the fiduciary adviser in the development of the investment advice program and in the selection of investment options available under the plan; the past performance and historical rates of return of the designated investment options available under the plan, to the extent that such information is not otherwise provided; all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice, the sale, acquisition, or holding of the security or other property pursuant to such advice, or any rollover or other distribution of plan assets or the investment of distributed assets in any security or other property pursuant to such advice; and any material affiliation or material contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property.

The notification to participants and beneficiaries also is required to explain: the manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed; the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser; that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice; and that a recipient of the advice may separately arrange for the provision of advice by another adviser that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property. Because the computer model exception for qualifying employer securities has been removed from paragraph (b)(4)(i)(G)(*2*), explained above, the language in paragraph (b)(7)(i)(F) of the proposal that required the notification to include any limitations with respect to a computer model's ability to take into account qualifying employer securities also has been removed.

Paragraph (b)(7)(ii)(A) of the final rule requires that the notification furnished to participants and beneficiaries must be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and must be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

Paragraph (b)(7)(ii)(B) of the final rule references the availability of a model disclosure form in the appendix to the final rule. As with the proposal, the model disclosure form may be used for purposes of satisfying the requirements set forth in paragraph (b)(7)(i)(C), as well as the requirements of paragraph (b)(7)(ii)(A) of the final rule. The final rule, like the proposal, makes clear, however, that the use of the model disclosure form is not mandatory.

The Department received a number of comments related to the contents and timing of the disclosures required under paragraph (b)(7). One commenter suggested that the final rule require the disclosure be provided at least 14 days before the initial provision of investment advice, and further require that each advice session be accompanied by a summary disclosure that includes a subset of the information required under the proposal (*e.g.,* fees or other compensation that may be received, and that the adviser is acting as a fiduciary). Another commenter recommended disclosure of each investment option's profitability to the fiduciary advisers or their affiliates, suggesting that this would enable participants to better understand the advisers' financial interests. In contrast, another commenter stated that requiring disclosure of ''all'' fees or other compensation could overwhelm participants and beneficiaries with information, and that the Department should instead adopt a materiality standard for such disclosure. Another commenter suggested removal of the past return information disclosure, arguing that participants may focus on investments with the highest returns without considering or understanding the associated risks. Another commenter suggested that the provision should require disclosure of historical rates of return at the asset class level, rather than the individual investment level. Others also indicated the practical difficulties in providing the proposal's disclosures for plans with numerous investment options, and requested that the Department consider more limited disclosures.

After consideration of the comments received, the Department believes that the statutory disclosure framework, reflected in both the proposal and final rule, strikes the appropriate balance in terms of ensuring participants and beneficiaries have the information to assess the potential for conflicts of interest and compensation of the fiduciary adviser.

Some commenters requested that the Department clarify that the required disclosures may be combined with other disclosures the adviser is required to furnish under securities or other laws. It is the view of the Department that nothing in the final rule forecloses the use of other materials for making the disclosures required by the final rule, so long as the understandability and clarity of the disclosures is not compromised by virtue of their inclusion in such other materials and the requirements of paragraph (b)(7)(ii)(A) are satisfied.

Like the proposal, paragraph (b)(7)(iii) of the final rule provides that the required notifications may, in accordance with 29 CFR 2520.104b–1, be furnished in either written or electronic form. Some commenters requested more flexibility for electronic disclosures than is permitted under 29 CFR 2520.104b–1. Others, however, suggested more limited use of electronic disclosures. Because the Department currently is reviewing issues related to use of electronic media to furnish information to participants and beneficiaries, this provision has not

been changed from the proposal in response to these comments.[34]

Paragraph (b)(7)(iv) of the final rule sets forth miscellaneous recordkeeping and furnishing responsibilities of the fiduciary adviser. Specifically, this paragraph requires that, at all times during the provision of advisory services to the participant or beneficiary pursuant to the arrangement, the fiduciary adviser must: Maintain the information required to be disclosed to participants and beneficiaries in accurate form; provide, without charge, accurate, up-to-date disclosures to the recipient of the advice no less frequently than annually; provide, without charge, accurate information to the recipient of the advice upon request of the recipient; and provide, without charge, to the recipient of the advice any material change to the required information at a time reasonably contemporaneous to the change in information. These provisions are being adopted in the final rule without substantive change from the proposal.

g. Disclosure to Authorizing Fiduciary

As discussed in more detail above in connection with the audit provision, paragraph (b)(8) of the final rule is a new provision that requires disclosure of certain information to the fiduciary that authorizes an investment advice arrangement. Under this provision, the fiduciary adviser must provide the authorizing fiduciary with a written notification that the fiduciary adviser intends to comply with the conditions of the statutory exemption for investment advice under section 408(b)(14) and (g) and this regulation. The notification also must inform the authorizing fiduciary that the fiduciary adviser's arrangement will be audited annually by an independent auditor for compliance with the requirements of the statutory exemption and this regulation, and that the auditor will furnish the authorizing fiduciary a copy of that auditor's findings within 60 days of its completion of the audit.

Because paragraph (b)(5) of the rule already requires authorization by an independent fiduciary, the Department does not believe the notification requirement in paragraph (b)(8) will impose a significant additional burden on fiduciary advisers.

h. Other Conditions

Paragraph (b)(9) of the final rule, like paragraph (b)(8) of the proposal, sets forth the additional requirements contained in section 408(g)(7) of ERISA that apply to the provision of investment advice under the statutory exemption. These requirements are as follows: The fiduciary adviser must provide appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws (paragraph (b)(9)(i)); any sale, acquisition, or holding of a security or other property occurs solely at the direction of the recipient of the advice (paragraph (b)(9)(ii)); the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable (paragraph (b)(9)(iii)); and the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be (paragraph (b)(9)(iv)). This provision is unchanged from the corresponding provision of the proposal.

A commenter described a situation where an IRA owner or participant gives standing instructions to rebalance his or her portfolio on a pre-determined basis (which the commenter referred to as ''ministerial rebalancing'') and another situation where changes to a portfolio are permitted when a model changes and the client receives advance notice (which the commenter referred to as ''re-optimization'' or ''re-allocation''), and asked whether these were consistent with the requirement in paragraph (b)(9)(ii) that any sale, acquisition or holding of a security or other property occurs solely at the direction of the recipient of the advice.

In general, it is the view of the Department that a pre-authorization for a fiduciary adviser to maintain a particular asset allocation structure for a participant's portfolio by periodic rebalancing of investments would not violate the ''solely at the direction'' requirement in paragraph (b)(9)(ii), provided that such maintenance does not involve the exercise of discretion on the part of the fiduciary adviser, that is, when a participant is informed of and approves, at the time of the authorization, the specific circumstances under which a rebalancing of his or her portfolio will take place and the particular investments that will be utilized for such rebalancing. If, on the other hand, the particular investments that might be utilized for purposes of rebalancing a participant's account are not known and the fiduciary adviser is given the discretion to select the required investments, it is the view of the Department that, in order to avoid violating paragraph (b)(9)(ii), the participant must be afforded advance notice of the fiduciary adviser's intended investments and a reasonable opportunity, generally at least 30 days, to object to the investments. With respect to a different asset allocation structure, the Department believes that the participant or beneficiary must make an affirmative direction for its implementation.

i. Definitions

Paragraph (c) sets forth definitions of terms used in the final rule.

Paragraph (c)(1) defines the term ''designated investment option.'' The term ''designated investment option'' means any investment option designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term ''designated investment option'' shall not include ''brokerage windows,'' ''self-directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan. The Department has added a cross-reference to clarify that the term ''designated investment option'' has the same meaning as ''designated investment alternative'' as defined in 29 CFR 2550.404a–5 (relating to certain disclosures to participants).

Paragraph (c)(2) defines the term ''fiduciary adviser,'' as it appears in section 408(g)(11)(A) of ERISA. A commenter suggested that paragraph (c)(2)(ii), which treats a person who develops the computer model or markets the investment advice program or computer model utilized in satisfaction of paragraph (b)(4) as a fiduciary adviser, is overly broad, and could result in higher costs overall and fewer parties willing to provide these functions. In response, the Department notes that such fiduciary status is conferred by statute at section 408(g)(11)(A). However, the Department further notes that Sec. 2550.408g–2, discussed in more detail below, permits one such fiduciary to elect to be treated as a fiduciary with respect to the plan.

Paragraph (c)(3) defines the term ''registered representative'' as set forth in ERISA section 408(g)(11)(C), which states that a registered representative of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the

[34] See 76 FR 19285 (Apr. 7, 2011).

investment adviser referred to in such section).

Paragraph (c)(4), consistent with section 601(b)(3)(A)(i) of the PPA, generally defines the term ''Individual Retirement Account'' or ''IRA'' for purposes of the final rule to mean plans described in paragraphs (B) through (F) of section 4975(e)(1) of the Code, as well as a trust, plan, account, or annuity which, at any time, has been determined by the Secretary of the Treasury to be described in such paragraphs. However, as explained above, paragraphs (c)(4)(vii) and (c)(4)(viii) have been added to make clear that for purposes of the regulation, the term ''IRA'' includes a ''simplified employee pension'' described in section 408(k) of the Code, and a ''simple retirement account'' described in section 408(p) of the Code.

Like the proposal, paragraph (c)(5) of the final rule defines the term ''affiliate.'' Under this provision, an ''affiliate'' of another person means: Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of such other person (paragraph (c)(5)(i)); any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person (paragraph (c)(5)(ii)); any person directly or indirectly controlling, controlled by, or under common control with, such other person (paragraph (c)(5)(iii)); and any officer, director, partner, copartner, or employee of such other person (paragraph (c)(5)(iv)). Consistent with ERISA section 408(g)(11)(B), this definition is based on the definition of an ''affiliated person'' of an entity as contained in section 2(a)(3) of the Investment Company Act of 1940 (ICA) (15 U.S.C. sec. 80a–2(a)(3)), except that it does not reflect clauses (E) and (F) thereof. The Department has determined that including provisions similar to clauses (E) and (F) is unnecessary, because these clauses appear to focus on persons who exercise control over the management of an investment company.[35] These persons would be treated as affiliates under paragraph (c)(5)(iii) of the final rule because they would be persons directly or indirectly controlling, controlled by, or under common control with, such other person.

A number of commenters presented factual questions on the definition of ''affiliate'' in paragraph (c)(5). These have not been addressed here because of their inherently factual nature.

One comment requested that the Department instead adopt the definition of ''affiliate'' that applies under 29 CFR 2510.3–21. For purposes of that regulation, an ''affiliate'' of a person includes: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; any officer, director, partner, employee or relative (as defined in ERISA section 3(15)) of such person; and any corporation or partnership of which such person is an officer, director or partner.[36] Because section 408(g)(11)(B) of ERISA defines the term ''affiliate'' for purposes of the statutory exemption specifically by reference to the definition in section 2(a)(3) of the ICA, the Department has not adopted this comment.

In a variety of places, the final rule refers to persons with ''material affiliations'' or ''material contractual relationships,'' which are defined in paragraphs (c)(6) and (c)(7), respectively. Paragraph (c)(6)(i) of the final rule describes a person with a ''material affiliation'' with another person as: Any affiliate of the other person; any person directly or indirectly owning, controlling, or holding, 5 percent or more of the interests of such other person; and any person 5 percent or more of whose interests are directly or indirectly owned, controlled, or held, by such other person. Paragraph (c)(6)(ii) provides that, for these purposes, an ''interest'' means with respect to an entity: The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation; the capital interest or the profits interest of the entity if the entity is a partnership; or the beneficial interest of the entity if the entity is a trust or unincorporated enterprise.

Paragraph (c)(7) of the final rule provides that persons shall be treated as having a ''material contractual relationship'' if payments made by one person to the other person pursuant to written contracts or agreements between the persons exceed 10 percent of the gross revenue, on an annual basis, of such other person. The Department notes that this 10% gross revenue test is not limited to amounts paid pursuant to contracts or arrangements that have been reduced to writing.[37]

Lastly, paragraph (c)(8) defines ''control'' to mean the power to exercise a controlling influence over the management or policies of a person other than an individual.

j. Retention of Records

As with the proposal, paragraph (d) of the final rule sets forth the record retention requirements applicable to an eligible investment advice arrangement. Consistent with section 408(g)(9) of ERISA, paragraph (d) provides that the fiduciary adviser must maintain, for a period of not less than 6 years after the provision of investment advice under the section any records necessary for determining whether the applicable requirements of the final rule have been met, noting that a transaction prohibited under section 406 of ERISA shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

k. Noncompliance

Paragraph (e) of the final rule, like the proposal, specifically addresses the consequences of noncompliance with the regulation. This provision makes clear that the prohibited transaction relief described in paragraph (b) of the regulation will not apply to any transaction with respect to which the applicable conditions of the final rule have not been satisfied. Further, in the case of a pattern or practice of noncompliance with any of the applicable conditions of the final rule, the relief will not apply to any transaction in connection with the provision of investment advice provided by the fiduciary adviser during the period over which the pattern or practice extended. With respect to what would constitute a ''pattern or practice,'' the Department believes that it is important to identify both individual violations and patterns of such violations. Isolated, unrelated, or accidental occurrences would not themselves constitute a pattern or practice. However, intentional, regular, deliberate practices involving more than isolated events or individuals, or institutionalized practices will almost always constitute a pattern or practice. In determining whether a pattern or practice exists, the Department will consider whether the noncompliance appears to be part of either written or unwritten policies or established

[35] ICA section 2(a)(3)(E) and (F) include in the definition of an affiliated person: If the other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and if such other person is an unincorporated investment company not having a board of directors, the depositor thereof. 15 U.S.C. 80a–2(a)(3)(E)–(F).

