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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1214

[Document No. AMS–FV–10–0008–FR–1A]

RIN 0581–AD00

Christmas Tree Promotion, Research, and Information Order; Stay of Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; stay of regulations.

SUMMARY: On November 8, 2011, a final rule was published in the **Federal Register** (76 FR 69094) establishing an industry-funded promotion, research, and information program for fresh cut Christmas trees, effective November 9, 2011. Due to recent events, the regulations are stayed in order to provide all interested persons, including the Christmas tree industry and the general public, an opportunity to become more familiar with the program.

DATES: Effective November 17, 2011 Subpart A of 7 CFR part 1214 is stayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Research and Promotion Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Room 1406, Stop 0244, Washington, DC 20250–0244; *telephone:* (301) 334–2891; or *facsimile:* (301) 334–2896; or *email: Patricia.Petrella@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: The Department of Agriculture (Department) published in the **Federal Register** on November 8, 2011, (76 FR 69094) a final rule that established a Christmas Tree Promotion, Research, and Information Order (Order). This Order was issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425). While we are confident that the Christmas Tree program is compliant with all applicable law and supported by the domestic Christmas tree industry, the program will be stayed to provide additional time for the Department to reach out to the Christmas Tree industry and the public to explain how a research and promotion program is a producer driven program to support American farmers.

Accordingly, the regulations establishing the Order published November 8, 2011 (76 FR 69094) are stayed indefinitely.

Authority: 7 U.S.C. 7411–7425.

Dated: November 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–29713 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0648; Directorate Identifier 2010–NM–276–AD; Amendment 39–16859; AD 2011–23–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) 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:

Seven cases of on-ground hydraulic accumulator screw cap/end cap failure have been experienced on CL–600–2B19 aeroplanes, resulting in the loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. * * *

* * * * *

A detailed analysis of the calculated line of trajectory of a failed screw cap/end cap for each of the accumulators has been conducted, resulting in the identification of several areas where systems and/or structural components could potentially be damaged. Although all of the failures to date have occurred on the ground, an in-flight failure affecting such components could potentially have an adverse effect on the controllability of the aeroplane.

* * * * *

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

DATES: This AD becomes effective December 22, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 22, 2011.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 4, 2010 (75 FR 64636, October 20, 2010).

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: Christopher Alfano, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

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 June 29, 2011 (76 FR 38065), and proposed to supersede AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010). That NPRM proposed to correct an unsafe condition for the specified products.

Since we issued AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), we have determined

that further rulemaking is necessary. While AD 2010–22–02 did not require the removal of the hydraulic system No. 3 accumulator, or replacement of the hydraulic system No. 1, inboard brake and outboard brake accumulators, as specified in Part IV and Part VII of Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010, this AD requires those actions. Also, for airplanes on which Bombardier Service Bulletin 601R–29–035, dated May 11, 2010, is done, and a reducer having part number MS21916D8–6 installed, this AD requires replacing the reducer with a new reducer. We have coordinated with Transport Canada Civil Aviation (TCCA) on this issue.

Comments

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

Request for Restatement of All Compliance Requirements of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)

Comair, Inc. (the commenter) requested that we revise the NPRM (76 FR 38065, June 29, 2011) to restate all the compliance requirements of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), and reasoned that it is less confusing and more accurate to completely restate all the compliance requirements of AD 2010–22–02. The commenter expressed that the way the NPRM was written, a copy of AD 2010–22–02 must be on-hand to fully cross reference between AD 2010–22–02 and the NPRM. The commenter stated that as an example, paragraph (h) of the NPRM, in part, states: ''Doing the removal of the hydraulic system No. 3 accumulator in paragraph (o) of this AD is an alternative method of compliance with the requirements of this paragraph,'' but that AD 2010–22–02 actually references paragraph (j) instead of paragraph (o) of the NPRM. The commenter explained that the content of paragraphs (j) and (m) of AD 2010–22–02 is not included in the NPRM.

We agree to clarify. We have restated the requirements of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), in this final rule. We provided a table in the Change to Existing AD paragraph in the NPRM (76 FR 38065, June 29, 2011) to identify and cross-reference paragraph requirements in AD 2010–22–02 with the corresponding paragraph requirements in this AD. That table did not identify the paragraphs that did not change from AD 2010–22–02 to the NPRM. The actions specified in paragraph (j) of AD 2010–22–02 are specified in paragraph (o) of this AD. The actions specified in paragraph (m) of AD 2010–22–02 are specified in paragraph (p) of this AD. No changes have been made to this AD in this regard.

Request for Clarification of Intent of Paragraph (o) of the NPRM (76 FR 38065, June 29, 2011)

The commenter requested that action specified in paragraph (o) of the NPRM (76 FR 38065, June 29, 2011) be considered a superseding requirement, instead of an ''alternate method of compliance'' for the actions specified in paragraph (h) of the NPRM. The commenter did not provide a reason for this request.

We agree that the wording in paragraph (h) of this final rule should be revised to clarify the intent of paragraph (o) of this AD. We have revised paragraph (h) of this final rule to specify that paragraph (o) of this final rule is terminating action instead of an alternative method of compliance (AMOC) for the requirements of paragraph (h) of this final rule, by replacing ''is an alternate method of compliance'' with ''terminates.''

Request for Consideration of Other AMOCs

The commenter requested that we revise the NPRM (76 FR 38065, June 29, 2011) to allow for previous AMOCs, which would, among other actions, allow for the relocation of the No. 3 Accumulator using ''SB 601R–29–0 Rev B.'' The commenter proposed that we do this as a separate paragraph or optional paragraph, or to include this in paragraph (t)(1) of the NPRM.

For the reasons stated by the commenter, we agree to allow for previous approved AMOCs in accordance with AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010) in this final rule. We have revised paragraph (t)(1) of this final rule accordingly.

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.

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 about 605 products of U.S. registry.

The actions that are required by AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), and retained in this AD take about 19 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $1,615 per product.

We estimate that it will take about 14 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $3,054 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these 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 $2,567,620, or $4,244 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 38065, June 29, 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 removing Amendment 39–16481 (75 FR 64636, October 20, 2010) and adding the following new AD:

2011–23–08 Bombardier, Inc.: Amendment 39–16859. Docket No. FAA–2011–0648; Directorate Identifier 2010–NM–276–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 22, 2011.

Affected ADs

(b) This AD supersedes AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010).

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 29 and 32: Hydraulic Power and Landing Gear, respectively.

Reason

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

Seven cases of on-ground hydraulic accumulator screw cap/end cap failure have been experienced on CL–600–2B19 aeroplanes, resulting in the loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. * * *

* * * * *

A detailed analysis of the calculated line of trajectory of a failed screw cap/end cap for each of the accumulators has been conducted, resulting in the identification of several areas where systems and/or structural components could potentially be damaged. Although all of the failures to date have occurred on the ground, an in-flight failure affecting such components could potentially have an adverse effect on the controllability of the aeroplane.

* * * * *

Compliance

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

Restatement of Requirements of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, OCTOBER 20, 2010), With Revised Service Information:

Airplane Flight Manual (AFM) Revision

(g) Within 30 days after November 4, 2010 (the effective date of AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010)), revise the Limitations section, Normal Procedures section, and Abnormal Procedures section of the Canadair Regional Jet AFM, CSP A–012, by incorporating Canadair Regional Jet Temporary Revision (TR) RJ/186–1, dated August 24, 2010, into the applicable section of Canadair Regional Jet AFM, CSP A–012. Thereafter, except as provided by paragraph (t) of this AD, no alternative actions specified in Canadair Regional Jet TR RJ/186–1, dated August 24, 2010, may be approved.

Note 1: The actions required by paragraph (g) of this AD may be done by inserting a copy of Canadair Regional Jet TR RJ/186–1, dated August 24, 2010, into the applicable section of the Canadair Regional Jet AFM, CSP A–012. When this TR has been included in the general revisions of this AFM, the general revisions may be inserted into this AFM, and this TR removed, provided that the relevant information in the general revision is identical to that in Canadair Regional Jet TR RJ/186–1, dated August 24, 2010.

Deactivation of the Hydraulic System No. 3 Accumulator

(h) Within 250 flight cycles after November 4, 2010, deactivate the hydraulic system No. 3 accumulator, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009. Doing the removal of the hydraulic system No. 3 accumulator in paragraph (o) of this AD terminates the requirements of this paragraph. The actions in this paragraph apply to all accumulators in hydraulic system No. 3.

Removal of the Hydraulic System No. 2 Accumulator

(i) Within 500 flight cycles after November 4, 2010, remove the hydraulic system No. 2 accumulator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–29–032, Revision A, dated January 26, 2010. The actions in this paragraph apply to all accumulators in hydraulic system No. 2.

Initial and Repetitive Ultrasonic Inspections of Hydraulic System No. 1, Inboard Brake and Outboard Brake Accumulators

(j) For hydraulic system No. 1, inboard brake and outboard brake accumulators having P/N 601R75138–1 (08–60163–001 or 08–60163–002): At the applicable compliance times specified in paragraph (l) of this AD, do the inspections required by paragraphs (j)(1) and (j)(2) of this AD. Repeat the inspections for each accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002) thereafter at intervals not to exceed 500 flight cycles until the replacement specified in this paragraph is done or the replacement specified in paragraph (p) of this AD is done. If any crack is found, before further flight, replace the accumulator with a new accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002) and having the letter ''T'' after the serial number on the identification plate, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in table 1 or table 2 of this AD.

(1) Do an ultrasonic inspection for cracks on each accumulator, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin identified in table 1 of this AD.

TABLE 1—BOMBARDIER SERVICE INFORMATION FOR ACCUMULATOR INSPECTION

Accumulator	Document	Revision	Date
Hydraulic System No. 1	Bombardier Alert Service Bulletin A601R–29–029, including Appendix A, dated October 18, 2007.	B	May 11, 2010.
Inboard and Outboard Brake	Bombardier Alert Service Bulletin A601R–32–103, including Appendix A, Revision A, dated October 18, 2007.	D	May 11, 2010.

(2) Do an ultrasonic inspection for cracks on the screw cap, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in table 2 of this AD.

TABLE 2—BOMBARDIER SERVICE INFORMATION FOR SCREW CAP INSPECTION

Accumulator	Document	Revision	Date
Hydraulic System No. 1	Bombardier Service Bulletin 601R–29–033, including Appendix A, dated May 5, 2009.	A	May 11, 2010.
Inboard and Outboard Brake	Bombardier Service Bulletin 601R–32–106, including Appendix A.	A	May 11, 2010.

(k) For hydraulic system No. 1 inboard brake, and outboard brake accumulators having P/N 601R75138–1 (08–60163–001 or 08–60163–002): Do the inspections specified in paragraph (j) of this AD at the applicable time in paragraph (k)(1), (k)(2), and (k)(3) of this AD.

(1) For any accumulator not having the letter ''T'' after the serial number on the identification plate and with more than 4,500 flight cycles on the accumulator as of November 4, 2010: Inspect within 500 flight cycles after November 4, 2010.

(2) For any accumulator not having the letter ''T'' after the serial number on the identification plate and with 4,500 flight cycles or less on the accumulator as of November 4, 2010: Inspect prior to the accumulation of 5,000 flight cycles on the accumulator.

(3) If it is not possible to determine the flight cycles accumulated for any accumulator not having the letter ''T'' after the serial number on the identification plate: Inspect within 500 flight cycles after November 4, 2010.