[36] 29 CFR 2510.3–21(e)(1).

[37] See 74 FR 3822 (Jan. 21, 2009) (explaining corresponding language in the 2009 final rule).

practices, whether there is evidence of similar noncompliance with respect to more than one plan or arrangement, and whether the noncompliance is within a fiduciary adviser's control.

This provision is being adopted without change from the proposal. The Department believes that one of the most significant deterrents to noncompliance with the conditions of the statutory exemption is the potentially significant excise taxes applicable to transactions that fail to satisfy its conditions, and that extending the potential for excise taxes to encompass a period over which a pattern or practice of noncompliance extends creates additional incentives on the part of fiduciary advisers that take advantage of the exemptive relief to be vigilant in assuring compliance.

l. Effective Date

The Department proposed that the regulation would be effective 60 days after the date of publication of the final rule. One commenter indicated that the 60 day effective date would not constitute sufficient time to comply with the final rule, and suggested the effective date should be extended to 180 days after publication of the final rule.

Given the importance of investment advice to participants and beneficiaries generally and given that the exemption implemented in the final rule will expand the opportunity for participant and beneficiaries to obtain affordable, quality investment advice, the Department believes that the final rule should be effective on the earliest possible date, and has not made the suggested change. Accordingly, the final rule contained in this document will be effective 60 days after the date of publication in the **Federal Register** and will apply to transactions described in paragraphs (b) of the final rule occurring on or after that date.

m. Miscellaneous

A number of commenters made suggestions beyond the scope of this regulation that they believed would additionally benefit participants and beneficiaries. These suggestions were not adopted by the Department.

C. Overview of Final § 2550.408g–2 and Public Comments

Section 408(g)(11)(A) of ERISA provides that, with respect to an arrangement that relies on use of a computer model to qualify as an ''eligible investment advice arrangement'' under the statutory exemption, a person who develops the computer model, or markets the investment advice program or computer model, shall be treated as a fiduciary of a plan by reason of the provision of investment advice referred to in ERISA section 3(21)(A)(ii) to the plan participant or beneficiary. Such a person also shall be treated as a ''fiduciary adviser'' for purposes of ERISA sections 408(b)(14) and 408(g). The Secretary of Labor, however, may prescribe rules under which only one fiduciary adviser may elect to be treated as a fiduciary with respect to the plan. Section 4975(f)(8)(J)(i) of the Code contains a parallel provision to ERISA section 408(g)(11)(A) that applies for purposes of Code sections 4975(d)(17) and 4975(f)(8).

In conjunction with the proposed regulation implementing the statutory exemption for investment advice, the Department also proposed a rule, Sec. 2550.408g–2, governing the requirements for electing to be treated as a fiduciary and fiduciary adviser by reason of developing or marketing a computer model or an investment advice program used in an eligible investment advice arrangement. Section 2550.408g–2 sets forth requirements that must be satisfied in order for one such fiduciary adviser to elect to be treated as a fiduciary with respect to a plan under such an eligible investment advice arrangement. See paragraph (a) of Sec. 2550.408g–2.

Paragraph (b)(1) of Sec. 2550.408g–2 provides that, if an election meets the requirements of paragraph (b)(2), then the person identified in the election shall be the sole fiduciary adviser treated as a fiduciary by reason of developing or marketing a computer model, or marketing an investment advice program, used in an eligible investment advice arrangement. Paragraph (b)(2) requires that the election be in writing and that the writing identify the arrangement, and person offering the arrangement, with respect to which the election is to be effective. The writing also must identify the electing person. Under paragraph (b)(2)(ii), the electing person must: fall within any of paragraphs (c)(2)(i)(A) through (E) of Sec. 2550.408g–1; develop the computer model or market the computer model or investment advice program; and acknowledge that it elects to be treated as the only fiduciary, and fiduciary adviser, by reason of developing such computer model or marketing such computer model or investment advice program. Paragraph (b)(2) of Sec. 2550.408g–2 requires that the election be signed by the person acknowledging that it elects to be treated as the only fiduciary and fiduciary adviser; that a copy of the election be furnished to the person who authorized use of the arrangement; and that the writing be retained in accordance with the record retention requirements of Sec. 2550.408g–1(d).

The Department notes that this election applies only for purposes of limiting fiduciary status that results from developing or marketing a computer model or investment advice program used under the statutory exemption. It would not, for example, permit a fiduciary adviser who actually renders investment advice to participants or beneficiaries to avoid fiduciary status.

The Department received no substantive comments on this regulation and, therefore, is adopting the regulation substantially as proposed. This regulation, like Sec. 2550.408g–1, will be effective 60 days after the date of publication of the final rule in the **Federal Register**.

D. Regulatory Impact Analysis

Regulatory Procedures

Executive Order 12866 ''Regulatory Planning and Review'' and Executive Order 13563 ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 12866 and 13563 require a comprehensive regulatory impact analysis be performed for any economically significant regulatory action, defined as an action that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. In accordance with OMB Circular A–4, the Department has examined the economic and policy implications of this final rule and has concluded that the action's benefits justify its costs.

Summary of Impacts

The provisions of this final regulation reflect the Department's efforts to ensure that the advice provided pursuant to them will be affordable and of high quality. The results of this final regulation will depend on its impacts on the availability, cost, use, and quality of participant investment advice. The

Department anticipates that, as a result of these actions, quality, affordable expert investment advice will proliferate, producing significant net gains for participant-directed defined contribution (DC) plan participants and beneficiaries and beneficiaries of individual retirement accounts (IRAs) (collectively hereafter, ''participants''). The improved investment results will reflect reductions in investment errors such as poor trading strategies and inadequate diversification.

The Department estimates that this final rule will yield benefits of between $7 billion and $18 billion annually, at a cost of between $2 billion and $5 billion, thereby producing a net financial benefit of between $5 billion and $13 billion. The estimated costs of the final regulation include costs of approximately $745 million that are associated with the Paperwork Reduction Act information collection requests contained in the final rule. Table 1 below presents these average annual real benefits and costs given a ten year horizon with discount rates of 3 percent and 7 percent.

TABLE 1—ACCOUNTING STATEMENT

Category	Estimates			Units		
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate	Period covered
Benefits:						
Annualized	13,200.0	7,000.0	18,300.0	2009	7%	2011–2020
Monetized ($millions/year)	13,200.0	7,000.0	18,300.0	2009	3%	2011–2020
Annualized	0.0	0.0	0.0		7%	
Quantified	0.0	0.0	0.0		3%	
Qualitative	In addition to the quantified benefits, the Department anticipates that the regulation will improve aggregate investment results, reflecting reduced participants' investment related expenses, and will improve the welfare of participants by better aligning participant investments and their risk tolerances.					
Notes	The regulation is anticipated to extend quality, expert investment advice to a significantly greater number of participants. This will improve aggregate investment results, reflecting reductions in investment errors (including poor trading strategies and inadequate diversification).					
Costs:						
Annualized	3,700.0	1,900.0	5,100.0	2009	7%	2011–2020
Monetized ($millions/year)	3,700.0	1,900.0	5,100.0	2009	3%	2011–2020
Annualized	0.0	0.0	0.0		7%	
Quantified	0.0	0.0	0.0		3%	
Qualitative						
Notes	The costs of this regulation are due to the direct cost of providing (or paying for) investment advice, including approximately $745 million that are associated with the Paperwork Reduction Act information collection requests contained in this final rule.					
Transfers	Not applicable.					
Effects:						
State, Local, and/or Tribal Government	Not applicable.					
Small Business	Not applicable.					
Wages	Not applicable.					
Growth	The regulation may also have macroeconomic consequences, which are likely to be small but positive.					

Need for Regulatory Action

With the growth of participant-directed retirement savings accounts, the retirement income security of America's workers increasingly depends on their investment decisions. Unfortunately, there is evidence that many participants of these retirement accounts often make costly investment errors due to flawed information or reasoning. As more fully discussed in the Benefits section below, these participants may make financial mistakes which result in lower asset accumulation, and thus final retirement account balances, for these individuals and/or result in less than optimal levels of compensated risk. Financial losses (including foregone earnings) from such mistakes likely amounted to more than $114 billion in 2010.[38] These losses compound and grow larger as workers progress toward and into retirement.

Such mistakes and consequent losses historically can be attributed at least in part to provisions of the Employee Retirement Income Security Act of 1974 that effectively preclude a variety of arrangements whereby financial professionals might otherwise provide retirement plan participants with expert investment advice. Specifically, these ''prohibited transaction'' provisions of section 406 of ERISA and section 4975 of the Internal Revenue Code prohibit fiduciaries from dealing with DC plan or IRA assets in ways that advance their own interests. The prohibited transaction provisions prohibit a fiduciary from dealing with the assets of a plan in his own interest or for his own account and from receiving any consideration for his own personal account from any party dealing with the plan in connection with a transaction

[38] See 74 FR No 164 (Aug. 22, 2008), 74 FR No 12 (Jan. 21, 2009), and 75 FR No 40 (Mar. 2, 2010) for background on the analysis contained in the Department's Regulatory Impact Analysis.

involving the assets of the plan.[39] These statutory provisions have been interpreted as prohibiting a fiduciary from using the authority, control or responsibility that makes it a fiduciary to cause itself, or a party in which it has an interest that may affect its best judgment as a fiduciary, to receive additional fees.[40] As a result, in the absence of a statutory or administrative exemption, fiduciaries are prohibited from rendering investment advice to plan participants regarding investments that result in the payment of additional advisory and other fees to the fiduciaries or their affiliates. Section 4975 of the Code applies similarly to the rendering of investment advice to an individual retirement account (IRA) beneficiary.

Over the past several years, the Department has issued various forms of guidance concerning when a person would be a fiduciary by reason of rendering investment advice, and when such investment advice might result in prohibited transactions.[41] Responding to the need to afford participants and beneficiaries greater access to professional investment advice, Congress amended the prohibited transaction provisions of ERISA and the Code, as part of the Pension Protection Act of 2006 (PPA),[42] to permit a broader array of investment advice providers to offer their services to participants responsible for investment of assets in their individual accounts and, accordingly, for the adequacy of their retirement savings.

Specifically, section 601 of the PPA added a statutory prohibited transaction exemption under sections 408(b)(14) and 408(g) of ERISA, with parallel provisions at Code sections 4975(d)(17) and 4975(f)(8).[43] Section 408(b)(14) sets forth the investment advice-related transactions that will be exempt from the prohibitions of ERISA section 406 if the requirements of section 408(g) are met.[44] These requirements are met only if advice is provided by a fiduciary adviser under an ''eligible investment advice arrangement.'' Section 408(g) provides for two general types of eligible arrangements: one based on compliance with a ''fee-leveling'' requirement (imposing limitation on fees and compensation of the fiduciary adviser); the other, based on compliance with a ''computer model'' requirement (requiring use of a certified computer model). Both types of arrangements also must meet several other requirements.

The Department's final investment advice regulation is needed to provide additional guidance regarding the conditions set forth in the PPA statutory exemption for investment advice. The Department calibrated this final regulation to protect participants while promoting the affordability of investment advice arrangements operating pursuant to the PPA's statutory exemptive relief. The Department expects that as a result of this regulatory action, high-quality, affordable investment advice will proliferate, producing significant net benefits for participants. For a further discussion of these benefits, see the Benefits section below.

Benefits

The Department believes this final regulation will provide important benefits to society by extending quality, expert investment advice to more participants, leading them to make fewer investment mistakes. As noted below, prior to implementation of the PPA, investment mistakes cost participants approximately $114 billion in 2010 for participants, the Department estimates.[45] The Department believes that participants, after having received such advice, may pay lower fees and expenses, engage in less excessive or poorly timed trading, more adequately diversify their portfolios and thereby assume less uncompensated risk, achieve a more optimal level of compensated risk, and/or pay less excess taxes. The Department estimates that advice available prior to the PPA reduced errors by $15 billion annually (*i.e.,* investment errors would have been $124 billion absent this advice). Increased use of investment advice under the PPA will incrementally reduce such mistakes by between $7 billion and $18 billion annually (roughly 6 percent to 16 percent of the $114 billion in investment errors remaining after pre-PPA advise is given), the Department estimates. Thus, the cumulative benefit of the pre-PPA investment advice and the new investment advice under the PPA and this final rule ranges between $22 billion and $33 billion. The Department's estimates of the magnitude of these investment errors and the resulting reductions from participants receiving investment advice are summarized in Table 2 below. The sections below describe in more detail the investment errors participants may make along with the method the Department used to calculate the baseline, benefit and impact estimates for this final regulation.

TABLE 2—LONG TERM INVESTMENT ERRORS AND IMPACT OF ADVICE

[$Billions, annual]

Policy context	Remaining errors	Errors eliminated by advice	
		Incremental	Cumulative
No advice	$124	$0	$0
Existing/Pre-PPA advice only (Baseline)	114	15	15
New/PPA advice:			

[39] ERISA section 406(b)(1) and (3) and Code section 4975(c)(1)(E) and (F).

[40] 29 CFR 2550.408b–2(e).

[41] See Interpretative Bulletin relating to participant investment education, 29 CFR 2509.96–1 (Interpretive Bulletin 96–1); Advisory Opinion (AO) 2005–10A (May 11, 2005); AO 2001–09A (December 14, 2001); and AO 97–15A (May 22, 1997). In October 2010, the Department proposed amendments to the regulation, at 29 CFR 2510.3–21(c) that define when the provision of advice causes a person to be a fiduciary.

[42] Public Law 109–280, 120 Stat. 780 (Aug. 17, 2006).

[43] Under Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), 5 U.S.C. App. 1, 92 Stat. 3790, the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. Therefore, the references in this notice to specific sections of ERISA should be taken as referring also to the corresponding sections of the Code.

[44] The transactions described in section 408(b)(14) are: the provision of investment advice to the participant or beneficiary with respect to a security or other property available as an investment under the plan; the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and the direct or indirect receipt of compensation by a fiduciary adviser or affiliate in connection with the provision of investment advice or the acquisition, holding or sale of a security or other property available as an investment under the plan pursuant to the investment advice.

[45] The Department bases these estimates upon the retirement assets in DC plans and Individual Retirement Accounts reported by the Federal Reserve Board's Flow of Funds Accounts (Mar. 2011), *at http://www.federalreserve.gov/releases/z1/Current/.* This estimate is subject to wide uncertainty. See 74 FR No 164 (Aug. 22, 2008), 74 FR No 12 (Jan. 21, 2009), and 75 FR No 40 (Mar. 2, 2010) for the details of the Department's Regulatory Impact Analysis.

TABLE 2—LONG TERM INVESTMENT ERRORS AND IMPACT OF ADVICE—Continued

[$Billions, annual]

Policy context	Remaining errors	Errors eliminated by advice	
		Incremental	Cumulative
Low Estimate	96	7	22
Primary Estimate	101	13	28
High Estimates	107	18	33

Investment Mistakes

The Department believes that many participants make costly investment mistakes and therefore could benefit from receiving and following good advice. In theory, investors can optimize their investment mix over time to match their investment horizon and personal taste for risk and return. But in practice many investors do not optimize their investments, at least not in accordance with generally accepted financial theories.

Some investors fail to exhibit clear, fixed and rational preferences for risk and return. Some base their decisions on flawed information or reasoning. For example some investors appear to anchor decisions inappropriately to plan features or to mental accounts or frames, or to rely excessively on past performance measures or peer examples. Some investors suffer from overconfidence, myopia, or simple inertia.[46] Such informational and behavioral problems translate into at least five distinct types of investment mistakes.[47]

Fees and Expenses

Two distinct types of inefficiency can result in higher than optimal consumer expenditures for a particular type of good. The first is prices that are higher than would be efficient. Efficient markets require vigorous competition. Sellers with market power can command inefficiently high prices, thereby capturing consumer surplus and imposing a ''dead weight loss'' of welfare on society. Efficient markets also require perfect information and rational, utility maximizing consumers. Imperfect information, search costs and consumers' behavioral biases likewise can allow some sellers to command inefficiently high prices. The Department accordingly has considered whether such conditions might exist in the market for investment products and services bought by or on behalf of participants. The second type of inefficiency is suboptimal consumer choices among available products. Even if goods are priced competitively, welfare will be lost if consumers make poor purchasing decisions. Imperfect information, search costs and behavioral biases can compromise purchasing decisions, and the Department has considered whether participants' purchases of investment products and services might be so compromised.

The Department believes that the research available at this time provides an insufficient basis to confidently determine whether or to what degree participants pay inefficiently high investment prices.[48] Market conditions that may lead to inefficiently high prices—namely imperfect information, search costs and investor behavioral biases—certainly exist in the retail IRA market and likely exist to some degree in particular segments of the DC plan market. The Department believes there is a strong possibility that at least some participants, especially IRA beneficiaries, pay inefficiently high investment prices. If so, the Department would expect that quality advice reduces that inefficiency. Such a reduction in inefficiencies would increase participants' welfare by transferring economic surplus from producers of investment products and services to participants and thereby reducing societal dead weight loss. The Department additionally believes that even where investment prices are efficient participants often make bad investment decisions with respect to expenses—that is, participants buy investment products and services whose marginal cost exceed their associated marginal benefit.[49] The Department expects the PPA and this final regulation to reduce such investment errors, improving participant and societal welfare. However, at this time the Department has no basis on which to quantify such errors or improvements.

Poor Trading Strategies

There is evidence that some participants trade excessively, while many more participants trade too little, failing even to rebalance. In DC plans, excessive participant trading often worsens performance, and participants in accounts that are automatically rebalanced generally fare best.[50] Among inferior strategies, it is likely that active trading aimed at timing the market generates more adverse results than failing to rebalance. Many mutual funds investors' experience badly lags the performance of the funds they hold because they buy and sell shares too frequently and/or at the wrong times.[51] Investors often buy and sell in response to short-term past returns, and suffer as a result.[52] Good advice is likely to discourage market timing efforts and encourage rebalancing, thereby

[46] See, *e.g.,* Richard H. Thaler & Shlomo Benartzi, *The Behavioral Economics of Retirement Savings Behavior,* AARP Public Policy Institute White Paper 2007–02 (Jan. 2007); and Jeffrey R. Brown & Scott Weisbenner, *Individual Account Investment Options and Portfolio Choice: Behavioral Lessons from 401(k) Plans,* Social Science Research Network Abstract 631886 (Dec. 2004).

[47] The Department notes that much of the research documenting investment mistakes does not account for whether advice was present or not. At least some of the mistakes may have been made despite good advice to the contrary; some may have been made pursuant to bad advice. There is evidence both that advice sometimes is not followed, and that advice is sometimes bad. These issues are explored more below.

[48] See 74 FR No 164 (Aug. 22, 2008), 74 FR No 12 (Jan. 21, 2009), and 75 FR No 40 (Mar. 2, 2010) for background on the analysis contained in the Department's Regulatory Impact Analysis.

[49] It is possible that the converse could sometimes occur: participants might fail to buy efficiently priced products and services whose marginal cost lags their associated marginal benefit. If so advice, by correcting this error, might lead to higher expenses, but would still improve overall societal welfare. The economic research suggests that participants are insensitive to fees rather than excessively sensitive to fees, thus the Department believes that the converse situation is likely to be rare.

[50] *See, e.g.,* Takeshi Yamaguchi *et al., Winners and Losers: 401(k) Trading and Portfolio Performance,* Michigan Retirement Research Center Working Paper WP2007–154 (June 2007).

[51] *See, e.g.,* Dalbar Inc., *Quantitative Analysis of Investor Behavior 2007* (2007).

[52] *See, e.g.,* Rene Fischer & Ralf Gerhardt, *Investment Mistakes of Individual Investors and the Impact of Financial Advice,* Science Research Network Abstract 1009196 (Aug. 2007); Julie Agnew & Pierluigi Balduzzi, *Transfer Activity in 401(k) Plans,* Social Science Research Network Abstract 342600 (June 2006); and George Cashman *et al., Investor Behavior in the Mutual Fund Industry: Evidence from Gross Flows,* Social Science Research Network Abstract 966360 (Feb. 2007).

ameliorating adverse impacts from poor trading strategies.

Inadequate Diversification

Investors sometimes fail to diversify adequately and thereby assume uncompensated risk and suffer associated losses. For example, DC plan participants sometimes concentrate their assets excessively in stock of their employer.[53] Relative to full diversification,[54] employer stock investments can be costly for DC plan participants.[55] Other lapses in diversification may involve omission from portfolios asset classes such as overseas equity or debt, small cap stocks, or real estate. Such lapses may sometimes reflect limited investment menus supplied by DC plans.[56] Yet even where adequate choices are available and company stock is not a factor, investors sometimes fail to diversify adequately.[57] The Department believes that quality advice will address over concentration in employer stock and other failures to properly diversify.

Inappropriate Risk

Investors who avoid the foregoing mistakes might be said to invest efficiently, in the sense that the investor generally can expect the maximum possible return given their level risk. However, these participants may still be making a costly mistake: they may fail to calibrate the risk and return of their portfolio to match their own risk and return preferences. As a result, participant investments may be too risky or too safe for their own tastes. The Department currently lacks a sufficient basis on which to estimate the magnitude of such mistakes, but believes mistakes associated with inappropriate risk levels may be common and large. The characteristics of a diversified portfolio's risks and returns generally are determined by the portfolio's allocation across asset classes. As noted above, there is ample evidence that participants' asset allocation choices often are inconsistent with fixed or well behaved risk and return preferences. If participants' true preferences are in fact fixed or well behaved, then observed asset allocations, which often appear to shift in response to seemingly irrelevant factors (or fail to shift in response to relevant factors), certainly entail large welfare losses. The Department believes good advice might help participants calibrate their asset allocations to match their true preferences.

Excess Taxes

It is likely that many households pay excess taxes as a result of disconnects between their investments and current tax strategies. Households saving for retirement must decide not only what assets to hold, but also whether to locate these assets in taxable or tax-deferred accounts. For example, households may be able to maximize their expected after-tax wealth by first placing heavily taxed bonds in their tax-deferred account and then placing lightly taxed equities in their taxable account. However a significant number of households do not follow this practice.[58] What is not clear, however, is whether such households are in fact making investment mistakes. In practice, this simple asset location rule may fail to minimize taxes.[59] As a result the Department currently has no basis to estimate the magnitude of excess taxes that might derive from participants' investment mistakes. In any event, whether or to what extent investment advisers would be positioned to provide advice on tax efficiency is unclear.

Baseline Estimates: Availability and Use of Advice by Participants

Participants have always had the option of obtaining permissible investment advice services directly in the retail market. DC plan sponsors likewise have had the option of obtaining such services in the commercial market and making them available to plan participants and beneficiaries in connection with the plan.

Prior to the 2006 enactment of the PPA, a substantial fraction of DC plan sponsors made investment advice available to plan participants and beneficiaries. Today, as the PPA's implementation progresses, many more have begun providing or are gearing up to provide such advice. The Department bases its estimate for pre-PPA availability of advice to DC plan participants on reported plan

[53] *See, e.g.,* Olivia S. Mitchell & Stephen P. Utkus, *The Role of Company Stock in Defined Contribution Plans,* National Bureau of Economic Research Working Paper W9250 (Oct. 2002); and Jeffrey R. Brown & Scott Weisbenner, *Individual Account Investment Options and Portfolio Choice: Behavioral Lessons from 401(k) Plans,* Social Science Research Network Abstract 631886 (Dec. 2004).

[54] This comparison should be viewed as an outer bound. Full diversification of the same assets might not be feasible if companies are unwilling to alter the compensation mix in this way (*see, e.g.,* Olivia S. Mitchell & Stephen P. Utkus, *The Role of Company Stock in Defined Contribution Plans,* National Bureau of Economic Research Working Paper W9250 (Oct. 2002)). The comparison also neglects some potential tax benefits of employer stock investments that might offset losses from reduced diversification (*see, e.g.,* Mukesh Bajaj *et al., The NUA Benefit and Optimal Investment in Company Stock in 401(k) Accounts,* Social Science Research Network Abstract 965808 (Feb. 2007)). *See also,* Lisa K. Meulbroek, Company Stock in Pension Plans: How Costly Is It?, Social Science Research Network Abstract 303782 (Mar. 2002) and Krishna Ramaswamy, Company Stock and Pension Plan Diversification, in The Pension Challenge: Risk Transfers and Retirement Income Security 71, 71–88 (Olivia S. Mitchell & Kent Smetters eds., 2003). The economic literature provides some evidence that investing in employer stock increases participants' exposure to equity overall, which might increase average wealth (*see, e.g.,* Jack L. Vanderhei, The Role of Company Stock in 401(k) Plans, Employee Benefit Research Institute T–133 Written Statement for the House Education and Workforce Committee, Subcommittee on Employer-Employee Relations, Hearing on Enron and Beyond: Enhancing Worker Retirement Security (Feb. 2002), at *http://www.ebri.org/pdf/publications/testimony/t133.pdf).*

[55] Following findings reported in Lisa K. Meulbroek, *Company Stock in Pension Plans: How Costly Is It?,* Social Science Research Network Abstract 303782 (Mar. 2002), this estimate reflects losses amounting to 14 percent of the employer stock's value, assuming 10 percent of DC plan assets are held in employer stock, the DC plan is one-half of total wealth, and the holding period is 10 years. For comparison, following findings reported in Krishna Ramaswamy, *Company Stock and Pension Plan Diversification, in The Pension Challenge: Risk Transfers and Retirement Income Security* 71, 71–88 (Olivia S. Mitchell & Kent Smetters eds., 2003), the annualized cost of an option to receive the higher of the return on a typical company stock or the return on a fully diversified equity portfolio over a three-year horizon would amount to approximately $24 billion, the Department estimates. This measure probably exaggerates the loss to participants, however, insofar as it would preserve for the participant the potential upside of a company stock that outperforms the market.

[56] *See, e.g.,* Edwin J. Elton *et al., The Adequacy of Investment Choices Offered By 401(k) Plans,* Social Science Research Network Abstract 567122 (Mar. 2004), which finds that menus are frequently inadequate, and Ning Tang and Olivia S. Mitchell, *The Efficiency of Pension Plan Investment Menus: Investment Choices in Defined Contribution Pension Plans,* University of Michigan Retirement Research Center Working Paper WP 2008–176 (June 2008), at *http://www.mrrc.isr.umich.edu/publications/papers/pdf/wp176.pdf,* which finds that most menus are efficient.