Note 2: For any accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002) and the letter ''T'' after the serial number on the identification plate, or if the accumulator P/N is not listed in paragraph (j) of this AD, the inspection specified in paragraph (j) of this AD is not required.

Credit for Actions Accomplished in Accordance With Previous Service Information

(l) Deactivating the hydraulic system No. 3 accumulator before November 4, 2010, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–29–031, dated December 23, 2008, is acceptable for compliance with the requirements of paragraph (h) of this AD.

(m) Removing the hydraulic system No. 2 accumulator in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–29–032, dated November 12, 2009, before November 4, 2010, is acceptable for compliance with the requirements of paragraph (i) of this AD.

(n) An ultrasonic inspection for cracks done before November 4, 2010, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin identified in table 3 of this AD, or the Accomplishment Instructions of the applicable service bulletin identified in table 4 of this AD, is acceptable for compliance with the corresponding ultrasonic inspection required by paragraph (j) of this AD.

TABLE 3—BOMBARDIER CREDIT SERVICE INFORMATION FOR ACCUMULATOR INSPECTION

Document	Revision	Date
Bombardier Alert Service Bulletin A601R–29–029		October 18, 2007.
Bombardier Alert Service Bulletin A601R–29–029	A	November 12, 2009.
Bombardier Alert Service Bulletin A601R–32–103		November 21, 2006.
Bombardier Alert Service Bulletin A601R–32–103	A	March 7, 2007.
Bombardier Alert Service Bulletin A601R–32–103	B	October 18, 2007.
Bombardier Alert Service Bulletin A601R–32–103	C	February 26, 2009.

TABLE 4—BOMBARDIER CREDIT SERVICE INFORMATION FOR SCREW CAP INSPECTION

Document	Date
Bombardier Service Bulletin 601R–29–033	May 5, 2009.
Bombardier Service Bulletin 601R–32–106	May 5, 2009.

New Requirements of This AD

Removal of the Hydraulic System No. 3 Accumulator

(o) Within 1,000 flight cycles after the effective date of this AD, remove the hydraulic system No. 3 accumulator, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009. Doing the action in this paragraph terminates the requirements of paragraph (h) of this AD.

Replacement of the Hydraulic System No. 1, Inboard Brake and Outboard Brake Accumulators

(p) Within 4,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first, replace any hydraulic system No. 1, inboard brake or outboard brake

accumulator having P/N 601R75138–1 (08–60163–001 or 08–60163–002), with a new accumulator having P/N 601R75139–1 (11093–4), in accordance with the Accomplishment Instructions of the applicable service bulletin identified in table 5 of this AD. Doing the action in this paragraph terminates the requirement for the inspections in paragraph (j) of this AD for that accumulator. As of the effective date of this AD, use only Bombardier Service Bulletin 601R–29–035, Revision A, dated December 8, 2010; or Bombardier Service Bulletin 601R–32–107, Revision B, dated December 8, 2010; as applicable.

TABLE 5—BOMBARDIER SERVICE INFORMATION FOR ACCUMULATOR REPLACEMENT

Accumulator	Document	Revision	Date
Hydraulic System No. 1	Bombardier Service Bulletin 601R–29–035		May 11, 2010.
Hydraulic System No. 1	Bombardier Service Bulletin 601R–29–035	A	December 8, 2010.
Inboard and Outboard Brake	Bombardier Service Bulletin 601R–32–107	A	June 17, 2010.
Inboard and Outboard Brake	Bombardier Service Bulletin 601R–32–107	B	December 8, 2010.

Action for Airplanes on Which Bombardier Service Bulletin 601R–29–035, Dated May 11, 2010, Is Done and Reducer Having P/N MS21916D8–6 Is Installed

(q) For airplanes on which Bombardier Service Bulletin 601R–29–035, dated

May 11, 2010, is done, and reducer having P/N MS21916D8–6 is installed: Within 1,200 flight cycles or 8 months after the effective date of this AD, replace the reducer of the hydraulic system No. 1 with a new reducer in accordance with Part B of Bombardier Service Bulletin 601R–29–035, Revision A, dated December 8, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(r) Removing the hydraulic system No. 3 accumulator in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin

A601R–29–031, dated December 23, 2008, before November 4, 2010, is acceptable for compliance with the requirements of paragraph (o) of this AD.

(s) Replacing any hydraulic system No. 1, inboard brake, or outboard brake accumulator before November 4, 2010, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–107, dated May 11, 2010; or Bombardier Service Bulletin 601R–32–107, Revision A, dated June 17, 2010; is acceptable for compliance with the corresponding requirements of paragraph (p) of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: (1) The actions specified in Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010, apply only to Tactair accumulators. The actions required by paragraphs (h), (i), and (o) of this AD apply to all accumulators in the positions specified in paragraphs (h), (i), and (o) of this AD.

(2) While Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010, does not require replacement of the reducer of the hydraulic system No. 1 with a new reducer, paragraph (q) of this AD does.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2010–22–02, Amendment 39–16481 (75 FR 64636, October 20, 2010), are approved as AMOCs for the corresponding provisions of this AD.

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

Related Information

(u) Refer to MCAI Canadian Airworthiness Directive CF–2010–24, dated August 3, 2010; Canadair Regional Jet Temporary Revision RJ/186–1, dated August 24, 2010, to the Canadair Regional Jet Airplane Flight Manual, CSP A–012; Bombardier Alert Service Bulletin A601R–29–029, Revision B, dated May 11, 2010, including Appendix A, dated October 18, 2007; Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009; Bombardier Alert Service Bulletin A601R–32–103, Revision D, dated May 11, 2010, including Appendix A, Revision A, dated October 18, 2007; Bombardier Service Bulletin 601R–29–032, Revision A, dated January 26, 2010; Bombardier Service Bulletin 601R–29–033, Revision A, dated May 11, 2010, including Appendix A, dated May 5, 2009; Bombardier Service Bulletin 601R–29–035, Revision A, dated December 8, 2010; Bombardier Service Bulletin 601R–32–106, Revision A, including Appendix A, dated May 11, 2010; and Bombardier Service Bulletin 601R–32–107, Revision B, dated December 8, 2010; for related information.

Material Incorporated by Reference

(v) You must use the following service information, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. 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.

(1) Canadair Regional Jet Temporary Revision RJ/186–1, dated August 24, 2010, to the Canadair Regional Jet Airplane Flight Manual, CSP A–012 (previously approved for incorporation by reference on November 4, 2010 (75 FR 64636, October 20, 2010));

(2) Bombardier Alert Service Bulletin A601R–29–029, Revision B, dated May 11, 2010, including Appendix A, dated October 18, 2007 (previously approved for incorporation by reference on November 4, 2010 (75 FR 64636, October 20, 2010))*;

(3) Bombardier Alert Service Bulletin A601R–29–031, Revision A, dated March 26, 2009 (previously approved for incorporation by reference on November 4, 2010 (75 FR 64636, October 20, 2010));

(4) Bombardier Alert Service Bulletin A601R–32–103, Revision D, dated May 11, 2010, including Appendix A, Revision A, dated October 18, 2007 (previously approved for incorporation by reference on November 4, 2010 (75 FR 64636, October 20, 2010))*;

(5) Bombardier Service Bulletin 601R–29–032, Revision A, dated January 26, 2010 (previously approved for incorporation by reference on November 4, 2010 (75 FR 64636, October 20, 2010));

(6) Bombardier Service Bulletin 601R–29–033, Revision A, dated May 11, 2010, including Appendix A, dated May 5, 2009 (previously approved for incorporation by reference on November 4, 2010 (75 FR 64636, October 20, 2010))*;

(7) Bombardier Service Bulletin 601R–29–035, Revision A, dated December 8, 2010 (approved for incorporation by reference on December 22, 2011);

(8) Bombardier Service Bulletin 601R–32–106, Revision A, including Appendix A, dated May 11, 2010 (previously approved for incorporation by reference on November 4, 2010 (75 FR 64636, October 20, 2010))*; and

(9) Bombardier Service Bulletin 601R–32–107, Revision B, dated December 8, 2010 (approved for incorporation by reference on December 22, 2011).

Note 4: * In Appendix A to these documents, the document number is shown only on page A1 of these appendices.

(10) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone (514) 855–5000; fax (514) 855–7401; email

thd.crj@aero.bombardier.com; Internet *http://www.bombardier.com.*

(11) 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.

(12) 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 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–29680 Filed 11–16–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0954; Directorate Identifier 2011–CE–028–AD; Amendment 39–16865; AD 2011–24–01]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Piaggio Aero Industries S.p.A. Model P–180 airplanes. 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:

Some lock sleeves (part number (P/N) 114146681), which were installed in some Main Landing Gear (MLG) actuators, had been incorrectly manufactured.

If left uncorrected, this condition could lead to failure to lock the MLG actuator or to its unlock from the correct position, with subsequent possible damage to the aeroplane and injuries to occupants during landing.

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

DATES: This AD is effective December 22, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 22, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Piaggio Aero Industries S.p.A. Airworthiness Office; Via Luigi Cibrario, 4–16154 Genova–Italy; *telephone:* +39 010 6481353; *fax:* +39 010 6481881; *Email: airworthiness@piaggioaero.it.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090; *email: mike.kiesov@faa.gov.*

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 September 1, 2011 (76 FR 54403). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Some lock sleeves (part number (P/N) 114146681), which were installed in some Main Landing Gear (MLG) actuators, had been incorrectly manufactured.

If left uncorrected, this condition could lead to failure to lock the MLG actuator or to its unlock from the correct position, with subsequent possible damage to the aeroplane and injuries to occupants during landing.

This AD requires replacing defective MLG actuators with serviceable ones.

Defective actuators can be repaired by the manufacturer and identified with the ''P180–32–29'' marking on the name plate.

Comments

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

Comment Issue: MLG Actuator Compliance Time

Carlo Cardu, Piaggio Aero Industries, stated the MLG actuator has a life-limit based on landings and most operators note the landings accrued on the actuator. Mr. Cardu reasoned that for operators with a higher hours time-in-service (TIS)/landing ratio (more than 1), the AD compliance limit presented in hours TIS would be more stringent than required. As for operators with a lower hours TIS/landing ratio, the AD compliance limit presented in hours TIS would be relaxed with reference to the compliance time of the service information. Mr. Cardu recommended changing the actuator replacement compliances times to read:

before affected MLG actuators reach 3000 landings, replace * * *; only if landings data are not available, replace the affected actuator before 3000 FH TIS * * * or similar statement

The FAA agrees with the commenter and we changed paragraph (f)(3) of the AD.

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.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 102 products of U.S. registry. We also estimate that it will take about 0.5 work-hour 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 $0 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $4,335, or $43 per product.

In addition, we estimate that any necessary follow-on actions will take about 7 work-hours and require parts costing $64,822, for a cost of $65,417 per product. There are a maximum of 17 actuators that are identified by the

manufacturer that will be required to be replaced. We have no way of determining the number of affected airplanes on the U.S. registry that may have these actuators that may have to be replaced by these actions.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

There is a warranty expiration date for the replacement of the actuators. The FAA recommends owners/operators that have affected main landing gear actuators contact the manufacturer immediately and replace the actuators under warranty.

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 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 Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 54403), 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.

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:

2011–24–01 Piaggio Aero Industries S.p.A.: Amendment 39–16865; Docket No. FAA–2011–0954; Directorate Identifier 2011–CE–028–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 22, 2011.