[57] *See, e.g.,* Laurent E. Calvet *et al., Down or Out: Assessing the Welfare Costs of Household Investment Mistakes,* Harvard Institute of Economic Research Discussion Paper No. 2107 (Feb. 2006).

[58] *See, e.g.,* Daniel B. Bergstresser & James M. Poterba, *Asset Allocation and Asset Location: Household Evidence from the Survey of Consumer Finances,* Journal of Public Economics, Volume 88 1893, 1893–1915 (2004).

[59] *See, e.g.,* James M. Poterba *et al., Asset Location for Retirement Savers, in Public Policies and Private Pensions* 290, 290–331 (John B. Shoven *et al.* eds., 2004); John B. Shoven & Clemens Sialm, *Asset Location in Tax-Deferred and Conventional Savings Accounts,* Journal of Public Economics, Volume 88 (2003); James M. Poterba *et al., Asset Location for Retirement Savers, in Public Policies and Private Pensions* 290, 290–331 (John B. Shoven *et al.* eds., 2004); Gene Amromin, *Portfolio Allocation Choices in Taxable and Tax-Deferred Accounts: An Empirical Analysis of Tax-Efficiency,* Social Science Research Network Abstract 302824 (May 2002); Lorenzo Garlappi & Jennifer C. Huang, *Are Stocks Desirable in Tax-Deferred Accounts?,* Journal of Public Economics, Volume 90 2257, 2257- and Robert M. Dammon *et al., Optimal Asset Location and Allocation with Taxable and Tax-Deferred Investing,* The Journal of Finance, Volume LIX, Number 3 999, 999–1037 (2004).

experiences in 2006.[60] The Department assumes that approximately 40 percent of DC plan sponsors provided access to investment advice either on line, by phone, or in-person in 2006, as outlined in Table 3 below. The Department further assumes that approximately 25 percent of the participants that are offered advice use the offered advice, as outlined in Table 4 below. In-person advice seems to be offered by most plan sponsors. On-line advice and, to a lesser degree, telephone advice are favored more by large sponsors. Smaller plan sponsors appear to offer advice generally, and in-person advice in particular, more frequently than larger plan sponsors.

TABLE 3—AVAILABILITY OF ADVICE: DC PLANS OFFERING ADVICE

Policy context	Any advice (computer or live)
Pre-PPA	40%
PPA—Low Estimate	56%
PPA—Primary Estimate	63%
PPA—High Estimate	69%

Investment advice is also already used by a substantial fraction of IRA participants, the Department believes. A majority of IRA participants that invest in mutual funds purchase some or all of their funds via a professional financial adviser.[61] Overall in 2006, 60 percent of U.S. workers and retirees said they use the advice of a financial professional when making retirement savings and investment decisions; 40 percent said the advice of a financial professional was more helpful to them than alternatives.[62] However, what is not clear from the survey was how recently the participant received the referenced advice: in the same survey just 29 percent of participants stated that in the past year they obtained investment advice from a professional financial adviser who was paid through fees or commissions.[63]

TABLE 4—USE OF ADVICE BY DC PLAN AND IRA PARTICIPANTS

Policy context	Share of participants advised		
	DC Plans		IRA
	Where offered	Overall	
Pre-PPA	25%	10%	33%
PPA—Low Estimate	25%	14%	50%
PPA—Primary Estimate	25%	16%	67%
PPA—High Estimates	25%	17%	80%

The effect of investment advice depends not merely on its availability but on its use by DC plan and IRA participants. Do the participants seek advice, and if so do they follow it? According to one survey, among DC plan participants offered investment advice, approximately one in four uses the offered advice. There is some evidence that historically in-person advice has achieved higher use rates than on-line advice, with on-line advice appealing more to higher-income participants.[64] In another survey large fractions of workers say they would be very likely (19 percent) or somewhat likely (35 percent) to take advantage of advice provided by the company that manages their employer's DC plan. Of these, two-thirds said they would implement only those recommendations that were in line with their own ideas; 21 percent said they would implement all of the recommendations they receive as long as they trusted the source.[65] In a subsequent survey, among those obtaining investment advice, 36 percent say they implemented ''all'' of the advice, 58 percent ''some,'' and just 5 percent ''none.''[66]

The Department's assumptions regarding use of advice are summarized in Tables 3 and 4 above.[67] The

[60] This assessment is based on the Department's reading of Hewitt Associates LLC, *Survey Findings: Hot Topics in Retirement, 2007* (2007); Profit Sharing/401(k) Council of America, *50th Annual Survey of Profit Sharing and 401(k) Plans* (2007); and Deloitte Development LLC, *Annual 401(k) Benchmarking Survey, 2005/2006 Edition* (2006). In addition to investment advice, a majority of sponsors also provide one or more other types of support to participants' investment decisions.

[61] Eighty-two percent of mutual fund shareholders who hold funds outside of DC plans purchase some or all of their funds from a professional financial adviser such as a full-service broker, independent financial planner, bank or savings institution representative, insurance agent, or accountant (*see, e.g.,* Victoria Leonard-Chambers & Michael Bogdan, *Why Do Mutual Fund Investors Use Professional Financial Advisers?,* Investment Company Institute Research Fundamentals, Volume 16, Number 1 (April 2007)). As families owning IRAs outnumber those owning pooled investment vehicles outside of retirement accounts (*see, e.g.,* Brian K. Bucks *et al., Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances,* Federal Reserve Bulletin 92 A1, A1–A38 (2006)), it is reasonable to conclude that a large majority of IRA beneficiaries who invest in mutual funds purchase them via such professionals. However, the Department has no basis to estimate the fraction of these beneficiaries that receive true investment advice from such professionals. It is possible that some make their purchase decisions without receiving any recommendation or material guidance from the professional making the sale.

[62] Alternatives including advice of peers, written plan materials, print media, television and radio, seminars, software, on-line information or advice, and retirement benefit statements were all less likely to be characterized as ''most helpful.''

[63] *See, e.g.,* Employee Benefit Research Institute, *2007 Retirement Confidence Survey, Wave XVII,* Posted Questionnaire (Jan. 2007).

[64] *See, e.g.,* Profit Sharing/401(k) Council of America, *50th Annual Survey of Profit Sharing and 401(k) Plans* (2007); and Julie Agnew, *Personalized Retirement Advice and Managed Accounts: Who Uses Them and How Does Advice Affect Behavior in 401(k) Plans?,* Center for Retirement Research Working Paper 2006–9 (2006).

[65] *See, e.g.,* Employee Benefit Research Institute, *2007 Retirement Confidence Survey, Wave XVII,* Posted Questionnaire (Jan. 2007). In practice this might translate into a high rate of compliance with recommendations, if recommendations turn out not to diverge too much from participants' own ideas.

[66] *See, e.g.,* Employee Benefit Research Institute, 2008 Retirement Confidence Survey, Wave XVIII, Posted Questionnaire (Jan. 2008).

[67] The Department's bases its assumptions on its reading of Employee Benefit Research Institute, *2007 Retirement Confidence Survey, Wave XVII,* Posted Questionnaire (Jan. 2007); Hewitt Associates LLC, *Survey Findings: Hot Topics in Retirement, 2007* (2007); Profit Sharing/401(k) Council of America, *50th Annual Survey of Profit Sharing and 401(k) Plans* (2007); and Deloitte Development LLC, *Annual 401(k) Benchmarking Survey, 2005/2006 Edition* (2006). There are a number of reasons to believe that use of advice will be higher among IRA beneficiaries than DC plan participants. The aforementioned survey reports, read together, generally support this conclusion. In addition, relative to IRA beneficiaries, DC participants may have less need for advice and/or easier access to alternative forms of support for their investment decisions. DC plan participants' choice is usually confined to a limited menu selected by a plan fiduciary, and the menu may include one-stop alternatives such as target date funds that may mitigate the need for advice. Their plan or employer may provide general financial and investment education in the form of printed material or seminars. They often make initial investment decisions (sometimes by default) before contributing to the plan so the decisions' impact

Continued

Department believes it is likely that in practice a large proportion of participants who receive advice will follow that advice either in whole or in part. This is especially likely if the advice turns out to be broadly in line with the participants' own thinking. Nonetheless, some advice will not be followed, and as a result some investment errors will not be corrected. For purposes of this analysis, the Department has assumed that advised participants make investment errors at one-half the rate of unadvised participants. The remaining errors reflect participant failures to follow advice. Additionally, for purposes of this analysis, the Department assumes that all permissible advice arrangements deliver advice of similar quality and effectiveness.

TABLE 5—NUMBER OF ENTITIES

	Pre-PPA	PPA		
		Low estimate	Primary estimate	High estimate
DC:				
Plans offering (000s)	238	335	372	410
Participants offered (MM)	30	42	46	51
Participants using (MM)	6	9	10	11
IRA:				
IRAs using (MM)	17	25	34	41

Impact—Benefit

For purposes of this assessment, the Department estimates that as a result of the PPA and this final regulation the proportion of participants using advice will increase.[68] As stated above, the Department has assumed that advised participants make investment errors at one-half the rate of unadvised participants. The estimates provided in the Tables 3 to 5 show three possible impacts for the PPA and this final regulation to reflect the uncertainty surrounding the availability and use of advice as well as the percentage of errors eliminated by advice: ''low'' estimates assume that 14 percent of DC plan participants and half of IRA beneficiaries will utilize advice which eliminates 25 percent of investment errors, ''primary'' estimates assume that 16 percent of DC plan participants and two-thirds of IRA beneficiaries will utilize advice which eliminates half of investment errors, and ''high'' estimates assume that 17 percent of DC plan participants and 80 percent of IRA beneficiaries will utilize advice which eliminates 75 percent of investment errors.

As summarized in Tables 3 through 5 above, the PPA and this final regulation will increase the availability of investment advice and thereby increase the use of investment advice by participants. The PPA and this final regulation will reduce investment mistakes by between $7 billion and $18 billion annually, the Department estimates. Cumulatively, after implementation of this final regulation, use of existing and new investment advice by DC plan and IRA participants will eliminate between $22 billion and $33 billion worth of investment errors annually. The Department's estimates of investment errors and reductions from investment advice are summarized in Table 2 above.

Costs

Compliance with the terms and condition of the final rule is a condition of relief from the prohibited transaction provisions of ERISA and the Code. Such exemptive relief would allow a fiduciary adviser to receive compensation from providers of recommended investments. As such, this final rule does not include any Federal mandates that will require expenditures by the private sector per se. Plan sponsors and participants are expected to take advantage of these new opportunities in the marketplace; therefore these plans and participants will shoulder the costs to reap the associated benefits.

Nevertheless, participant gains from investment advice must be weighed against the cost of that advice. This final rule is expected to make quality fiduciary advice available to participants at a lower direct price, because advisers will be able to rely on indirect revenue sources, subject to the safeguards and conditions of the final rule, to compensate their efforts. It may also make such advice available at a lower total cost to participants.

The general prohibition against transactions wherein fiduciary advisers' and participants' interests may conflict carries costs. Faced with such bars advisers may forgo certain potential economies of scale in production and distribution of financial services that would derive from more vertical and horizontal integration.[69] If they choose instead to take advantage of these opportunities and relationships, they must incur costs to carefully monitor and calibrate their relationships and compensation arrangements to avoid a prohibited fiduciary conflict, or structure and monitor their arrangements to meet the conditions of an applicable prohibited transaction exemption.

On the other hand, absent adequate protections, conflicts themselves may be more costly to participants than a general prohibition against them. The safeguards and conditions included in this final regulation are calibrated to ensure that conflicts do not compromise the quality of fiduciary advice.

The Department therefore expects this final rule to produce cost savings by harnessing economies of scale and by reducing compliance burdens. The Department is unaware of any available empirical basis on which to determine

may seem small. Finally, the availability of advice in connection with the plan is intermediated by the plan sponsor and fiduciary. In contrast, IRA beneficiaries generally have wider choice and are more likely to be without employer-provided support for their decisions. Decision points may more often occur when account balances are large, such as when rolling a large DC plan balance into an IRA or when retiring. Finally, the availability of advice to IRA beneficiaries is not intermediated by an employer—rather IRA beneficiaries interface directly with the retail market and will thereby be more directly affected by the exemptive relief provided by the PPA and this final regulation. For all of these reasons IRA beneficiaries may use advice more frequently than DC plan participants.

[68] See 74 FR No 164 (Aug. 22, 2008), 74 FR No 12 (Jan. 21, 2009), and 75 FR No 40 (Mar. 2, 2010) for background on the analysis contained in the Department's Regulatory Impact Analysis.

[69] For example, an adviser employed by an asset manager can share the manager's research instead of buying or producing such research independently.

whether or by how much costs might be reduced, however.

Different types of advice may come with different costs. For example, advice generated by an automated computer program may be less costly than advice provided by a personal adviser. For purposes of this analysis the Department assumed that in the context of a DC plan, computer generated advice costs 10 basis points annually, while adviser provided advice costs 20 basis points. In connection with an IRA the corresponding assumptions are 15 and 30 basis points. These assumptions are reasonable in light of information available to the Department about the cost of various existing advice arrangements. On this basis the Department estimates the aggregate cost of advice under the final rule to be a range between $1.9 billion and $5.1 billion annually as summarized in Table 6 below. These costs include the costs, outlined in the Paperwork Reduction Act section below, associated with requirements to document and keep records, provide disclosures to participants, hire an independent auditor, and obtain certification of the model from an eligible investment expert.