(b) Affected ADs

None.

(c) Applicability

This AD applies to PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 airplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) Have any of the following main landing gear (MLG) actuators installed:

(i) *Messier-Dowty Part Number (P/N) 114346003 (left hand side):* with serial number (S/N) SA0706275, SA0706276, SA0706726, SA0706727, SA0706728, SA0706729, SA0706738, SA0706739,SA0707243, SA0707864, or SA0708072; or

(ii) *Messier-Dowty P/N 114346004 (right hand side):* with S/N SA0703800, SA0703801, SA0705520, SA0706219, SA0706960, or SA0706961.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

The mandatory continuing airworthiness information (MCAI) states:

Some lock sleeves (part number (P/N) 114146681), which were installed in some Main Landing Gear (MLG) actuators, had been incorrectly manufactured.

If left uncorrected, this condition could lead to failure to lock the MLG actuator or to its unlock from the correct position, with subsequent possible damage to the aeroplane and injuries to occupants during landing.

This AD requires replacing defective MLG actuators with serviceable ones.

Defective actuators can be repaired by the manufacturer and identified with the ''P180–32–29'' marking on the name plate.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within 25 hours time-in-service (TIS) after December 22, 2011 (the effective date of this AD), inspect both installed MLG actuators to determine if an affected P/N and S/N actuator is installed.

(2) If any affected P/N and S/N actuator is identified with the ''P180–32–29'' marking on the name plate, no further action is required by this AD on that actuator.

(3) If one or both affected MLG actuators are not identified with the ''P180–32–29'' marking on the name plate, before reaching a total of 3,000 landings on the actuator or within the next 150 landings after December 22, 2011 (the effective date of this AD), whichever occurs later, replace the affected actuator(s) with serviceable parts following Part B of the Accomplishments Instructions of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0304, dated July 9, 2010. If landing data is not available, the use of a one-to-one landing to flight hour conversion must be applied (example: 3,000 landings equal 3,000 hours TIS).

(4) After December 22, 2011 (the effective date of this AD), do not install any MLG actuator having an affected P/N and S/N, unless it is identified with the ''P180–32–29'' marking on the name plate.

Note 1: There is a warranty expiration date for the replacement of the actuators. The FAA recommends owners/operators that have affected main landing gear actuators contact the manufacturer immediately and replace the actuators under warranty.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: None.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust,

Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090; *email: mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0133, dated July 12, 2011; and Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0304, dated July 9, 2010, for related information.

(i) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0304, dated July 9, 2010, approved for IBR on December 22, 2011.

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.A Airworthiness Office; Via Luigi Cibrario, 4–16154 Genova-Italy; *telephone:* +39 010 6481353; *fax:* +39 010 6481881; *Email: airworthiness@piaggioaero.it.*

(3) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(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 an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on November 8, 2011.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–29554 Filed 11–16–11; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

[Investigation No. MISC–032]

Rules of Adjudication and Enforcement

AGENCY: International Trade Commission.

ACTION: Final rule; correction.

SUMMARY: The United States International Trade Commission (''Commission'') is correcting a final rule that appeared in the **Federal Register** of October 19, 2011 (76 FR 64803). The final rule concerns the Commission's effort to gather more information on public interest issues arising from complaints filed with the Commission requesting institution of an investigation under Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. The intended effect of the final rule is to aid the Commission in identifying investigations that require further development of public interest issues in the record, and to identify and develop information regarding the public interest at each stage of the investigation.

DATES: Effective November 18, 2011.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, United States International Trade Commission, telephone (202) 708–2301. 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 at *http://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: In the final rule appearing on page 64803 in the **Federal Register** of Wednesday, October 19, 2011, the following correction is made:

§ 210.10 [Corrected]

On page 64809, in the second column, in § 210.10 Institution of investigation, in paragraph (b), ''The notice will define the scope of the investigation and may be amended as provided in § 210.14(b) and (b).'' is corrected to read ''The notice will define the scope of the investigation and may be amended as provided in § 210.14(b) and (c).''

Issued: November 10, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–29664 Filed 11–16–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 501

[Docket No. FDA–2009–N–0025]

Animal Food Labeling; Declaration of Certifiable Color Additives

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations regarding the declaration of certified color additives on the labels of animal food including animal feeds and pet foods. FDA is issuing a final regulation in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), which amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by requiring, among other things, the listing on food labels of the common or usual names of all color additives required to be certified by FDA. An additional purpose of this final rule is to make these regulations consistent with the regulations regarding the declaration of certified color additives on the labels of human food. The final rule also suggests appropriate terminology for the declaration of certification-exempt color additives on the labels of animal food.

DATES: This rule is effective November 18, 2013.

FOR FURTHER INFORMATION CONTACT: John P. Machado, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 453–6854, *john.machado@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The 1990 amendments amended section 403(i) of the FD&C Act to require that certified color additives used in or on a food be declared by their common or usual names. Because section 201(f) of the FD&C Act (21 U.S.C. 321(f)) defines ''food'' as any article used for food or drink for man or other animals, the changes made to section 403(i) by the 1990 amendments apply to both human and animal foods. In response to this statutory amendment, FDA revised its human food labeling regulations by adding paragraph (k) to § 101.22 (21 CFR 101.22). The proposed and final rules for these regulations were published in the **Federal Register** on June 21, 1991 (56 FR 28592) and January 6, 1993 (58 FR 2850), respectively.

On November 23, 2009, FDA issued a proposed rule (74 FR 61068) (proposed rule) which proposed a regulation for animal food labels similar to the one made in § 101.22 for human food labels. Specifically, the proposed rule adds paragraph (k) to the animal food labeling regulations at § 501.22 (21 CFR 501.22). This paragraph explains how certified color additives used in animal foods must be declared in the ingredient list, and sets out the various ways that manufacturers may collectively declare certification-exempt color additives in the ingredient list. Proposed § 501.22(k)(1) states that a color additive or the lake of a color additive subject to certification under section 721(c) of the FD&C Act (21 U.S.C. 379(c)) shall be declared by the common or usual name of the color additive as listed in the applicable regulation in part 74 (21 CFR part 74) or part 82 (21 CFR part 82), except that it is not necessary to include the ''FD&C'' prefix or the term ''No.'' in the declaration. However, the term ''Lake'' shall be included in the declaration for the lake of a certified color additive (*e.g.,* Blue 1 Lake).

Proposed § 501.22(k)(2) states that manufacturers may parenthetically declare an appropriate alternative name of the certified color additive following its common or usual name as specified in part 74 or part 82. The new provision also provides a number of options for collectively declaring the presence in food of the certification-exempt color additives that are listed in part 73 (21 CFR part 73). Color additives not subject to certification may be declared as ''Artificial Color,'' ''Artificial Color Added,'' or ''Color Added'' (or by an equally informative term that makes clear that a color additive has been used in the food). Alternatively, such color additives may be declared as ''Colored with _____'' or ''_____ color,'' the blank to be filled with the name of the color additive listed in the applicable regulation in part 73.

II. Comments

FDA received 14 comments, all from consumers who overwhelmingly supported the proposed rule. These comments approved of the declaration of certified colors in animal food as an aid to consumers in avoiding food allergies and other adverse reactions potentially caused by added colorings. Consumers value this additional information on the label in order to make informed choices about what their animals consume. There were only two comments that opposed the proposal and one comment that suggested additional requirements be adopted.

(*Comment 1*) One comment described the proposed rule as ''frivolous'' and stated that if the color additive was approved by FDA for inclusion in an animal food, the specific name of the color additive would not need to be declared. The commenter stated that without added colors the animal food would not be appealing. The comment concluded that adding information on certified colors would not benefit consumers.

The 1990 amendments required the declaration of certified colors on food labels and that requirement applies to animal food as well as human food. FDA is seeking to bring the declaration of certified colors on labels of animal food in line with the labeling of human foods. Twelve of the comments indicated that consumers strongly support these proposed requirements and believe that such information on the label would be valuable to them and would enable them to make informed decisions of their pet food choices, thus demonstrating that this rule is not frivolous and serves to provide desired information to consumers.

(*Comment 2*) One comment expressed disapproval of the proposed rule claiming that the costs of the rule outweigh the benefits. The comment stated, ''In difficult economic times, it seems unwise to impose unknown costs on small businesses without concrete benefits to consumers.'' Instead, the comment proposed exempting small businesses employing fewer than 20 employees from the labeling requirements of § 501.22(k)(1) and (k)(2), provided they state on the label ''artificial color added.'' The comment also stated that the rule did not have ''concrete benefits.''

In passing the 1990 amendments, Congress anticipated that declaration of certified colors, and nutrition labeling provisions in general, would impose some substantial compliance costs for large and small businesses (58 FR 2070; January 6, 1993). In the Regulatory Flexibility Analysis of the proposed rule (74 FR 61068 at 61069) we considered the economic impact on small businesses, as well as large firms, and tentatively concluded that at every establishment size, the expected cost of compliance would likely be significantly less than 1 percent of revenues for each label requiring new labeling. We have, therefore, determined that the compliance costs of this final rule are unlikely to have a significant economic impact on a substantial number of small entities and that compliance costs are, in general, reasonable.

Furthermore, this comment's suggestion that businesses with less than 20 employees be exempted from proposed § 501.22(k)(1) and (k)(2) if the phrase ''Artificial Color Added'' is added to the label fails to negate the compliances costs associated with this final rule. FDA maintains that it is the total process of changing the label (including administrative, graphic, prepress, and engraving activities as well as label inventory loss), and not the actual wording change on the label, that imposes the vast majority of the compliance costs of the rule. The requested exemption would still require those that qualify to make label changes and would only minimally reduce the number of words on the label. Additionally, the requested exemption would likely require that FDA create reporting requirements to allow small businesses to qualify for the exemption based on the number of employees. Thus, the requested exemption would not be expected to meaningfully reduce compliance costs. Due to these reasons, FDA has decided not to include this exemption in the final rule.

Moreover, FDA is decreasing the impact of such compliance costs by adopting a 2-year effective date to allow for depletion of animal food label inventories, and thus, FDA has done everything possible to both satisfy the statutory mandate and reduce the impact on affected businesses.

The consumers that commented on the proposed rule overwhelmingly indicated their support of the rule, and their willingness to incur additional costs in order to have the benefit of more information being declared on the label. One comment in support of the rule stated, ''Many pet food manufacturers are already compliant with these new regulations because the FDA had provided informal education to manufacturers in the 1990s, in anticipation of the impending changes

under [the 1990 amendments].'' Therefore, FDA finds that from the comments received, the public generally perceives that there is a benefit to the proposed rule as adopted.

(*Comment 3*) One comment that supported the proposed rule suggested that FDA go farther and require that certification-exempt colors, such as cochineal or carmine, be declared on animal food labels. The comment cited concerns regarding the potential for allergic reactions or illness caused by these color additives.

Congress mandated the declaration of certified colors in the 1990 amendments. Certification-exempt colors were not part of the Congressional initiative. However, CVM will work in concert with the Center for Food Safety and Applied Nutrition in evaluating whether additional authority in this area is needed.

As stated previously, other comments received generally supported the proposed rule for a variety of reasons, including the importance of informing consumers about the food they feed their pets. Therefore, as the comments in opposition to the proposed rule did not provide sufficient evidence to cause FDA to alter its provisions, FDA did not amend the provisions of the proposed rule in response to comments and is making no changes to the final regulation.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. As discussed more fully in section IV of this document, we have prepared a final regulatory flexibility analysis. This analysis indicates that at every establishment size, the expected one-time cost of compliance would likely be significantly less than 1 percent of average annual revenues for each label requiring new labeling. We have, therefore, determined that the compliance costs of the final rule are unlikely to have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before finalizing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Purpose of Rule

The purpose of this rule is to implement the 1990 Amendments, which required that all food labels list the common or usual names of all color additives that are required to be certified by FDA. FDA published the proposed rule in the November 23, 2009, **Federal Register** proposing a regulation that would require that the common or usual name of all color additives that are required to be certified by FDA be listed on the label of animal foods. Additionally, the proposed rule suggested how color additives not certified by FDA should be declared on the ingredient list of animal foods. This regulation would amend FDA's animal food regulations to include certain requirements of the 1990 Amendments, as was previously done with the human food regulations. Because FDA was directed to establish regulations by the 1990 Amendments, the agency lacked a great deal of flexibility in the development of the proposed rule.

B. Comments to the Proposed Rule

FDA received 14 comments to the proposed rule. Most supported the proposed rule, but one comment, which disapproved of the rule, stated that the costs of the rule outweigh the benefits. FDA does not agree with the implication of this comment that the rule is not justified and should not be finalized. Although, for the proposed rule and this final rule, FDA does not have information to quantify and monetize the benefits of the rule, FDA has provided a 2-year effective date in an attempt to reduce the compliance costs of the final rule. As discussed previously, this comment also suggested that businesses with less than 20 employees be exempted from proposed § 501.22(k)(1) and (k)(2) if the phrase ''Artificial Color Added'' is added to the label. Because the requested exemption would still result in label changes for those that qualify for the exemption, it would only minimally reduce the number of words on the label, and would not be expected to meaningfully reduce compliance costs. Due to these reasons, FDA has decided not to include this exemption in the final rule.

C. Benefits

As stated previously, no comments to the rule contained information or argument that persuaded FDA to amend the codified language of the rule. As such, FDA retains its initial benefits discussion and cost model for this final rule, incorporating updated cost factors where necessary to reflect current conditions. The principal benefit of this rule is that it would provide additional consumer information for purchasers of pet food and other animal food products to consider in making their buying decisions for those animal food products that are not currently labeled in accordance with the provisions of this final rule. The agency does not have any data with which to quantify the extent to which having this additional information would result in more informed buying decisions by consumers. The rule also would provide some voluntary options for all animal food manufacturers, including options for terminology they can use when declaring certification-exempt color additives on their product labels.

D. Costs

The final rule has an effective date that is 2 years from the date of publication. This time is intended to allow animal food manufacturers some time to deplete their current label inventories as they make the transition to the new label. We do not expect this final rule to require a major label redesign because it would likely only necessitate minor changes in wording on the ingredient list. Many animal food manufacturers are already declaring certified color additives in their labeling by their common or usual name.

The rule would impose some review costs on those animal food manufacturers that use or intend to use certified color additives. Because the vast majority of animal food products that contain certified color additives are pet foods, we limit the costs to review labels for the use of certified color additives to pet food manufacturers. Each of these manufacturers would need

to review the labels of its pet food products to determine the current level of compliance with the final rule. Those manufacturers determined not to be in compliance with the final rule would incur additional costs under § 501.22(k)(1) to change the wording of their labels.

Animal feeds for a limited number of production animals, such as animal feeds for certain farm-raised fish and poultry, also contain color additives. However, we believe the color additives used in animal feeds for fish and poultry are generally certification-exempt, because such color additives can produce the desired colors in edible tissues of these animals more efficiently than certified color additives; currently, no certified color additive is approved to alter the color of the edible tissue of these animals. We did not receive any comments or data on these assumptions on the use of color additives in animal feeds for production animals in general, and in particular, on the use of certified color additives in fish and poultry feeds.

Animal food manufacturers using certification-exempt color additives in their products would only incur additional relabeling costs under § 501.22(k)(2) if they were to revise their labels to use one of the specific terminology options set forth in that provision. Although § 501.22(k)(2) lists specific terms that manufacturers can use when declaring color additives that are exempt from certification (*e.g.,* ''Artificial Color'' or ''Color Added''), the provision also would permit such color additives to be declared using other equally informative terms that make clear that a color additive has been used in the food. An informal survey of labels demonstrated that most manufacturers of animal food products containing certification-exempt color additives are already declaring the presence of these ingredients in a manner that complies with proposed § 501.22(k)(2).[1] We are not aware of any private incentives that would lead these manufacturers to voluntarily change their labels solely for the purpose of adopting one of the terms identified in proposed § 501.22(k)(2), although it is conceivable that some may make such a change as part of a larger effort to change their labels for other reasons, such as to comply with § 501.22(k)(1) or as part of scheduled labeling changes. Because use of the terminology specified in § 501.22(k)(2) is optional and the presence of certification-exempt color additives can instead be declared in other equally informative ways, we do not expect § 501.22(k)(2) to impose any new compliance costs on animal food manufacturers.

E. Pet Food Labeling Costs

We do not have data sources that can be used to precisely estimate the number of pet food products. For the purpose of this analysis we assume, based on an industry source, that there may be up to 15,000 different brands of pet foods.[2] Further, we lack extensive data on pet food labels to confidently estimate the number of such labels that are currently consistent with the provisions of the final rule. An informal survey of pet food products for dogs, cats, rabbits, and guinea pigs, however, found that only 13 of the 68 products surveyed had labels that listed color ingredients in a manner that might be determined not to be in compliance with the final rule. Only 1 of the 13 products would definitely be considered out of compliance with the rule, and that was due to its failure to individually identify which of the identified certified color additives were the colors requiring certification and which were the lakes colors requiring certification.

On many of the other 12 product labels, the phrase ''and other color(s)'' or similar language followed immediately after a list of FDC colors requiring certification. In these cases, we believe it is likely that the phrase is being used to designate colors that do not require certification. However, because we could not rule out the possibility that the phrase ''and other color(s)'' or a similar phrase was being used to declare colors requiring certification that, therefore, would need to be listed individually by their common or usual name, we included them in the group of pet food product labels that would possibly be out of compliance. Based on the previous reasoning, we project the midpoint of the 12 possible cases of noncompliance represent actual cases of noncompliance with the final rule. Therefore, we project an upper end of the estimated noncompliance range at 7 of the 68 cases in the sample (6 of the possibly noncompliant cases plus the one case that is almost certainly out of compliance), or about 10 percent.

Due to the uncertainty surrounding pet food products in other market niches, as well as those that are imported (all or almost all of those in the informal sample are products that were produced in the United States, although some ingredients may have been imported), it may be proper to account for these products by increasing the possible non-compliance level. However, because of the arguments mentioned previously concerning our likely over estimation of the upper range of our estimate in our informal survey, we have only increased our high-end estimate of products that would not be in compliance with the proposed rule to 15 percent. Although only 1.5 percent of the sample would definitely be out of compliance, to account for some uncertainty we have increased the low end of our compliance range to 5 percent. We estimate current product labeling that would not be in compliance with the proposed rule to range from 750 to 2,250 products, or 5 to 15 percent of the estimated 15,000 different brands of pet food products. We did not receive any comments or data on these assumptions on the number of existing pet food product labels that would need to be modified in this final rule.

We have estimated a cost for the combined effort by pet food industry management to become familiar with the requirements of the rule, plus the effort to determine the compliance status of each of the approximately 15,000 products. We project that, on average, the compliance status of each product could be determined within 15 minutes by an industry compliance officer. In some instances, notably those involving companies with fewer products, the average may be longer, due to the additional time spent on general education and awareness of the rule's requirements being apportioned over fewer products. For those companies with tens or hundreds of product labels, however, the average time to review an individual pet food ingredient label could easily be less than our estimate of 15 minutes per label. In any case, at 15 minutes per label, the one-time effort to review the 15,000 labels would amount to 3,750 hours. Using the median wage rate of $34.31 per hour for an industrial production manager (adding 35 percent to account for benefits results in a cost of $46.32 per hour), the cost of this label review would amount to about $174,000.[3]

FDA's Labeling Cost Model presents low, medium, and high cost estimates for all aspects of the label manufacturing process, from the

[1] Informal survey of pet foods brands taken on April 20, 2007, at one grocery store and one drug store in Anne Arundel County, Maryland, by FDA personnel.

[2] Veterinary News Network, *http://www.myvnn.com,* accessed May 21, 2007.

[3] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics NAICS 311100—Animal Food Manufacturing (*http:/www.bls.gov/oes/2009/May/naics4_311100.htm*).

administrative efforts through physical creation of the label, as well as an estimate for the loss of current label inventory.[4] We do not have specific data on the frequency of scheduled label changes for the pet food industry, but believe it would be similar to the human food industry. The model also includes a field that attempts to show to what extent human food labeling changes can be coordinated with scheduled labeling changes based on the time period within which the additional changes must be made. The model suggests parameters that lead to cost estimates that fall exponentially with the time allowed for labeling changes. The default or suggested percentages in the human foods model for a 2-year effective date are 33 percent for private label products and 67 percent for brand name products. For pet foods, we believe the large majority of products are branded, implying that our estimate of all pet food labels that would have a scheduled label change within the 2-year effective date should be closer to 67 percent than 33 percent (the Labeling Cost Model does not include data for products made by the pet food industry). Further, the general conclusion of a discussion with an industry association was that 1.5 to 2 years is a reasonable estimate for the life of a pet food label order, and for large manufacturers it is likely less than 1 year.[5] Based on these insights and lacking any other data source, we estimate that 60 percent of the pet food ingredient labeling changes could be coordinated with scheduled labeling changes. We invited public comment and data on the extent to which pet food ingredient labeling changes can be coordinated with scheduled labeling changes in the proposed rule, but did not receive any comments addressing this request.

We ran the model with several different human food items as proxies for pet foods, including canned seafood, cereal, flour meal, and bagged snack food, assuming a 2-year effective date for the rule. The resulting total costs (which include label inventory loss) per stockkeeping unit (SKU) varied from low cost estimates for all but the canned seafood around $800, and with high cost estimates for canned seafood approaching $4,750. For the purpose of this analysis, we propose to use the median cost estimates from the cereal and canned seafood model results, or a range from about $1,250 per SKU to about $3,550 per SKU. For this final rule, FDA has adjusted these costs for inflation by about 4 percent to about $1,300 per SKU and $3,700 per SKU.

We project that only 300 to 900 pet food SKUs would be required to undertake an earlier labeling change as a result of this rule. This represents the 40 percent of SKUs that would not be able to coordinate the label change required by this rule with regularly scheduled label changes multiplied by the 750 to 2,250 SKUs that are not expected to be in compliance with the rule. Based on the range of per SKU costs described previously, the additional one-time labeling costs (including inventory loss) would range from $390,000 to about $3.3 million. Discounting these costs until the end of the 2-year transition period (at a 7-percent discount rate) results in one-time costs of about $340,000 to $2.9 million (at a 3-percent rate, the one-time cost would range from $367,000 to $3.1 million).

We estimate total pet food industry one-time costs (discounted at 7 percent) to range from about $510,000 to $3.1 million, including both the effort to determine compliance with the final rule and the labeling costs for those SKUs that would remain out of compliance after 2 years from the date of publication of the final rule. We do not project any additional annual reporting costs.