TABLE 6—COST OF ADVICE

	Pre-PPA	PPA		
		Low estimate	Mid estimate	High estimate
Incremental:				
Advice cost ($billions)	$3.90	$1.90	$3.70	$5.10
Advice cost rate (bps, average)	22.4	22.6	23.0	23.1
Cumulative (combined with policies to the left):				
Advice cost ($billions)	3.90	5.80	7.60	9.00
Advice cost rate (bps, average)	22.4	22.4	22.7	22.8

Regulatory Alternatives

Executive Order 12866 requires an economically significant regulation to include an assessment of the costs and benefits of potentially effective and reasonably feasible alternatives to a planned regulation, and an explanation of why the planned regulatory action is preferable to the identified potential alternatives. In formulating this final regulation, the Department considered several alternative approaches regarding computer model design and operation, which are discussed below. For a more detailed discussion of these alternatives, see section B.2., above.

Paragraph (b)(4)(i)(A) of the March 2010 proposal requires a computer model to be designed and operated to apply generally accepted investment theories that take into account historical risks and returns of different asset class over defined periods of time. The Department solicited comments in the proposal regarding whether the Department should amend the rule to specify generally accepted investment theories and require their application or specify certain practices required by such theories. Most commenters indicated that they did not believe the Department should specifically define or identify generally accepted investment theories or prescribe particular practices or computer model parameters. They explained that economic and investment theories and practices continually evolve over time in response to changes and developments in academic and expert thinking, technology, and financial markets. Some commenters explained that additional specificity would facilitate compliance determinations. Other commenters described theories and practices they believed to be generally accepted.

After carefully considering the comments, the Department decided not to change the provision in the final rule. The Department is concerned that attempting to provide additional specificity in this area, such as by prescribing an acceptable list of theories and practices, may result in significant unintended consequences. Specific requirements might limit advisers' ability to select or apply the most current or effective investment theories, and thereby impede beneficial innovations in investment advice and reduce the economic benefits of the statutory exemption. The Department also believes that the final rule's computer model requirements, taken together, are sufficient to safeguard against application of investment theories that are not generally accepted.

Paragraph (b)(4)(i)(F)(*1*) of the March 2010 proposal requires a computer model to take into account all ''designated investment options'' available under the plan without giving inappropriate weight to any investment option. The term ''designated investment option'' is defined to mean any investment option designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term ''designated investment option'' does not include ''brokerage windows,'' ''self-directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

Under paragraph (b)(4)(i)(F)(*2*) of the proposal, a computer does not have to make recommendations relating to the acquisition, holding or sale of the following: qualifying employer securities; an investment that allocates the invested assets of a participant or beneficiary to achieve varying degrees of long-term appreciation and capital preservation through equity and fixed income exposures, based on a defined time horizon or level of risk of the participant or beneficiary; and an annuity option with respect to which a participant or beneficiary may allocate assets toward the purchase of a stream of retirement income payments guaranteed by an insurance company.

The Department considered retaining this provision in the corresponding provision of the final rule, paragraph (b)(4)(i)(G). However, the Department has decided to remove qualifying employer securities and asset allocations funds from the list of excepted options. Based on comments received in response to the proposal, the Department believes that it is feasible to develop a computer model capable of addressing investments in qualifying employer securities, and that plan participants will significantly benefit from this advice. For example, DC plan participants sometimes concentrate their assets excessively in stock of their

employer.[70] Participant investments in employer securities can undermine diversification and thereby cause participants to bear uncompensated risk. This uncompensated risk comes at a cost.[71] According to 2008 Department estimates, holding employer stock instead of a diversified portfolio of investments cost DC plan participants $3 billion in risk-adjusted value annually.[72] Yet, participants often seem unaware of this uncompensated risk and falsely believe that they can gauge how their company stock will perform in the future.[73] Good investment advice can benefit participants by promoting appropriate diversification[74] and combat some of the false perceptions of participants concerning employer stock.[75]

The Department also decided to remove asset allocation funds from the list of excepted options. Asset allocation funds generally are designed to maintain a particular asset allocation that takes into account the time horizon or risk tolerance of the participant. Some commenters to the Department's 2008 proposed rule opined that it served no purpose to include such funds in an investment advice model's unrelated, overlaying asset allocation analysis. However, the Department's subsequent consideration of asset allocation funds has demonstrated that: (1) The asset allocation and associated risk and return characteristics of different funds targeted at similar participants varies widely; (2) the risk and return preferences of participants vary widely with factors other than the time horizons that are the sole targeting factor for many asset allocation funds; (3) participants investing in asset allocation funds sometimes do not understand the funds' risk and return characteristics; and (4) as a result of the forgoing, the risk and return characteristics of the asset allocation funds participants invest in are sometimes poorly aligned with the participants' own risk and return preferences. Because investment advice models will take into account designated investment options' true risk and return characteristics as well as participant characteristics and circumstances beyond time horizons, the Department believes that participants will benefit from investment advice that considers any asset allocation funds that are available to them.

The Department notes that a provision added to the final rule, paragraph (b)(4)(i)(G)(*2*)(*ii*), provides that a computer model will not fail to satisfy the requirements of paragraph (b)(4)(i)(G)(*1*) merely because it does not provide a recommendation with respect to an investment option that a participant or beneficiary requests to be excluded from consideration in such recommendations. Therefore, participants may express a preference for asset allocation funds to be excluded from a recommendation. This would be relevant in situations where participants do not want to include asset allocation funds in computer model investment advice, because such products themselves rely on a fund manager to maintain a particular asset allocation taking into account their time horizons (retirement age, life expectancy) and risk tolerance.

The Department, however, has decided to retain the exception for in-plan annuity products. It might be challenging for a computer model that is designed to select the optimal asset allocation for a participant's investments to also incorporate an option about whether the participant should purchase an in-plan annuity and how much of the portfolio should be dedicated to such a product. Annuities differ from other investments across several dimensions. For example, one valuable benefit to a lifetime annuity is that it provides an insurance-like feature of a guaranteed income stream that will last as long as one lives. It is difficult to know, however, how that should be valued within the context of a computer model. Similarly, participants' preferences about annuities may vary depending on their preferences regarding bequests. Another factor participants must consider is that the annuity may lock them in, either by preventing them from pulling out their accumulated value and investing it elsewhere or by imposing a penalty for doing so. Typically other investment options offer more liquidity. All of these features of annuities mean that it might be difficult to design a computer model that could produce a recommendation for a participant regarding the optimal selection of assets and purchase of annuities.

As an additional approach to ensuring that investment advice is not tainted by conflicts of interest, paragraph (b)(4)(i)(E)(*3*) of the March 2010 proposal provides that a computer model must be designed and operated to avoid investment recommendations that inappropriately distinguish among investment options in a single asset class on the basis of a factor that cannot confidently be expected to persist in the future.

A number of commenters requested that the Department remove paragraph (b)(4)(i)(E)(*3*). Some opined that the test contained in that provision—which applies on an asset-class by asset-class basis—lacks sufficient clarity because it fails to define the essential term ''asset class''. Some commenters also requested removal of this provision unless the Department clarifies that it would be acceptable for a computer model to take into account historical performance data. According to these commenters, the proposal's discussion of paragraph (b)(4)(i)(E)(*3*) and related computer model questions has been construed as strictly prohibiting, or strongly cautioning against, any consideration of historical performance data, even if

[70] Mitchell, Olivia S., and Stephen P. Utkus. October 2002. ''The Role of Company Stock in Defined Contribution Plans.'' NBER Working Paper No. W9250. Citing EBRI/ICI data, the authors find that, of those participants who are offered company stock through their 401(k), 48 percent of them hold over 20 percent of their 401(k) assets in company stock and approximately one third of them hold over 40 percent of their 401(k) assets in company stock. The authors acknowledge that there are potential productivity gains attributable to employee stock ownership. However, diversifying assets, on average, decreases wealth volatility. While not explicitly pointed out in this article, the volatility argument is particularly relevant when a participant holds a high concentration of one's own company stock because company financial distress will correspond directly with both lower job security and decreased financial returns.

[71] Meulbroek, Lisa. 2002. ''Company Stock in Pension Plans: How Costly is it?'' *Harvard Business School Working Paper* 02–058.

[72] This figure is based upon an estimate from Meulbroek (2002) where if 10 percent of DC plan assets are held in employer stock, the DC plan is one-half total wealth, and the holding period is 10 years, investors lose out on 14 percent of risk-adjusted value.

[73] Benartzi, Shlomo and Richard Thaler. 2007. ''Heuristics and Biases in Retirement Savings Behavior'' *The Journal of Economic Perspectives,* Vol. 21, Summer, pp. 81–104. Citing a Boston Research Group (2002) study of individuals (most of whom were highly aware of the Enron scandal), half of the respondents said their company stock carries less risk than a money market fund. Another study, that included the coauthors, found that only 33 percent of the respondents who own company stock realize that it is riskier than a ''diversified fund with many stocks.'' Employees' investment decisions reflect a belief that strong past performance by their company means that they should invest more in employee stock. Yet, this seems to have little bearing on future performance.

[74] Mottola, Gary and Stephen Utkus. 2007. ''Red, Yellow, and Green: A Taxonomy of 401(k) Choices'' Pension Research Council Working Paper, PRC WP 2007–14. Examining Vanguard's database of 2.9 million participants, the authors found that 17.2 percent of participants had invested more than 20 percent of their assets in company stock. A subset of 12,000 participants adopted managed account services. The authors were able to compare this subset's behavior before and after adopting the services. Before adoption, 11 percent of the participants had over 20 percent of their portfolio in company stock; a year after adoption, only 2 percent of the participants did.

[75] Choi, James, David Laibson, and Brigitte Madrian. 2005. *Brookings Papers on Economic Activity,* Vol. 2005, No. 2, pp. 151–198. Participants view the offering of the employee stock as a recommendation to purchase the stock. Loyalty to one's company may also be a factor.

considered in conjunction with other information. These commenters opined that a complete disregard of historical performance data would be inconsistent with generally accepted investment theories.

Additionally, some cautioned that, by limiting consideration to only those factors that can confidently be expected to persist in the future, a computer model might be limited to distinguishing between investment options solely on the basis of fees and expenses. A commenter noted that, other than fees, it could not identify any other factor with the necessary likelihood of persistence required under the proposal. Although commenters generally agreed that fees are an important consideration, most recognized they should not be the only factor taken into account.

A number of commenters expressed concern that this provision of the proposal, with its focus on historical performance data, superior past performance and fees, appeared to suggest that it would be impermissible under any circumstances for a plan fiduciary to pursue an active management style, or that a plan fiduciary would bear a very high burden of justification. Commenters also stated that the Department's proposal appeared to demonstrate a clear bias in favor of passive investment styles over active styles, which they believe to be premature because it is the subject of ongoing debate among investment experts.

Other commenters, however, questioned the utility of historical performance data beyond estimating future performance of an entire asset class. They further noted that, because the regulation permits a fiduciary adviser to provide investment recommendations to plan participants when the adviser has an interest in the investment options being recommended, there is the potential that the computer model might be designed to favor certain options by giving undue weight to historical performance data. They therefore stressed the importance of scrutinizing the use of historical performance data and supported the inclusion of paragraph (b)(4)(i)(E)(*3*).

As discussed above, the provision is not intended to prohibit a computer model from any consideration of an investment option's historical performance, as some commenters interpreted. Based on its review of relevant academic literature, the Department does not believe such a prohibition is warranted. Although the academic literature indicates that there is skill in the investment community,[76] there is considerable disagreement amongst academics as to how much persistent skill fund managers exhibit.[77]

Without further clarification, a fiduciary adviser might not consider any factors whose persistence is in doubt, such as historical performance, but instead would consider only factors that are essentially fixed, such as fees and expenses, solely because she is unwilling to risk noncompliance with that provision. That is, fiduciary advisers might omit from consideration factors that would be beneficial to consider, even when there is a sound empirical basis to justify their consideration. The Department believes that the final rule should not discourage consideration of factors whose predictive properties can be demonstrated. Accordingly, the Department has clarified application of this provision at paragraph (b)(4)(i)(C).

Uncertainty

The Department is highly confident in its conclusion that investment errors are common and often large, producing large avoidable losses (including foregone earnings) for participants. It is also confident that participants can reduce errors substantially by obtaining and following good advice. While the precise magnitude of the errors and potential reductions therein are uncertain, there is ample evidence that that magnitude is large.

However, the Department is uncertain to what extent advice will reach participants and to what extent advice that does reach them will reduce errors. To illustrate that uncertainty, the Department conducted sensitivity tests of how its estimates of the reduction in investment errors attributable to the PPA and this final rule would change in response to alternative assumptions regarding the availability, use, and quality of advice. Table 7 the results of these tests.[78]

TABLE 7—UNCERTAINTY IN ESTIMATE OF INVESTMENT ERROR REDUCTION

After PPA/Final Rule:		Impact of PPA	Impact of all advice	Remaining errors
Advice eliminates:	Advice reaches:			
25% of errors	14% of DC and 50% of IRA	$7	$21	$107
50% of errors *	16% of DC and 67% of IRA*	13	28	101

[76] *See e.g.,* Russ Wermers, ''Mutual Fund Performance: An Empirical Decomposition Into Stock-Picking Talent, Style, Transaction Costs And Expenses,'' The Journal of Finance (Aug., 2000). This study finds that fund managers choose stocks that outperform their relevant benchmark by an average of 71 basis points per year. However, non-stock components, expense ratios, and transaction costs explain why the returns on these active funds are not as high on average as index funds.

[77] *See e.g.,* Eugene Fama and Kenneth French, ''Luck Versus Skill in the Cross Section of Mutual Fund Returns,'' Journal of Finance (Sept. 21, 2010), *at http://www.afajof.org/afa/forthcoming/6311.pdf.* This study finds that approximately 10 percent of managers demonstrate higher returns before fees than what random chance would generate. Yet, after fees are taken into account, this share declines to 1 percent.

See also Robert Kosowski, Allan Timmermann, Russ Wermers and Hal White, ''Can Mutual Fund 'Stars' Really Pick Stocks? New Evidence from a Bootstrap Analysis,'' The Journal of Finance, Volume LXI, Number 6 (Dec. 2006). The authors find a larger share of fund managers demonstrating significant skill. Fama and French believe this analysis suffers from some of the same selection biases that industry prospectuses do.

See also John Hughes, Jing Liu and Mingshan Zhang, ''Overconfidence, Under-Reaction, and Warren Buffett's Investments,'' *at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1635061.* This study finds that mimicking Warren Buffett's position, or that of other top performing investment managers, can generate additional returns. The fact that following another fund's lead can be a credible exercise may be an argument in favor of looking at prior returns of some funds. However, the fact that winning strategies do get mimicked is an argument made by some that success cannot be indefinitely sustained. Copycats potentially drive up the price of the underlying assets over time.

See e.g., Jonathan B. Berk, and Richard C. Green, ''Mutual Fund Flows and Performance in Rational Markets,'' Journal of Political Economy, Volume 112, pp. 1269–1295 (2004).

[78] The Department maintains the 2006 baseline numbers used in the 2008 Proposal (73 FR 49896 (Aug. 22, 2008), *at http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=21243&AgencyId=8&DocumentType=1*). The baseline assessment was based on the Department's reading of Hewitt Associates LLC, Survey Findings: Hot Topics in Retirement, 2007 (2007), *at http://www.hewittassociates.com/Lib/MBUtil/AssetRetrieval.aspx?guid=CE3EEF86-50E7-4EEC-8C32-82FD055690A6;* Profit Sharing/401(k) Council of America, 50th Annual Survey of Profit Sharing and 401(k) Plans (2007); and Deloitte Development LLC, Annual 401(k) Benchmarking Survey, 2005/2006 Edition (2006), *at http://www.google.com/url?sa=t&source=web&cd=5&ved=0CDUQFjAE&url=http%3A%2F%2Fwww.ifebp.org%2Fpdf%2Fresearch%2F2005-06Annual401kSurvey.pdf&ei=_76UTYSXMY6y0QHBjZmADA&usg=AFQjCNFsUmmwPpFA_EoBDUGyB9uypfFCCQ.*

TABLE 7—UNCERTAINTY IN ESTIMATE OF INVESTMENT ERROR REDUCTION—Continued

After PPA/Final Rule:		Impact of PPA	Impact of all advice	Remaining errors
Advice eliminates:	Advice reaches:			
75% of errors	17% of DC and 80% of IRA	18	33	96

Note: Primary estimates denoted.*

The Department is uncertain about the mix of advice and other support arrangements that will compose the market, and about the relative effectiveness of alternative investment advice arrangements or other means of supporting participants' investment decisions. For example, to what extent will arrangements pursuant to this final rule displace alternative arrangements? Will advice arrangements operating pursuant to this final rule be more, less, or equally effective as alternative arrangements?

This analysis has assumed that all types of permissible advice arrangements are equally effective at reducing investment errors, and that none will increase errors (there will be no very bad advice). This assumption may not hold, however. The Department notes that if users of advice are fully informed and rational then more cost effective arrangements will dominate the market. This final rule establishes conditions to ensure that prospective users of advice available pursuant to it will have the opportunity to become fully informed.

The Department is uncertain about the potential magnitude of any transitional costs associated with this final rule. These might include costs associated with efforts of prospective fiduciary advisers to adapt their business practices to the applicable conditions. They might also include transaction costs associated with initial implementation of investment recommendations by newly advised participants.

Another source of uncertainty involves potential indirect downstream effects of this final rule. Investment advice may sometimes come packaged with broader financial advice, which may include advice on how much to contribute to a DC plan. The Department currently has no basis to estimate the incidence of such broad advice or its effects, but notes that those effects could be large. The opening of large new markets to a variety of investment advice arrangements to which they were heretofore closed may affect the evolution of investment advice products and services and related technologies and their distribution channels and respective market shares. Other possible indirect effects that the Department currently lacks bases to estimate include financial market impacts of changes in investor behavior and related macroeconomic effects.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and are likely to have a significant economic impact on a substantial number of small entities. For purposes of analysis under the RFA, the Department proposes to continue its usual practice of considering a small entity to be an employee benefit plan with fewer than 100 participants.[79] The Department estimates that approximately 100,000 small plans, a significant number, will voluntarily begin offering investment advice to participants as a result of this final regulation.

The primary effect of this final regulation will be to reduce participants' investment errors. This is an effect on participants rather than on plans. The impact on plans generally will be limited to increasing the means by which they may make advice available to participants, and this impact will be similar and proportionate for small and large plans. Therefore the Department certifies that the impact on small entities will not be significant. Pursuant to this certification the Department has refrained from preparing an Initial Regulatory Flexibility Analysis of this final regulation.

Notwithstanding this certification, the Department did separately consider the impact of this final regulation on participants in small plans.

As noted above, prior to implementation of the PPA smaller plan sponsors offered advice generally, and in-person advice in particular, more frequently than larger plan sponsors. The Department believes that exemptive relief provided by both the PPA and this final regulation will promote wider offering of advice by small and large plans sponsors alike. Accordingly the Department estimated the impacts on small plans assuming that they generally will be proportionate to those on large plans. However, because smaller plan sponsors are more likely to offer in-person advice, their average cost for advice and the proportion of participants using advice may both be higher. The Department estimates that the PPA and this final regulation will reduce small DC plan participant investment errors respectively by between $169 million and $299 million annually, at a cost of between $38 million and $67 million annually. The estimated impacts on small plans and their participants are summarized in Table 8 below.

TABLE 8—SMALL DC PLAN PARTICIPANT IMPACTS

	Pre-PPA	PPA		
		Low estimate	Primary estimate	High estimate
Dollars advised ($billions)	$50	$71	$79	$87
Investment errors ($billions)	$7.9	$7.7	$7.7	$7.6

[79] EBSA has consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes. *See* 13 CFR 121.903(c).

TABLE 8—SMALL DC PLAN PARTICIPANT IMPACTS—Continued

	Pre-PPA	PPA		
		Low estimate	Primary estimate	High estimate
Incremental:				
Errors reduced by advice ($millions)	$416	$169	$234	$299
Advice cost ($millions)	$93	$38	$52	$67
Advice cost rate (bps, average)	18	18	18	18
Error reduced per $1 of advice, average	$4.49	$4.49	$4.49	$4.49
Cumulative (combined with policies to the left):				
Errors reduced by advice ($millions)	$416	$585	$650	$715
Advice cost ($millions)	$93	$130	$145	$159
Advice cost rate (bps, average)	18	18	18	18
Error reduced per $1 of advice, average	$4.49	$4.49	$4.49	$4.49

Congressional Review Act

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the final rule does not include any Federal mandate that will result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation. Compliance with the terms and condition of the final rule is a condition of relief from the prohibited transaction provisions of ERISA and the Code. Such exemptive relief would allow a fiduciary adviser to receive compensation from providers of recommended investments. As such, this final rule does not include any Federal mandates that will require expenditures by the private sector per se.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, 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 does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the notice of proposed rulemaking (NPRM) solicited comments on the information collections included therein. The Department also submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the NPRM, for OMB's review. Although no public comments were received that specifically addressed the paperwork burden associated with the ICR, the Department welcomes public comments on its estimates and any suggestions for reducing the paperwork burdens.

In connection with the publication of this final rule, the Department submitted an ICR to OMB for a revised information collection. 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 approved the ICR on October 18, 2011 under OMB Control Number 1210–0134, which will expire on October 31, 2014. A copy of the ICR may be obtained by contacting the PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. *Telephone:* (202) 693–8410; *Fax:* (202) 219–2745. These are not toll-free numbers. *E-mail: ebsa.opr@dol.gov.* ICRs submitted to OMB also are available at *reginfo.gov* (*http://www.reginfo.gov/public/do/PRAMain*).

In order to use the statutory exemption to provide investment advice to participants, fiduciary advisers are required to make disclosures to participants, authorizing fiduciaries, and hire an independent auditor to conduct a compliance audit and issue an audit report every year. Fiduciary advisers who satisfy the conditions of the exemption based on the provision of computer model-generated investment advice are required to obtain certification of the model from an eligible investment expert. These paperwork requirements are designed to safeguard the interests of participants in connection with investment advice covered by the rule.

The Department calculated the estimated hour and cost burden of the ICRs under the final rule using the same methodology that was used in making such estimate in the March 2010 proposal.[80] The Department has made a minor increase to the estimated number of DC plan sponsors offering advice, the number of DC plan participants utilizing advice, and the labor hour rates used to estimate the hour burden based on more

[80] 75 FR 9360, 9364–65 (Mar. 2, 2010), *at http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=23559&AgencyId=8&DocumentType=1.*

current data.[81] The Department also has taken into account a new requirement in paragraph (b)(8) of the final rule, which requires fiduciary advisers to provide written notification to authorizing fiduciaries stating that it: (i) Intends to comply with the conditions of the statutory exemption under ERISA sections 408(b)(14) and 408(g) and these final regulations; (ii) will be audited annually by an independent auditor for compliance with the conditions of the exemption and regulations; and, (iii) that the auditor will furnish the authorizing fiduciary with a copy of the auditor's findings within 60 days of completion of the audit.[82] All other calculations remain the same as in the March 2010 proposed rule.

The Department made several specific basic assumptions in order to establish a reasonable estimate of the paperwork burden of this information collection:

- The Department assumes that 80% of disclosures [83] will be distributed electronically via means already in existence as a usual and customary business practice and the costs arising from electronic distribution will be negligible.
- The Department assumes that investment advisory firms will use existing in-house resources to prepare most disclosures and to maintain the recordkeeping systems. This assumption does not apply to the computer model certification, the audit or the computer program used to generate disclosures for IRA participants.
- The Department assumes a combination of personnel will perform the information collections with an hourly wage rate for 2011 of approximately $111, including both wages and benefits, for a financial manager and approximately $27 for clerical personnel.[84] Legal professional time is similarly assumed to be almost $124 per hour, and computer programming time is estimated at $72 per hour.

The Department assigned an hour burden (with associated 'equivalent costs' derived from multiplying the hour burden by the estimated employee compensation) and a cost burden (the actual monetary expenses of the entity, i.e. material and postage costs and fees paid to outside entities) to this final regulation. The total costs of this final regulation are calculated by adding the mutually exclusive hour burden equivalent costs and the cost burden. These PRA costs are a subset of the overall costs of this final regulation. The Department estimates that the third-party disclosures, computer model certification, and audit requirements for the final statutory exemption will require approximately 5.2 million burden hours (with an associated equivalent cost of approximately $602 million) and a cost burden of approximately $580 million in the first year. In each subsequent year the total burden hours are estimated to be approximately 2.8 million hours (with an associated equivalent cost of approximately $314 million) and the cost burden is estimated at approximately $431 million.

These paperwork burden estimates are summarized as follows:

Type of Review: Revised Collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Titles: Final Statutory Exemption for the Provision of Investment Advice to Participants and Beneficiaries of Participant-Directed Individual Account Plans and IRAs.

OMB Control Number: 1210–0134.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 16,000.

Estimated Number of Annual Responses: 20,684,000.

Frequency of Response: Initially, Annually, Upon Request, when a material change.

Estimated Total Annual Hour Burden: 5,179,000 hours in the first year; 2,849,000 hours in each subsequent year (with associated three year annualized hour burden of 3,626,000).

Estimated Total Annual Cost Burden: $580,272,000 in the first year; $430,973,000 for each subsequent year (with associated three year annualized cost burden of $480,739,000).

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, Chapter XXV, subchapter F, part 2550 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 6–2009, 74 FR 21524 (May 7, 2009). Secs. 2550.401b–1, 2550.408b–1, 2550.408b–19, 2550.408g–1, and 2550.408g–2 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657(c)(2), Pub. L. 107–16, 115 Stat. 38, 136 (2001)). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611(g)(3), Public Law 109–280, 120 Stat. 780, 975 (2006).

■ 2. Add § 2550.408g–1 to read as follows:

§ 2550.408g–1 Investment advice—participants and beneficiaries.

(a) *In general.* (1) This section provides relief from the prohibitions of section 406 of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975 of the Internal Revenue Code of 1986, as amended (the Code), for certain transactions in connection with the provision of investment advice to participants and beneficiaries. This section, at paragraph (b), implements the statutory exemption set forth at sections 408(b)(14) and 408(g)(1) of ERISA and sections 4975(d)(17) and 4975(f)(8) of the Code. The requirements and conditions set forth in this section apply solely for the relief described in paragraph (b) of this section and, accordingly, no inferences should be drawn with respect to requirements applicable to the provision of investment advice not addressed by this section.