F. Analysis of Alternatives

Because section 403(i) of the FD&C Act as amended by the 1990 amendments specifically requires certified color additives used in food to be declared by their common or usual names, we lacked the flexibility to consider other ways to declare certified color additives on the labels of animal food products. Based on the 2-year effective date included in this final rule, total discounted one-time compliance costs would range from about $510,000 to $3.1 million. As indicated earlier, the 2-year effective date is to allow for an orderly transition from current label inventory without a significant, additional cost to the animal food products industry. We invited comment on the 2-year effective date. Aside from one comment which suggested that manufacturers take advantage of the 2-year delay in effectiveness of this rule to come into compliance, we received no comments on our assumption that a 2-year effective date would allow for an orderly transition to the new labels.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis if a rule is expected to have a significant economic impact on a substantial number of small entities. Although we believe it is unlikely that significant economic impacts would occur, we cannot rule out the possibility completely because of uncertainty in the distribution of the affected products among establishments producing animal food products. The following constitutes the final regulatory flexibility analysis.

One requirement of the Regulatory Flexibility Act is a succinct statement of any objectives of the rule. As stated previously in this analysis, the agency is amending the ingredient labeling regulations for animal feeds and pet foods to require that the common or usual name of all color additives that are required to be certified by FDA be listed on the label. This change codifies in FDA's animal food labeling regulations the requirements of the 1990 Amendments, as was previously done for the food product labels for humans.

The Regulatory Flexibility Act also requires a description of the small entities that would be affected by the rule, and an estimate of the number of small entities to which the rule would apply. Although some 2007 Census data are available, they do not at this time include the level of detailed information that FDA used from the 2002 Census for this part of the analysis of the proposed rule. Accordingly, FDA relies on the 2002 Census data for the analysis of the final rule. When available, 2007 Census data are also included to show that the number of establishments and companies has not changed enough to meaningfully affect the conclusions of the analysis.

Dog and cat food manufacturers are classified in the North American Industrial Classification System (NAICS) under industry code 311111—Dog and Cat Food Manufacturing. Census data from 2002 in this category show that 175 companies with 242 establishments make dog and cat foods in the United States (198 companies and 264 establishments in 2007). NAICS industry code 311119 is identified as Other Animal Food Manufacturing. The 2002 Census data for this category reported a total of 1,042 companies with 1,567 establishments (982 companies and 1,489 establishments in 2007). At least 629 of these establishments, however, prepared feeds for beef cattle, dairy cattle, swine, poultry (other than chickens and turkeys), and other minor production animal species. These establishments manufacture animal feed for production animals such as cattle and swine that ordinarily would not include any color additives in their products. This reduces the number of

[4] FDA Labeling Cost Model, Final Report, Revised January 2003, RTI International.

[5] Email communication between industry association and FDA personnel on March 8, 2007.

establishments in industry code 311119 that are subject to § 501.22(k)(1) to 938.

We have not reduced the number of establishments any further to account for the 350 establishments that manufacture feed or feed ingredients for chickens and turkeys, fish species, and other minor species, which are the types of products that we believe are more likely to contain a color additive to aid in their marketability. Based on our understanding that feed or feed ingredients for chickens and turkeys, fish, and some other minor species typically do not contain color additives requiring certification, we believe that manufacturers of these products would only be minimally affected by proposed § 501.22(k)(1), if at all. However, since we cannot rule out the possibility that they would, at some point in the future, use a color additive requiring certification, we do not exclude them from the total of 938 establishments.

For the final rule, FDA includes the 1,303 non-employer establishments in NAICS 31111 (Animal Food Manufacturing) in 2008. Because many of these establishments may not manufacture products that would be affected by this rule, including all 1,303 establishments in the total results in an upper bound to the range of establishments. In total, this demonstrates that the number of establishments manufacturing dog, cat, and production animal foods that could be affected by § 501.22(k)(1) may be as large as 2,483 establishments (242 + 938 + 1,303). However, because the estimate of total SKUs affected by the rule only ranges up to 2,250, the number of total establishments could not be more than 2,250, and is likely lower since some establishments may have more than one SKU affected by the rule.

The Small Business Administration defines businesses in NAICS categories 311111 and 311119 as small entities if they employ less than 500 employees. Census data show that only one establishment with NAICS code 311111 employs 500 or more employees, and that no establishments within NAICS code 311119 employ 500 or more employees. By definition, all the non-employer establishments have fewer than 500 employees. The existence of some multi-establishment companies in NAICS codes 311111 and 311119 would likely increase the number of companies that would not meet the definition of a small entity because companies composed of more than one establishment are likely to have more employees. Nonetheless, we would expect that a large number of the upper bound of 2,250 establishments that manufacture dog food, cat food, or other animal food that might contain a color additive requiring certification would meet the criteria to be considered small businesses.

Census Data on industry shipments for dog and cat food manufacturers are not available for establishments with one to four employees in 2002. For those establishments with 5 to 9 employees, and those with 10 to 19 employees, the average annual value of shipments, adjusted for inflation, ranges from $4.06 to $5.01 million. For all establishments with 20 or more employees, it is much greater. If a manufacturer composed of only one establishment of five to nine employees had to undertake one product relabeling due to this rule, the one-time cost of this effort would represent only about 0.09 percent of average annual revenues. Those establishments with 10 to 19 employees could have 13 SKUs needing relabeling before their one-time costs equal 1 percent of average annual revenues, while establishments with 20 or more employees could have more than 60 SKUs needing relabeling before their one-time costs equal 1 percent of average annual revenues.

For those establishments with one to four employees that manufacture other animal foods, the average annual value of shipments is about $1.15 million. The average value of shipments for establishments in this industry with five or more employees is greater than $4.7 million. An average company composed of one establishment with one to four employees would expend 0.32 percent of its revenues for the cost of relabeling one SKU as a result of this rule. Establishments with 5 to 9 employees and those with 10 to 19 employees could have 13 and 29 SKUs requiring relabeling after 2 years, respectively, before their one-time costs would account for 1 percent of average annual revenues. All larger establishments could have 59 SKUs requiring relabeling after 2 years before their one-time costs would account for 1 percent of average annual revenues.

Although the data shows that the cost for relabeling one SKU would not likely represent a significant burden on a substantial number of small companies, we do not have data on either the number of affected animal food products manufactured by establishments or firms of any size, or the distribution of those animal food products that would not have met the requirements of the rule within 2 years of the publication of this final rule. That being the case, we must allow for the possibility, however unlikely, that the rule could have a significant impact on a substantial number of small firms.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The previous analysis shows that at every establishment size, the expected one-time cost of compliance would be significantly less than 1 percent of average annual revenues for each SKU requiring new labeling. The estimated number of SKUs requiring new labeling makes it unlikely that their distribution among establishments would result in any establishment incurring compliance costs greater than 1 percent of revenues. The agency believes, therefore, that this final rule would be unlikely to have a significant economic impact on a substantial number of small entities.

V. Environmental Impact

The agency has determined that establishment of this labeling requirement would not increase the existing levels of use or change the intended uses of color additives or their substitutes. Therefore, under 21 CFR 25.30(k), this final rule is determined to be categorically excluded from the need to prepare an environmental assessment or an environmental impact statement.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State law conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts ''any requirement for the labeling of food of the type required by * * * [21 U.S.C. 343(i)(2)] * * * that is not identical to the requirement of such section * * *'' 21 U.S.C. 343–1(a)(2). This final rule creates requirements for declaring the presence of certified color additives on the labels of animal food, including animal feeds and pet foods under 21 U.S.C. 343(i)(2).

VII. Paperwork Reduction Act of 1995

In the **Federal Register** of November 23, 2009 (74 FR 61068 at 61072), FDA published a proposed rule and invited comments on, among other things, the proposed collection of information.

In response to this **Federal Register** notice, FDA did not receive any comments regarding the information collection requirements contained in

this final rule. In response to OMB's request that the Agency describe how it has maximized the practical utility of this collection and minimized the burden, an explanation has been provided elsewhere in the preamble of this final rule (section III of this document).

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish notice in the **Federal Register**, announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

Title: Animal Food Labeling: Declaration of Certifiable Color Additives.

Description: FDA is revising its regulations in response to the 1990 amendments which amended the FD&C Act by requiring, among other things, the listing on food labels of the common and usual names of all color additives required to be certified by FDA. An additional purpose of this amendment is to make these regulations consistent with the regulations regarding the declaration of certified color additives on the labels of human food. The final rule also suggests appropriate terminology for the declaration of certification-exempt color additives on the labels of animal food. Thus, FDA estimates the burden for this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours	Total capital costs
501.22(k)(1)	2,250	6.67	15,000	0.25	3,750	[2] $3,100,000
501.22(k)(2)	2,250	0.2	450	0.25	112.5	1,500,000

[1] There are no operating and maintenance costs associated with this collection of information.
[2] Because the range was $510,000 to $3.1 million, FDA has chosen to show the higher figure here.

The numbers for § 501.22(k)(1) in table 1 of this document were taken from the Analysis of Impacts section of this document (section III of this document). The total number of establishments manufacturing dog, cat, and other non-production animal foods that could be subject to this final rule is estimated at 2,250. The annual frequency per response (6.67) is derived by dividing the 15,000 annual responses (*i.e.,* labels) by the number of establishments (2,250). The total hours (3,750) is derived by multiplying the number of total annual responses (15,000) by 15 minutes (0.25 per response). Due to the proposed two year delay in the effective date of the final rule, the total capital costs range from $510,000 to $3.1 million, and operating and maintenance costs were estimated to be zero.

Final § 501.22(k)(2) states the appropriate terminology for the declaration of certification-exempt color additives on the ingredient list of labels of animal food. Although the suggested appropriate terminology for labels for declaration of colors exempt from certification is optional and offers some flexibility to a manufacturer in terms of how to declare such color additives on its ingredient label, it is possible that some may voluntarily adopt the language specified in § 501.22(k)(2) when they are already relabeling their animal food products for other reasons such as for marketing purposes. The census data show up to 938 establishments produce animal feeds that may contain color additives exempt from certification. These additives may also be used at the 242 dog and cat food establishments in the United States, and any of the 1,303 non-employer establishments. We do not have data that can be used to estimate the number of product labels that will be voluntarily changed at the 2,250 establishments as a result of § 501.22(k)(2).

However, our analysis of the required changes for § 501.22(k)(1) estimated that about 6 percent of the products would require label changes after the 2-year effective date has passed (15 percent of labels that are currently out of compliance with proposed § 501.22(k)(1) times the 40 percent of those that would remain out of compliance after regular label changes occurring over 2 years). We assume that management would choose to make fewer voluntary label changes than required label changes. For our analysis, we assume that only one-half as much, or 3 years of these products, undergo voluntary label changes as in § 501.22(k)(2). This would result in 0.2 label changes per establishment for § 501.22(k)(2), or 450 label changes over the 2,250 establishments.

The hours per response for label review to determine compliance with the rule and the appropriate language to put on the label is estimated at 0.25 hours, which compares to the time allotted for animal food labels containing certified colors. The annual cost of label review is the hourly wage of an industrial production manager ($44.24) times 0.25 hours per response times the number of labels.

The upper-bound estimate of relabeling costs for the remaining labels (*i.e.,* those reviewed for compliance with the proposed rule), is $3,350 per SKU. The total one-time cost of § 501.22(k)(2) would, therefore, be the cost of label review plus the cost of changing 450 labels as part of normal business practices, for an estimated total of approximately $1.5 million. The total hours spent, as shown in table 1 of this document, are 112.5 (450 times 0.25).

List of Subjects in 21 CFR Part 501

Animal foods, Labeling, Specific animal food labeling requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 501 is amended as follows:

PART 501—ANIMAL FOOD LABELING

■ 1. The authority citation for 21 CFR part 501 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

■ 2. Section 501.22 is amended by adding paragraph (k) to read as follows:

§ 501.22 Animal foods; labeling of spices, flavorings, colorings, and chemical preservatives.

* * * * *

(k) The label of an animal food to which any coloring has been added shall declare the coloring in the statement of ingredients in the manner specified in paragraphs (k)(1) and (k)(2) of this section.

(1) A color additive or the lake of a color additive subject to certification under section 721(c) of the act shall be declared by the name of the color additive listed in the applicable regulation in part 74 or part 82 of this chapter, except that it is not necessary to include the ''FD&C'' prefix or the term ''No.'' in the declaration, but the term ''Lake'' shall be included in the declaration of the lake of the certified color additive (*e.g.,* Blue 1 Lake). Manufacturers may parenthetically declare an appropriate alternative name of the certified color additive following its common or usual name as specified in part 74 or part 82 of this chapter.

(2) Color additives not subject to certification may be declared as ''Artificial Color,'' ''Artificial Color Added,'' or ''Color Added'' (or by an equally informative term that makes clear that a color additive has been used in the food). Alternatively, such color additives may be declared as ''Colored with _____'' or ''_____ color,'' the blank to be filled with the name of the color additive listed in the applicable regulation in part 73 of this chapter.

Dated: November 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–29701 Filed 11–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9557]

RIN 1545–BF27

Application of Section 108(e)(8) to Indebtedness Satisfied by a Partnership Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of section 108(e)(8) of the Internal Revenue Code (Code) to partnerships and their partners. These regulations provide guidance regarding the determination of discharge of indebtedness income of a partnership that transfers a partnership interest to a creditor in satisfaction of the partnership's indebtedness. The final regulations also address the application of section 721 to a contribution of a partnership's recourse or nonrecourse indebtedness by a creditor to the partnership in exchange for a capital or profits interest in the partnership. Moreover, the final regulations address how a partnership's discharge of indebtedness income is allocated as a minimum gain chargeback under section 704. The regulations affect partnerships and their partners.

DATES: *Effective Date:* These regulations are effective on November 17, 2011.

Applicability Date: For dates of applicability, see §§ 1.108–8(d), 1.704–2(l)(1)(v), and 1.721–1(d)(4).

FOR FURTHER INFORMATION CONTACT: Joseph R. Worst or Megan A. Stoner, Office of Associate Chief Counsel (Passthroughs and Special Industries), (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under sections 108, 704, and 721 of the Code relating to the application of section 108(e)(8) to partnerships.

Section 108(e)(8) was amended by section 896 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1648), to include discharges of partnership indebtedness occurring on or after October 22, 2004. Prior to the amendment, section 108(e)(8) only applied to discharges of corporate indebtedness. Section 108(e)(8), as amended, provides that, for purposes of determining income of a debtor from discharge of indebtedness (COD income), if a debtor corporation transfers stock or a debtor partnership transfers a capital or profits interest in such partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of a partnership, any COD income recognized under section 108(e)(8) shall be included in the distributive shares of the partners in the partnership immediately before such discharge.

A notice of proposed rulemaking and a notice of public hearing (REG–164370–05, 2008–46 IRB 1157) were published in the **Federal Register** (73 FR 64903) on October 31, 2008, proposing amendments to the regulations regarding the application of section 108(e)(8) to partnerships and their partners, including the determination of COD income of a partnership that transfers a partnership interest to a creditor in satisfaction of the partnership's indebtedness (debt-for-equity exchange). The proposed regulations also provide that section 721 generally applies to a contribution of a partnership's recourse or nonrecourse indebtedness by a creditor to the partnership in exchange for a capital or profits interest in the partnership. A public hearing on the proposed regulations was scheduled for February 19, 2009, but was cancelled because no one requested to speak. However, comments responding to the proposed regulations were received. After consideration of these comments, the proposed regulations are adopted as revised by this Treasury decision. These final regulations generally retain the provisions of the proposed regulations with the modifications discussed in the preamble.

Summary of Comments and Explanation of Provisions

1. Valuation of Partnership Interest Transferred in Satisfaction of Partnership Indebtedness

Section 108(e)(8) provides that, for purposes of determining COD income of a debtor partnership, the partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the interest transferred to the creditor. Generally, the amount by which the indebtedness exceeds the fair market value of the partnership interest transferred is the amount of COD income required to be included in the distributive shares of the partners that were partners in the debtor partnership immediately before the discharge.

The proposed regulations provide that, for purposes of determining the amount of COD income, the fair market value of the partnership interest transferred to the creditor in a debt-for-equity exchange (debt-for-equity interest) is the liquidation value of the partnership interest if four requirements are satisfied (liquidation value safe harbor). For this purpose, liquidation value equals the amount of cash that the creditor would receive with respect to the debt-for-equity interest if, immediately after the transfer, the partnership sold all of its assets (including goodwill, going concern value, and any other intangibles) for cash equal to the fair market value of those assets, and then liquidated.

The four conditions of the liquidation value safe harbor in the proposed regulations are that (i) The debtor partnership determines and maintains capital accounts of its partners in accordance with the capital accounting rules of § 1.704–1(b)(2)(iv) (capital account maintenance requirement); (ii) the creditor, debtor partnership, and its partners treat the fair market value of

the indebtedness as being equal to the liquidation value of the debt-for-equity interest for purposes of determining the tax consequences of the debt-for-equity exchange (consistency requirement); (iii) the debt-for-equity exchange is an arm's-length transaction (arm's-length requirement); and (iv) subsequent to the debt-for-equity exchange, neither the partnership redeems nor any person related to the partnership purchases the debt-for-equity interest as part of a plan at the time of the debt-for-equity exchange which has as a principal purpose the avoidance of COD income by the partnership (anti-abuse provision). If these requirements are not satisfied, all of the facts and circumstances are considered in determining the fair market value of the debt-for-equity interest for purposes of applying section 108(e)(8). Each of the four requirements of the proposed regulations is discussed in the preamble.

The first requirement is the capital account maintenance requirement. Commenters requested that the final regulations clarify that this requirement does not necessitate compliance with all aspects of the substantial economic effect safe harbor under § 1.704–1(b)(2), notably the requirement that the partnership liquidate in accordance with the positive capital account balances of its partners. To eliminate confusion over the capital account maintenance requirement in the liquidation value safe harbor, the IRS and the Treasury Department have decided to remove the capital account maintenance requirement from the liquidation value safe harbor because the maintenance of capital accounts is not necessary to the determination of the liquidation value of the partner's interest.

The second requirement of the liquidation value safe harbor in the proposed regulations is the consistency requirement. This requirement is intended to ensure consistent reporting by the creditor, debtor partnership, and its partners. One commenter suggested narrowing the scope of this requirement in the final regulations so that the failure of a partner to consistently treat the fair market value of the indebtedness as being equal to the liquidation value of the debt-for-equity interest does not invalidate the partnership's use of the liquidation value safe harbor, provided the creditor and the partnership otherwise consistently determine and report COD income based on such valuation. The IRS and the Treasury Department considered the issue and decided to not modify this requirement in the final regulations. The amount of COD income computed under the liquidation value safe harbor may differ from the amount computed using the fair market value of the partnership interest. Thus, in order for the partnership to use the liquidation value safe harbor, the IRS and the Treasury Department believe that the partnership and all of its partners must report consistently.

One commenter suggested that taxpayers should not be able to selectively exploit to their benefit the discrepancy between liquidation value and fair market value and suggested that the final regulations require that a partnership apply a consistent valuation methodology to all equity issued in any debt-for-equity exchange that is part of the same overall transaction. The IRS and the Treasury Department agree, and therefore the final regulations add this as a condition to the liquidation value safe harbor.

The third requirement of the liquidation value safe harbor in the proposed regulations is the arm's-length requirement. Commenters requested that the final regulations clarify whether this requirement can be satisfied where the exchange is between the partnership and an existing partner. The IRS and the Treasury Department believe that the liquidation value safe harbor should be available where the transaction involves related parties and have clarified this requirement in the final regulations to provide that, as long as the debt-for-equity exchange has terms that are comparable to terms that would be agreed to by unrelated parties negotiating with adverse interests, the third requirement is satisfied even if the transaction is between related parties.

The fourth requirement of the liquidation value safe harbor in the proposed regulations is an anti-abuse provision. The final regulations follow the anti-abuse provision of the proposed regulations by adding a restriction on subsequent purchases of the debt-for-equity interest by a person related to any partner (in addition to purchases by a person related to the partnership) as part of a tax-avoidance plan. Thus, under the final regulations, the partnership cannot redeem and no person related to the partnership or to any partner can purchase the debt-for-equity interest as part of a plan at the time of the debt-for-equity exchange that has as a principal purpose the avoidance of COD income by the partnership. Commenters requested that the final regulations clarify the meaning of ''related'' in this context. The IRS and the Treasury Department agree that clarification is warranted and therefore the final regulations refer to sections 267(b) and 707(b) for the meaning of ''related'' in the anti-abuse provision.

The final regulations also address the application of the liquidation value safe harbor rule to a partnership (upper-tier partnership) that directly or indirectly owns an interest in one or more partnerships (lower-tier partnership(s)). The final regulations provide that, with respect to interests held in one or more lower-tier partnerships, the liquidation value of an interest in an upper-tier partnership is determined by taking into account the liquidation value of such lower-tier partnership interest.

The final regulations provide that if the fair market value of the debt-for-equity interest does not equal the fair market value of the indebtedness exchanged, then general tax law principles shall apply to account for the difference. Moreover, section 707(a)(2)(A), as it relates to the treatment of payments to partners for transfers of property, will be considered, if appropriate.

2. Application of Section 721 to Debt-for-Equity Exchanges

The proposed regulations generally provide that the nonrecognition rule of section 721 applies to the debt-for-equity exchange. Under the proposed regulations, the creditor does not recognize a loss or a bad debt deduction in the debt-for-equity exchange. The creditor's basis in the debt-for-equity interest is increased under section 722 by the adjusted basis of the indebtedness. The preamble to the proposed regulations requested comments on alternative approaches.

A number of commenters agreed with the general application of section 721 to the debt-for-equity exchange, but recommended that the rule be modified in the final regulations. The commenters argued that the application of section 721 to the debt-for-equity exchange may result in asymmetry in the timing of the partnership's COD income inclusion and the creditor's loss, character conversion for the creditor from ordinary loss to capital loss, and disparities between the partners' aggregate bases in their partnership interests and the partnership's basis in its assets. Some commenters suggested that these results could be alleviated if the final regulations bifurcate the debt-for-equity exchange into two transactions, namely the cancellation of a portion of the indebtedness, and the contribution of the balance in exchange for an interest in the partnership in a transaction to which section 721 applies (bifurcation approach). Another commenter, however, stated that a

bifurcation approach is not consistent with section 721 or case law.