[81] The increase in the estimated number of DC plans offering advice and DC plan participants utilizing advice is due to updating the count to reflect 2008 Form 5500 data, the latest year for which Form 5500 data is available. The counts in the 2010 Proposed Rule were based on 2006 Form 5500 data.

[82] The Department estimates that no additional hour or cost burden will be associated with this disclosure, because it will be provided in the normal course of engaging in an eligible investment advice engagement.

[83] This estimate is derived from Current Population Survey October 2003 School Supplement probit equations applied to the February 2005 Contingent Worker Supplement. These equations show that approximately 81 percent of workers aged 19 to 65 had internet access either at home or at work in 2005. The Department further assumes that one percent of these participants will elect to receive paper documents instead of electronic, thus 20 percent of participants receive disclosures through paper media.

[84] Hourly wage estimates are based on data from the Bureau of Labor Statistics Occupational Employment Survey (May 2009) and the Bureau of Labor Statistics Employment Cost Index (October 2010). Clerical wage and benefits estimates are based on metropolitan wage rates for executive secretaries and administrative assistants. Financial manager wage and benefits estimates are based on metropolitan wage estimates for financial managers. Legal professional wage and benefits estimates are based on metropolitan wage rates for lawyers. Computer programmer wage and benefits estimates are based on metropolitan wage rates for professional computer programmers.

(2) Nothing contained in ERISA section 408(g)(1), Code section 4975(f)(8), or this regulation imposes an obligation on a plan fiduciary or any other party to offer, provide or otherwise make available any investment advice to a participant or beneficiary.

(3) Nothing contained in ERISA section 408(g)(1), Code section 4975(f)(8), or this regulation invalidates or otherwise affects prior regulations, exemptions, interpretive or other guidance issued by the Department of Labor pertaining to the provision of investment advice and the circumstances under which such advice may or may not constitute a prohibited transaction under section 406 of ERISA or section 4975 of the Code.

(b) *Statutory exemption.* (1) *General.* Sections 408(b)(14) and 408(g)(1) of ERISA provide an exemption from the prohibitions of section 406 of ERISA for transactions described in section 408(b)(14) of ERISA in connection with the provision of investment advice to a participant or a beneficiary if the investment advice is provided by a fiduciary adviser under an ''eligible investment advice arrangement.'' Sections 4975(d)(17) and (f)(8) of the Code contain parallel provisions to ERISA sections 408(b)(14) and (g)(1).

(2) *Eligible investment advice.* For purposes of section 408(g)(1) of ERISA and section 4975(f)(8) of the Code, an ''eligible investment advice arrangement'' means an arrangement that meets either the requirements of paragraph (b)(3) of this section or paragraph (b)(4) of this section, or both.

(3) *Arrangements that use fee leveling.* For purposes of this section, an arrangement is an eligible investment advice arrangement if—

(i)(A) Any investment advice is based on generally accepted investment theories that take into account the historic risks and returns of different asset classes over defined periods of time, although nothing herein shall preclude any investment advice from being based on generally accepted investment theories that take into account additional considerations;

(B) Any investment advice takes into account investment management and other fees and expenses attendant to the recommended investments;

(C) Any investment advice takes into account, to the extent furnished by a plan, participant or beneficiary, information relating to age, time horizons (*e.g.,* life expectancy, retirement age), risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences of the participant or beneficiary. A fiduciary adviser shall request such information, but nothing in this paragraph (b)(3)(i)(C) shall require that any investment advice take into account information requested, but not furnished by a participant or beneficiary, nor preclude requesting and taking into account additional information that a plan or participant or beneficiary may provide;

(D) No fiduciary adviser (including any employee, agent, or registered representative) that provides investment advice receives from any party (including an affiliate of the fiduciary adviser), directly or indirectly, any fee or other compensation (including commissions, salary, bonuses, awards, promotions, or other things of value) that varies depending on the basis of a participant's or beneficiary's selection of a particular investment option; and

(ii) The requirements of paragraphs (b)(5), (6), (7), (8) and (9) and paragraph (d) of this section are met.

(4) *Arrangements that use computer models.* For purposes of this section, an arrangement is an eligible investment advice arrangement if the only investment advice provided under the arrangement is advice that is generated by a computer model described in paragraphs (b)(4)(i) and (ii) of this section under an investment advice program and with respect to which the requirements of paragraphs (b)(5), (6), (7), (8) and (9) and paragraph (d) are met.

(i) A computer model shall be designed and operated to—

(A) Apply generally accepted investment theories that take into account the historic risks and returns of different asset classes over defined periods of time, although nothing herein shall preclude a computer model from applying generally accepted investment theories that take into account additional considerations;

(B) Take into account investment management and other fees and expenses attendant to the recommended investments;

(C) Appropriately weight the factors used in estimating future returns of investment options;

(D) Request from a participant or beneficiary and, to the extent furnished, utilize information relating to age, time horizons (*e.g.,* life expectancy, retirement age), risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences; provided, however, that nothing herein shall preclude a computer model from requesting and taking into account additional information that a plan or a participant or beneficiary may provide;

(E) Utilize appropriate objective criteria to provide asset allocation portfolios comprised of investment options available under the plan;

(F) Avoid investment recommendations that:

(*1*) Inappropriately favor investment options offered by the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser over other investment options, if any, available under the plan; or

(*2*) Inappropriately favor investment options that may generate greater income for the fiduciary adviser or a person with a material affiliation or material contractual relationship with the fiduciary adviser; and

(G)(*1*) Except as provided in paragraph (b)(4)(i)(G)(*2*) of this section, take into account all designated investment options, within the meaning of paragraph (c)(1) of this section, available under the plan without giving inappropriate weight to any investment option.

(*2*) A computer model shall not be treated as failing to meet the requirements of this paragraph merely because it does not make recommendations relating to the acquisition, holding or sale of an investment option that:

(*i*) Constitutes an annuity option with respect to which a participant or beneficiary may allocate assets toward the purchase of a stream of retirement income payments guaranteed by an insurance company, provided that, contemporaneous with the provision of investment advice generated by the computer model, the participant or beneficiary is also furnished a general description of such options and how they operate; or

(*ii*) The participant or beneficiary requests to be excluded from consideration in such recommendations.

(ii) Prior to utilization of the computer model, the fiduciary adviser shall obtain a written certification, meeting the requirements of paragraph (b)(4)(iv) of this section, from an eligible investment expert, within the meaning of paragraph (b)(4)(iii) of this section, that the computer model meets the requirements of paragraph (b)(4)(i) of this section. If, following certification, a computer model is modified in a manner that may affect its ability to meet the requirements of paragraph (b)(4)(i), the fiduciary adviser shall, prior to utilization of the modified model, obtain a new certification from an eligible investment expert that the

computer model, as modified, meets the requirements of paragraph (b)(4)(i).

(iii) The term ''eligible investment expert'' means a person that, through employees or otherwise, has the appropriate technical training or experience and proficiency to analyze, determine and certify, in a manner consistent with paragraph (b)(4)(iv) of this section, whether a computer model meets the requirements of paragraph (b)(4)(i) of this section; except that the term ''eligible investment expert'' does not include any person that: Has any material affiliation or material contractual relationship with the fiduciary adviser, with a person with a material affiliation or material contractual relationship with the fiduciary adviser, or with any employee, agent, or registered representative of the foregoing; or develops a computer model utilized by the fiduciary adviser to satisfy this paragraph (b)(4).

(iv) A certification by an eligible investment expert shall—

(A) Be in writing;

(B) Contain—

(*1*) An identification of the methodology or methodologies applied in determining whether the computer model meets the requirements of paragraph (b)(4)(i) of this section;

(*2*) An explanation of how the applied methodology or methodologies demonstrated that the computer model met the requirements of paragraph (b)(4)(i) of this section;

(*3*) A description of any limitations that were imposed by any person on the eligible investment expert's selection or application of methodologies for determining whether the computer model meets the requirements of paragraph (b)(4)(i) of this section;

(*4*) A representation that the methodology or methodologies were applied by a person or persons with the educational background, technical training or experience necessary to analyze and determine whether the computer model meets the requirements of paragraph (b)(4)(i); and

(*5*) A statement certifying that the eligible investment expert has determined that the computer model meets the requirements of paragraph (b)(4)(i) of this section; and

(C) Be signed by the eligible investment expert.

(v) The selection of an eligible investment expert as required by this section is a fiduciary act governed by section 404(a)(1) of ERISA.

(5) *Arrangement must be authorized by a plan fiduciary.* (i) Except as provided in paragraph (b)(5)(ii) of this section, the arrangement pursuant to which investment advice is provided to participants and beneficiaries pursuant to this section must be expressly authorized by a plan fiduciary (or, in the case of an Individual Retirement Account (IRA), the IRA beneficiary) other than: The person offering the arrangement; any person providing designated investment options under the plan; or any affiliate of either. Provided, however, that for purposes of the preceding, in the case of an IRA, an IRA beneficiary will not be treated as an affiliate of a person solely by reason of being an employee of such person.

(ii) In the case of an arrangement pursuant to which investment advice is provided to participants and beneficiaries of a plan sponsored by the person offering the arrangement or a plan sponsored by an affiliate of such person, the authorization described in paragraph (b)(5)(i) of this section may be provided by the plan sponsor of such plan, provided that the person or affiliate offers the same arrangement to participants and beneficiaries of unaffiliated plans in the ordinary course of its business.

(iii) For purposes of the authorization described in paragraph (b)(5)(i) of this section, a plan sponsor shall not be treated as a person providing a designated investment option under the plan merely because one of the designated investment options of the plan is an option that permits investment in securities of the plan sponsor or an affiliate.

(6) *Annual audit.* (i) The fiduciary adviser shall, at least annually, engage an independent auditor, who has appropriate technical training or experience and proficiency, and so represents in writing to the fiduciary adviser, to:

(A) Conduct an audit of the investment advice arrangements for compliance with the requirements of this section; and

(B) Within 60 days following completion of the audit, issue a written report to the fiduciary adviser and, except with respect to an arrangement with an IRA, to each fiduciary who authorized the use of the investment advice arrangement, in accordance with paragraph (b)(5) of this section, that—

(*1*) Identifies the fiduciary adviser,

(*2*) Indicates the type of arrangement (*i.e.,* fee leveling, computer models, or both),

(*3*) If the arrangement uses computer models, or both computer models and fee leveling, indicates the date of the most recent computer model certification, and identifies the eligible investment expert that provided the certification, and

(*4*) Sets forth the specific findings of the auditor regarding compliance of the arrangement with the requirements of this section.

(ii) With respect to an arrangement with an IRA, the fiduciary adviser:

(A) Within 30 days following receipt of the report from the auditor, as described in paragraph (b)(6)(i)(B) of this section, shall furnish a copy of the report to the IRA beneficiary or make such report available on its Web site, provided that such beneficiaries are provided information, with the information required to be disclosed pursuant to paragraph (b)(7) of this section, concerning the purpose of the report, and how and where to locate the report applicable to their account; and

(B) In the event that the report of the auditor identifies noncompliance with the requirements of this section, within 30 days following receipt of the report from the auditor, shall send a copy of the report to the Department of Labor at the following address: Investment Advice Exemption Notification, U.S. Department of Labor, Employee Benefits Security Administration, Room N–1513, 200 Constitution Ave., NW., Washington, DC 20210, or submit a copy electronically to *InvAdvNotification@dol.gov.*

(iii) For purposes of this paragraph (b)(6), an auditor is considered independent if it does not have a material affiliation or material contractual relationship with the person offering the investment advice arrangement to the plan or with any designated investment options under the plan, and does not have any role in the development of the investment advice arrangement, or certification of the computer model utilized under the arrangement.

(iv) For purposes of this paragraph (b)(6), the auditor shall review sufficient relevant information to formulate an opinion as to whether the investment advice arrangements, and the advice provided pursuant thereto, offered by the fiduciary adviser during the audit period were in compliance with this section. Nothing in this paragraph shall preclude an auditor from using information obtained by sampling, as reasonably determined appropriate by the auditor, investment advice arrangements, and the advice pursuant thereto, during the audit period.

(v) The selection of an auditor for purposes of this paragraph (b)(6) is a fiduciary act governed by section 404(a)(1) of ERISA.

(7) *Disclosure to participants.* (i) The fiduciary adviser must provide, without charge, to a participant or a beneficiary before the initial provision of

investment advice with regard to any security or other property offered as an investment option, a written notification of:

(A) The role of any party that has a material affiliation or material contractual relationship with the fiduciary adviser in the development of the investment advice program, and in the selection of investment options available under the plan;

(B) The past performance and historical rates of return of the designated investment options available under the plan, to the extent that such information is not otherwise provided;

(C) All fees or other compensation that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with—

(*1*) The provision of the advice;

(*2*) The sale, acquisition, or holding of any security or other property pursuant to such advice; or

(*3*) Any rollover or other distribution of plan assets or the investment of distributed assets in any security or other property pursuant to such advice;

(D) Any material affiliation or material contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property;

(E) The manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed;

(F) The types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser;

(G) The adviser is acting as a fiduciary of the plan in connection with the provision of the advice; and

(H) That a recipient of the advice may separately arrange for the provision of advice by another adviser that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property.

(ii)(A) The notification required under paragraph (b)(7)(i) of this section must be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and must be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(B) The appendix to this section contains a model disclosure form that may be used to provide notification of the information described in paragraph (b)(7)(i)(C) of this section. Use of the model form is not mandatory. However, use of an appropriately completed model disclosure form will be deemed to satisfy the requirements of paragraphs (b)(7)(i) and (ii) of this section with respect to such information.

(iii) The notification required under paragraph (b)(7)(i) of this section may, in accordance with 29 CFR 2520.104b–1, be provided in written or electronic form.

(iv) With respect to the information required to be disclosed pursuant to paragraph (b)(7)(i) of this section, the fiduciary adviser shall, at all times during the provision of advisory services to the participant or beneficiary pursuant to the arrangement—

(A) Maintain accurate, up-to-date information in a form that is consistent with paragraph (b)(7)(ii) of this section,

(B) Provide, without charge, accurate, up-to-date information to the recipient of the advice no less frequently than annually,

(C) Provide, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(D) Provide, without charge, to the recipient of the advice any material change to the information described in paragraph (b)(7)(i) at a time reasonably contemporaneous to the change in information.

(8) *Disclosure to authorizing fiduciary.* The fiduciary adviser shall, in connection with any authorization described in paragraph (b)(5)(i) of this section, provide the authorizing fiduciary with a written notice informing the fiduciary that:

(i) The fiduciary adviser intends to comply with the conditions of the statutory exemption for investment advice under section 408(b)(14) and (g) of the Employee Retirement Income Security Act and this section;

(ii) The fiduciary adviser's arrangement will be audited annually by an independent auditor for compliance with the requirements of the statutory exemption and related regulations; and

(iii) The auditor will furnish the authorizing fiduciary a copy of that auditor's findings within 60 days of its completion of the audit.

(9) *Other conditions.* The requirements of this paragraph are met if—

(i) The fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(ii) Any sale, acquisition, or holding of a security or other property occurs solely at the direction of the recipient of the advice,

(iii) The compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(iv) The terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

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

(1) The term ''*designated investment option*'' means any investment option designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term ''*designated investment option*'' shall not include ''brokerage windows,'' ''self-directed brokerage accounts,'' or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan. The term ''*designated investment option*'' has the same meaning as the term ''*designated investment alternative*'' as defined in 29 CFR 2550.404a–5(h).

(2)(i) The term ''*fiduciary adviser*'' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in section 3(21)(A)(ii) of ERISA by the person to the participant or beneficiary of the plan and who is—

(A) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(B) A bank or similar financial institution referred to in section 408(b)(4) of ERISA or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(C) An insurance company qualified to do business under the laws of a State,

(D) A person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*),

(E) An affiliate of a person described in paragraphs (c)(2)(i)(A) through (D), or

(F) An employee, agent, or registered representative of a person described in paragraphs (c)(2)(i)(A) through (E) of this section who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of advice.

(ii) Except as provided under 29 CFR 2550.408g–2, a fiduciary adviser includes any person who develops the computer model, or markets the computer model or investment advice program, utilized in satisfaction of paragraph (b)(4) of this section.

(3) A ''*registered representative*'' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).

(4) ''*Individual Retirement Account*'' or ''*IRA*'' means—

(i) An individual retirement account described in section 408(a) of the Code;

(ii) An individual retirement annuity described in section 408(b) of the Code;

(iii) An Archer MSA described in section 220(d) of the Code;

(iv) A health savings account described in section 223(d) of the Code;

(v) A Coverdell education savings account described in section 530 of the Code;

(vi) A trust, plan, account, or annuity which, at any time, has been determined by the Secretary of the Treasury to be described in any of paragraphs (c)(4)(i) through (v) of this section;

(vii) A ''simplified employee pension'' described in section 408(k) of the Code; or

(viii) A ''simple retirement account'' described in section 408(p) of the Code.

(5) An ''*affiliate*'' of another person means—

(i) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of such other person;

(ii) Any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;

(iii) Any person directly or indirectly controlling, controlled by, or under common control with, such other person; and

(iv) Any officer, director, partner, copartner, or employee of such other person.

(6)(i) A person with a ''*material affiliation*'' with another person means—

(A) Any affiliate of the other person;

(B) Any person directly or indirectly owning, controlling, or holding, 5 percent or more of the interests of such other person; and

(C) Any person 5 percent or more of whose interests are directly or indirectly owned, controlled, or held, by such other person.

(ii) For purposes of paragraph (c)(6)(i) of this section, ''*interest*'' means with respect to an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation;

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise.

(7) Persons have a ''*material contractual relationship*'' if payments made by one person to the other person pursuant to contracts or agreements between the persons exceed 10 percent of the gross revenue, on an annual basis, of such other person.

(8) ''*Control*'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) *Retention of records.* The fiduciary adviser must maintain, for a period of not less than 6 years after the provision of investment advice under this section any records necessary for determining whether the applicable requirements of this section have been met. A transaction prohibited under section 406 of ERISA shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(e) *Noncompliance.* (1) The relief from the prohibited transaction provisions of section 406 of ERISA and the sanctions resulting from the application of section 4975 of the Code described in paragraph (b) of this section shall not apply to any transaction described in such paragraphs in connection with the provision of investment advice to an individual participant or beneficiary with respect to which the applicable conditions of this section have not been satisfied.

(2) In the case of a pattern or practice of noncompliance with any of the applicable conditions of this section, the relief described in paragraph (b) of this section shall not apply to any transaction in connection with the provision of investment advice provided by the fiduciary adviser during the period over which the pattern or practice extended.

(f) *Effective date and applicability date.* This section shall be effective December 27, 2011. This section shall apply to transactions described in paragraph (b) of this section occurring on or after December 27, 2011.

Appendix to § 2550.408g–1

Fiduciary Adviser Disclosure

This document contains important information about [*enter name of* Fiduciary Adviser] and how it is compensated for the investment advice provided to you. You should carefully consider this information in your evaluation of that advice.

[*enter name of* Fiduciary Adviser] has been selected to provide investment advisory services for the [*enter name of* Plan]. [*enter name of* Fiduciary Adviser] will be providing these services as a fiduciary under the Employee Retirement Income Security Act (ERISA). [*enter name of* Fiduciary Adviser], therefore, must act prudently and with only your interest in mind when providing you recommendations on how to invest your retirement assets.

Compensation of the Fiduciary Adviser and Related Parties

[*enter name of* Fiduciary Adviser] (is/is not) compensated by the plan for the advice it provides. *(if compensated by the plan, explain what and how compensation is charged (e.g., asset-based fee, flat fee, per advice)). (If applicable,* [*enter name of* Fiduciary Adviser] is not compensated on the basis of the investment(s) selected by you.)

Affiliates of [*enter name of* Fiduciary Adviser] (*if applicable enter,* and other parties with whom [*enter name of* Fiduciary Adviser] is related or has a material financial relationship) also will be providing services for which they will be compensated. These services include: [*enter description of services, e.g., investment management, transfer agent, custodial, and shareholder services for some/all the investment funds available under the plan.*]

When [*enter name of* Fiduciary Adviser] recommends that you invest your assets in an investment fund of its own or one of its affiliates and you follow that advice, [*enter name* of Fiduciary Adviser] or that affiliate will receive compensation from the investment fund based on the amount you invest. The amounts that will be paid by you will vary depending on the particular fund in which you invest your assets and may range from __% to __%. Specific information concerning the fees and other charges of each investment fund is available from [*enter source, such as: your plan administrator, investment fund provider (possibly with Internet Web site address)*]. This information should be reviewed carefully before you make an investment decision.

(*if applicable enter,* [*enter name of* Fiduciary Adviser] or affiliates of [*enter name of* Fiduciary Adviser] also receive compensation from non-affiliated investment funds as a result of investments you make as a result of recommendations of [*enter name of* Fiduciary Adviser]. The amount of this compensation also may vary depending on the particular fund in which you invest. This compensation may range from __% to __%. Specific information concerning the fees and other charges of each investment fund is

available from [*enter source, such as: your plan administrator, investment fund provider (possibly with Internet Web site address)*]. This information should be reviewed carefully before you make an investment decision.

(*if applicable enter,* In addition to the above, [*enter name of* Fiduciary Adviser] or affiliates of [*enter name of* Fiduciary Adviser] also receive other fees or compensation, such as commissions, in connection with the sale, acquisition or holding of investments selected by you as a result of recommendations of [*enter name of* Fiduciary Adviser]. These amounts are: [*enter description of all other fees or compensation to be received in connection with sale, acquisition or holding of investments*]. This information should be reviewed carefully before you make an investment decision.

(*if applicable enter,* When [*enter name of* Fiduciary Adviser] recommends that you take a rollover or other distribution of assets from the plan, or recommends how those assets should subsequently be invested, [*enter name of* Fiduciary Adviser] or affiliates of [*enter name of* Fiduciary Adviser] will receive additional fees or compensation. These amounts are: [*enter description of all other fees or compensation to be received in connection with any rollover or other distribution of plan assets or the investment of distributed assets*]. This information should be reviewed carefully before you make a decision to take a distribution.

Consider Impact of Compensation on Advice

The fees and other compensation that [*enter name of* Fiduciary Adviser] and its affiliates receive on account of assets in [*enter name of* Fiduciary Adviser] (*enter if applicable,* and non-[*enter name of* Fiduciary Adviser]) investment funds are a significant source of revenue for the [*enter name of* Fiduciary Adviser] and its affiliates. You should carefully consider the impact of any such fees and compensation in your evaluation of the investment advice that [*enter name of* Fiduciary Adviser] provides to you. In this regard, you may arrange for the provision of advice by another adviser that may have no material affiliation with or receive no compensation in connection with the investment funds or products offered under the plan. This type of advice is/is not available through your plan.

Investment Returns

While understanding investment-related fees and expenses is important in making informed investment decisions, it is also important to consider additional information about your investment options, such as performance, investment strategies and risks. Specific information related to the past performance and historical rates of return of the investment options available under the plan (has/has not) been provided to you by [*enter source, such as: your plan administrator, investment fund provider*]. (*if applicable enter,* If not provided to you, the information is attached to this document.)

For options with returns that vary over time, past performance does not guarantee how your investment in the option will perform in the future; your investment in these options could lose money.

Parties Participating in Development of Advice Program or Selection of Investment Options

Name, and describe role of, affiliates or other parties with whom the fiduciary adviser has a material affiliation or contractual relationship that participated in the development of the investment advice program (if this is an arrangement that uses computer models) or the selection of investment options available under the plan.

Use of Personal Information

Include a brief explanation of the following—What personal information will be collected; How the information will be used; Parties with whom information will be shared; How the information will be protected; and When and how notice of the Fiduciary Adviser's privacy statement will be available to participants and beneficiaries.

Should you have any questions about [*enter name of* Fiduciary Adviser] or the information contained in this document, you may contact [*enter name of contact person for fiduciary adviser, telephone number, address*].

■ 3. Add § 2550.408g–2 to read as follows:

§ 2550.408g–2 Investment advice—fiduciary election.

(a) *General.* Section 408(g)(11)(A) of the Employee Retirement Income Security Act, as amended (ERISA), provides that a person who develops a computer model or who markets a computer model or investment advice program used in an ''eligible investment advice arrangement'' shall be treated as a fiduciary of a plan by reason of the provision of investment advice referred to in ERISA section 3(21)(A)(ii) to the plan participant or beneficiary, and shall be treated as a ''fiduciary adviser'' for purposes of ERISA sections 408(b)(14) and 408(g), except that the Secretary of Labor may prescribe rules under which only one fiduciary adviser may elect to be treated as a fiduciary with respect to the plan. Section 4975(f)(8)(J)(i) of the Internal Revenue Code, as amended (the Code), contains a parallel provision to ERISA section 408(g)(11)(A) that applies for purposes of Code sections 4975(d)(17) and 4975(f)(8). This section sets forth requirements that must be satisfied in order for one such fiduciary adviser to elect to be treated as a fiduciary with respect to a plan under an eligible investment advice arrangement.

(b)(1) If an election meets the requirements in paragraph (b)(2) of this section, then the person identified in the election shall be the sole fiduciary adviser treated as a fiduciary by reason of developing or marketing the computer model, or marketing the investment advice program, used in an eligible investment advice arrangement.

(2) An election satisfies the requirements of this paragraph (b) with respect to an eligible investment advice arrangement if the election is in writing and such writing—

(i) Identifies the investment advice arrangement, and the person offering the arrangement, with respect to which the election is to be effective;

(ii) Identifies a person who—

(A) Is described in any of 29 CFR 2550.408g–1(c)(2)(i)(A) through (E),

(B) Develops the computer model, or markets the computer model or investment advice program, utilized in satisfaction of 29 CFR 2550.408g–1(b)(4) with respect to the arrangement, and

(C) Acknowledges that it elects to be treated as the only fiduciary, and fiduciary adviser, by reason of developing such computer model, or marketing such computer model or investment advice program;

(iii) Is signed by the person identified in paragraph (b)(2)(ii) of this section;

(iv) Is furnished to the person who authorized the arrangement, in accordance with 29 CFR 2550.408g–1(b)(5); and

(v) Is maintained in accordance with 29 CFR 2550.408g–1(d).

Signed at Washington, DC, this 5th day of October 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2011–26261 Filed 10–24–11; 8:45 am]

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To extend the Generalized System of Preferences, and for other purposes. (Oct. 21, 2011; 125 Stat. 401)

H.R. 3080/P.L. 112–41

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