The IRS and the Treasury Department agree with the latter comment and believe that the bifurcation approach would be inconsistent with the treatment of analogous corporate debt-for-equity transactions involving corporate indebtedness evidenced by a security in which section 351 would apply, for example. Further, comments in favor of the bifurcation approach assume a creditor has not validly taken a bad debt deduction under section 166 prior to the debt-for-equity exchange in a transaction independent of and separate from the debt-for-equity exchange. After consideration of the issue, the IRS and the Treasury Department have determined that the final regulations will not adopt the bifurcation approach.

3. Obligations for Unpaid Rent, Royalties, and Interest

The proposed regulations provide that section 721 does not apply to the transfer of a partnership interest to a creditor in satisfaction of a partnership's recourse or nonrecourse indebtedness for unpaid rent, royalties, or interest on indebtedness (including accrued original issue discount). These items generally give rise to ordinary income to the creditor and a deduction to the partnership. Most commenters agreed that the general nonrecognition rule under section 721 should not apply to the transfer of a partnership interest in satisfaction of these items. The IRS and the Treasury Department believe that the exception to section 721 for these items is necessary to prevent the conversion of ordinary income into capital gain.

The final regulations retain the exception for these ordinary income items, but, in response to a comment, limit the scope of the exception. The commenter suggested that the exception be limited to items that accrued on or after the beginning of the creditor's holding period for the indebtedness. The IRS and the Treasury Department agree with the comment, and therefore, the final regulations provide that section 721 does not apply to a debt-for-equity exchange to the extent the partnership interest is exchanged for the partnership's indebtedness for unpaid rent, royalties, or interest on the partnership's indebtedness (including accrued original issue discount) that accrued on or after the beginning of the creditor's holding period for the indebtedness.

The preamble to the proposed regulations states the general rule that when property is transferred as payment on indebtedness (or in satisfaction thereof), gain or loss on the property is recognized. Under that approach, in a debt-for-equity exchange, if the partnership is treated as satisfying its indebtedness for unpaid rent, royalties, or interest on indebtedness (including accrued original issue discount) with a fractional interest in each asset of the partnership, the partnership could recognize gain or loss equal to the difference between the fair market value of each partial asset deemed transferred to the creditor and the adjusted basis in that partial asset. The IRS and the Treasury Department believe that in a debt-for-equity exchange where the partnership has not disposed of any of its assets, the partnership should not be required to recognize gain or loss on the transfer of a partnership interest in satisfaction of its indebtedness for unpaid rent, royalties, or interest. Therefore, under the final regulations, a debtor partnership will not recognize gain or loss upon the transfer of a partnership interest to a creditor in a debt-for-equity exchange for unpaid rent, royalties, or interest that accrued on or after the beginning of the creditor's holding period for the indebtedness.

4. COD Income as First-Tier Item for Minimum Gain Chargeback Rules

The preamble to the proposed regulations requested comments regarding the manner in which COD income arising from a debt-for-equity exchange should be treated for purposes of the minimum gain chargeback rules under § 1.704–2(f)(6). Section 1.704–2(f)(6) provides that any minimum gain chargeback required for a partnership taxable year consists first of certain gains recognized from the disposition of partnership property subject to one or more partnership nonrecourse liabilities and then, if necessary, of a pro rata portion of the partnership's other items of income and gain for that year. A similar rule applies to chargebacks of partner nonrecourse debt minimum gain. See § 1.704–2(i)(4).

Commenters recommended that, where a minimum gain chargeback results from the discharge of partnership or partner nonrecourse debt, the first-tier of the minimum gain chargeback should include COD income relating to such debt. The IRS and the Treasury Department agree with this comment, and therefore the final regulations provide that COD income arising from a discharge of a partnership or partner nonrecourse indebtedness is treated as a first-tier item for minimum gain chargeback purposes under §§ 1.704–2(f)(6), 1.704–2(j)(2)(i)(A), and 1.704–2(j)(2)(ii)(A).

5. Disposition of Installment Obligations

Section 453B provides rules regarding dispositions of installment obligations. Generally, if an installment obligation of a taxpayer is satisfied at other than its face value or the taxpayer distributes, transmits, sells, or otherwise disposes of an installment obligation, the taxpayer recognizes any deferred gain or loss. However, § 1.453–9(c)(2) provides that the contribution of an installment obligation to a partnership under section 721, for example, does not constitute a disposition. The IRS and the Treasury Department believe that this exception does not apply to a creditor who disposes of an installment obligation of a partnership by contributing it to the debtor partnership, even if the transaction qualifies under section 721. In that case, the creditor must recognize gain or loss under section 453B. This treatment is consistent with the corporate rules that require a creditor to recognize gain or loss under section 453B on the disposition of an installment obligation of a corporation to the debtor corporation in a transaction that qualifies under section 351. Rev. Rul. 73–423 (1973–2 CB 161), (see § 601.601(d)(2)(ii)(*b*)). Accordingly, the IRS and the Treasury Department are proposing regulations under section 453B to clarify this issue.

6. Additional Issues

The preamble to the proposed regulations requested comments on whether any special allocation rules of COD income should apply where partnership indebtedness owed to a preexisting partner is satisfied with the transfer of a partnership interest. The proposed regulations did not address this issue. Commenters recommended that the final regulations not impose any special allocation rules regarding COD income realized under section 108(e)(8) from the cancellation of a partnership indebtedness owed to a preexisting partner. Commenters suggested that Rev. Rul. 92–97 (1992–2 CB 124) and Rev. Rul. 99–43 (1999–2 CB 506), (see § 601.601(d)(2)(ii)(*b*)), provide an appropriate framework for determining how COD income should be allocated, whether or not the creditor is a partner in the partnership. The IRS and the Treasury Department agree that existing guidance provides a framework for allocating COD income and, thus, the final regulations do not adopt any additional guidance regarding the allocation of COD income among partners in a debt-for-equity exchange.

Effective/Applicability Date

These final regulations apply to debt-for-equity exchanges occurring on or after the date these final regulations are published in the **Federal Register**.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Joseph R. Worst and Megan A. Stoner of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.108–8 is added to read as follows:

§ 1.108–8 Indebtedness satisfied by partnership interest.

(a) *In general.* For purposes of determining income of a debtor from discharge of indebtedness (COD income), if a debtor partnership transfers a capital or profits interest in the partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness (a debt-for-equity exchange), the partnership is treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the partnership interest.

(b) *Determination of fair market value*—(1) *In general.* All the facts and circumstances are considered in determining the fair market value of a partnership interest transferred by a debtor partnership to a creditor in satisfaction of the debtor partnership's indebtedness (debt-for-equity interest) for purposes of paragraph (a) of this section. If the fair market value of the debt-for-equity interest does not equal the fair market value of the indebtedness exchanged, then general tax law principles shall apply to account for the difference.

(2) *Safe harbor*—(i) *General rule.* For purposes of paragraph (a) of this section, the fair market value of a debt-for-equity interest is deemed to be equal to the liquidation value of the debt-for-equity interest, as defined in paragraph (b)(2)(iii) of this section, if the following requirements are satisfied—

(A) The creditor, debtor partnership, and its partners treat the fair market value of the indebtedness as being equal to the liquidation value of the debt-for-equity interest for purposes of determining the tax consequences of the debt-for-equity exchange;

(B) If, as part of the same overall transaction, the debtor partnership transfers more than one debt-for-equity interest to one or more creditors, then each creditor, debtor partnership, and its partners treat the fair market value of each debt-for-equity interest transferred by the debtor partnership to such creditors as equal to its liquidation value;

(C) The debt-for-equity exchange is a transaction that has terms that are comparable to terms that would be agreed to by unrelated parties negotiating with adverse interests; and

(D) Subsequent to the debt-for-equity exchange, the debtor partnership does not redeem the debt-for-equity interest, and no person bearing a relationship to the debtor partnership or its partners that is specified in section 267(b) or section 707(b) purchases the debt-for-equity interest, as part of a plan at the time of the debt-for-equity exchange that has as a principal purpose the avoidance of COD income by the debtor partnership.

(ii) *Tiered-partnership rule.* For purposes of this paragraph (b)(2), the liquidation value of a debt-for-equity interest in a partnership (upper-tier partnership) that directly or indirectly owns an interest in one or more partnerships (lower-tier partnership(s)) is determined by taking into account the liquidation value of such lower-tier partnership interests.

(iii) *Definition of liquidation value.* For purposes of this paragraph (b)(2), the liquidation value of a debt-for-equity interest equals the amount of cash that the creditor would receive with respect to the debt-for-equity interest if, immediately after the debt-for-equity exchange, the partnership sold all of its assets (including goodwill, going concern value, and any other intangibles) for cash equal to the fair market value of those assets and then liquidated.

(c) *Example.* The following example illustrates the provisions of this section:

Example. (i) AB partnership has $1,000 of outstanding indebtedness owed to C. C agrees to transfer to AB partnership the $1,000 indebtedness in a debt-for-equity exchange for a debt-for-equity interest in AB partnership. The liquidation value of C's debt-for-equity interest is $700, which is the amount of cash that C would receive with respect to that interest if, immediately after the debt-for-equity exchange, AB partnership sold all of its assets for cash equal to the fair market value of those assets and then liquidated. Each of the requirements of the liquidation value safe harbor described in paragraph (b)(2) of this section is satisfied.

(ii) Because the requirements in paragraph (b)(2) of this section are satisfied, the fair market value of C's debt-for-equity interest in AB partnership for purposes of determining AB partnership's COD income is the liquidation value of C's debt-for-equity interest, or $700. Accordingly, AB partnership is treated as satisfying the $1,000 indebtedness for $700 under section 108(e)(8).

(d) *Effective/applicability date.* This section applies to debt-for-equity exchanges occurring on or after November 17, 2011.

■ **Par. 3.** Section 1.704–2 is amended as follows:

■ 1. In paragraph (f)(6), the first sentence is revised and in the last sentence, the language ''(j)(2)(i) and (iii)'' is removed and the language ''(j)(2)(i) and (j)(2)(iii)'' is added in its place.

■ 2. Paragraphs (j)(2)(i)(A) and (j)(2)(ii)(A) are revised.

■ 3. In paragraph (l), revise the paragraph heading and add a new paragraph (l)(1)(v).

The revisions and additions read as follows:

§ 1.704–2 Allocations attributable to nonrecourse liabilities.

* * * * *

(f) * * *

(6) * * * Any minimum gain chargeback required for a partnership taxable year consists first of a pro rata portion of certain gains recognized from the disposition of partnership property

subject to one or more partnership nonrecourse liabilities and income from the discharge of indebtedness relating to one or more partnership nonrecourse liabilities to which partnership property is subject, and then, if necessary, consists of a pro rata portion of the partnership's other items of income and gain for that year. * * *

* * * * *

(j) * * *

(2) * * *

(i) * * *

(A) First, a pro rata portion of gain from the disposition of property subject to partnership nonrecourse liabilities and discharge of indebtedness income relating to partnership nonrecourse liabilities to which property is subject;

* * * * *

(ii) * * *

(A) First, a pro rata portion of gain from the disposition of property subject to partner nonrecourse debt and discharge of indebtedness income relating to partner nonrecourse debt to which property is subject.

* * * * *

(l) *Effective/applicability dates.* * * *

(1) * * *

(v) The first sentence of paragraph (f)(6) of this section and paragraphs (j)(2)(i)(A) and (j)(2)(ii)(A) of this section apply on and after November 17, 2011.

* * * * *

■ **Par. 4.** Section 1.721–1 is amended by adding new paragraph (d) to read as follows:

§ 1.721–1 Nonrecognition of gain or loss on contribution.

* * * * *

(d) *Debt-for-equity exchange*—(1) *In general.* Except as otherwise provided in section 721 and the regulations under section 721, section 721 applies to a contribution of a partnership's indebtedness by a creditor to the debtor partnership in exchange for a capital or profits interest in the partnership (debt-for-equity exchange). See § 1.108–8(a) for rules in determining the debtor partnership's discharge of indebtedness income.

(2) *Exception.* Section 721 does not apply to a debt-for-equity exchange to the extent the transfer of the partnership interest to the creditor is in exchange for the partnership's indebtedness for unpaid rent, royalties, or interest (including accrued original issue discount) that accrued on or after the beginning of the creditor's holding period for the indebtedness. The debtor partnership will not recognize gain or loss upon the transfer of a partnership interest to a creditor in a debt-for-equity exchange for unpaid rent, royalties, or interest (including accrued original issue discount).

(3) *Cross reference.* For rules in determining whether a partnership interest transferred to a creditor in a debt-for-equity exchange is treated as payment of interest or accrued original issue discount, see §§ 1.446–2 and 1.1275–2, respectively.

(4) *Effective/applicability date.* This paragraph (d) applies to debt-for-equity exchanges occurring on or after November 17, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: November 8, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury.

[FR Doc. 2011–29553 Filed 11–15–11; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9554]

RIN 1545–BJ07

Extending Religious and Family Member FICA and FUTA Exceptions to Disregarded Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document describes a correction to final and temporary regulations (TD 9554) extending the exceptions from taxes under the Federal Insurance Contributions Act (''FICA'') and the Federal Unemployment Tax Act (''FUTA'') under sections 3121(b)(3) (concerning individuals who work for certain family members), 3127 (concerning members of religious faiths), and 3306(c)(5) (concerning persons employed by children and spouses and children under 21 employed by their parents) of the Internal Revenue Code (''Code'') to entities that are disregarded as separate from their owners for Federal tax purposes. The temporary regulations also clarify the existing rule that the owners of disregarded entities, except for qualified subchapter S subsidiaries, are responsible for backup withholding and related information reporting requirements under section 3406. These regulations were published in the **Federal Register** on Tuesday, November 1, 2011 (76 FR 67363).

DATES: This correction is effective on November 17, 2011, and is applicable on November 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph Perera, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under section 7701 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9554) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recording requirements.

Correction of Publication

Accordingly, 26 CFR part 301 is corrected by making the following correcting amendment:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 2.** Section 301.7701–2T is added to read as follows:

§ 301.7701–2T Business entities; definitions (temporary).

(a) through (c)(2)(iv) [Reserved]. For further guidance, see § 301.7701–2(a) through (c)(2)(iv).

(A) *In general.* Section § 301.7701–2(c)(2)(i) (relating to certain wholly owned entities) does not apply to taxes imposed under Subtitle C—Employment Taxes and Collection of Income Tax (chapters 21, 22, 23, 23A, 24 and 25 of the Internal Revenue Code). However, § 301.7701–2(c)(2)(i) does apply to withholding requirements imposed under section 3406 (backup withholding). The owner of a business entity that is disregarded under § 301.7701–2 is subject to the withholding requirements imposed under section 3406 (backup withholding). Section 301.7701–2(c)(2)(i) also applies to taxes imposed under Subtitle A, including Chapter 2—Tax on Self Employment Income. The owner of an entity that is treated in the same manner as a sole proprietorship under § 301.7701–2(a) will be subject to tax on self-employment income.

(B) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(B).

(C) *Exceptions.* For exceptions to the rule in § 301.7701–2(c)(2)(iv)(B), see sections 31.3121(b)(3)–1(d), 31.3127–1(c), and 31.3306(c)(5)–1(d).

(D) through (e)(4) [Reserved]. For further guidance, see § 301.7701–2(c)(2)(iv)(D) through (e)(4).

(5) Paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section apply to wages paid on or after November 17, 2011. For rules that apply to paragraph (c)(2)(iv)(A) of this section before November 17, 2011, see 26 CFR part 301 revised as of April 1, 2009. However, taxpayers may apply paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section to wages paid on or after January 1, 2009.

(e)(6) through (e)(7) [Reserved]. For further guidance, see § 301.7701–2(e)(6) through (e)(7).

(8) *Expiration Date.* The applicability of paragraphs (c)(2)(iv)(A) and (c)(2)(iv)(C) of this section expires on or before November 14, 2014.

LaNita Van Dyke,

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

[FR Doc. 2011–29560 Filed 11–16–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1042]

Drawbridge Operation Regulation; China Basin, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Third Street Drawbridge across China Basin, mile 0.0, at San Francisco, CA. The deviation is necessary to allow the City of San Francisco to inspect the bridge structure as required by the U.S. Department of Transportation. This deviation allows the bridge to be secured in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 10 a.m. to 2 p.m. on November 16, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–1042 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1042 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 rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437–3516, email *David.H.Sulouff@uscg.mil* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The City of San Francisco requested a temporary change to the operation of the Third Street Drawbridge, mile 0.0, over China Basin, at San Francisco, CA. The drawbridge navigation span provides a vertical clearance of 3 feet above Mean High Water in the closed-to-navigation position. As required by 33 CFR 117.149, the draw shall open on signal if at least one hour notice is given to the San Francisco Department of Public Works. Navigation on the waterway is commercial and recreational.

The Third Street Drawbridge will be secured in the closed-to-navigation position from 10 a.m. to 2 p.m. on November 16, 2011, to allow the City of San Francisco to inspect the bridge structure as required by the U.S. Department of Transportation. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were received.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time. In the event of an emergency, the drawbridge can open upon one hour notice.

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

Dated: November 3, 2011.

D.H. Sulouff,

Bridge Section Chief, Eleventh Coast Guard District.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0025; FRL–9489–8]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); General Definitions; Definition of Modification of Existing Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving, as proposed July 18, 2011, several revisions to the State Implementation Plan (SIP) for the State of Texas that relate to severable portions of the definition of ''modification of existing facility'' in the general definitions for the Texas NSR Program. EPA finds that these changes to the Texas SIP comply with the Federal Clean Air Act (the Act or CAA) and EPA regulations, and are consistent with EPA policies. EPA is also disapproving a severable portion of the definition that was proposed for disapproval on September 23, 2009. EPA is taking these actions under section 110 of the Act.

DATES: This final rule is effective December 19, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0025. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working

days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, *telephone* (214) 665–7212; *fax number* (214) 665–6762; *email address spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever any reference to ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. The State's Submittals

On March 13, 1996; July 22, 1998; and September 4, 2002; the State of Texas submitted revisions to the Texas State Implementation Plan (SIP) concerning the definition of ''modification of existing facility'' for minor source permitting under Title 30 of the Texas Administrative Code (30 TAC), Chapter 116—Control of Air Pollution by Permits for New Construction or Modification, Subchapter A—Definitions. The definition of ''modification of existing facility'' for minor NSR permitting is located at 30 TAC 116.10(11) in the September 4, 2002, submittal. The March 13, 1996, revisions to this definition were repealed and readopted, and new versions were submitted to EPA on July 22, 1998. This definition was later recodified from 30 TAC 116.10(9) to 116.10(11) in a SIP submittal dated September 4, 2002.

Section 30 TAC 116.10—General Definitions—is currently approved as adopted by Texas on August 21, 2002, and as approved April 14, 2010 (75 FR 19468). As approved, the current SIP does not include all the definitions under Section 116.10, including the definition of ''modification of existing facility'' found in Section 116.10(11). On July 18, 2011 (76 FR 42078), EPA proposed to approve severable portions of this definition first adopted by Texas on February 14, 1996 (submitted March 13, 1996). The next submittal reflects the Texas repeal and readoption of this definition as Section 116.10(9) on June 17, 1998 (submitted July 22, 1998). The regulatory history of the March 13, 1996 submittal was used to evaluate the later submittals. On July 18, 2011 (76 FR 42078), we proposed to approve severable portions of the definition ''modification of existing facility'' as submitted on July 22, 1998, and the redesignation of this definition to Section 116.10(11) adopted August 21, 2002 (submitted September 4, 2002). We also proposed to approve Subparagraphs (C) and (D) of this definition as submitted July 22, 1998, and September 4, 2002. In response to this proposal, we received comments from the Texas Industry Project (TIP) and the BCCA Appeal Group (BCCAAG).

On September 23, 2009 (74 FR 48450), EPA proposed to disapprove severable portions of the definition of ''modification of existing facility'' under Subparagraph (G). In response to this proposal, we received comments from the University of Texas at Austin, Environmental Clinic (UT Environmental Clinic).[1] Today, we finalize our disapproval of Subparagraph (G) as not meeting the requirements of the CAA.

EPA is taking these actions under section 110 of the Act.

Finally, please note that Texas submitted further revisions to 30 TAC 116.10 on October 5, 2010. This includes the removal of two definitions, the renumbering of other definitions, and revisions to certain definitions. In this October 2010 submittal, TCEQ renumbered the definition of ''modification of existing facility'' to Section 116.10(9) and relettered Subparagraphs (C) and (D) to Subparagraphs (B) and (C), respectively, with no other changes. We are not acting on the October 5, 2010, SIP submittal here. We will address the October 2010 SIP revisions in a separate action.

Additional information related to these SIP submittals is contained in the Technical Support Documents (TSD) for the September 23, 2009,[2] and July 18, 2011,[3] proposals, which are in the docket for this action.

The table below summarizes the changes that were submitted and are affected by this action. A summary of EPA's evaluation of each section and the basis for this proposal is discussed in section III of this preamble. The TSD includes a detailed evaluation of the referenced SIP submittals.

[1] The UT Environmental Clinic forwarded its comments on behalf of: Environmental Integrity Project: Environmental Defense Fund; Galveston-Houston Association for Smog Prevention; Public Citizen; Citizens for Environmental Justice; Sierra Club Lone Star Chapter; Community-In-Power and Development Association; KIDS for Clean Air; Clean Air Institute of Texas; Sustainable Energy and Economic Development Coalition; Robertson County: Our Land, Our Lives; Texas Protecting Our Land, Water, and Environment; Citizens for a Clean Environment; Multi-County Coalition; and Citizens Opposing Power Plants for Clean Air.

[2] The TSD for the September 23, 2009, proposal is in the docket as document EPA–R06–OAR–2005–TX–0025–0007. You can access this TSD on line at: *http://www.regulations.gov/#!documentDetail;D=EPA-R06-OAR-2005-TX-0025-0007.*

[3] The TSD for the July 18, 2011, proposal is in the docket as document EPA–R06–OAR–2005–TX–0025–0378. You can access this TSD on line at: *http://www.regulations.gov/#!documentDetail;D=EPA-R06-OAR-2005-TX-0025-0378.*

Section	Title	Date submitted	Date adopted by TCEQ	Description of change	Date of EPA proposed action	Final EPA action
30 TAC 116.10(11)	Definition of modification of existing facility—Introductory paragraph.	3/13/1996 7/22/1998 9/4/2002	2/14/1996 6/17/1998 8/21/2002	Initial adoption ..... Repeal and readoption as Section 116.10(9). Recodification to Section 116.10(11).	7/18/2011—proposed approval.	Approval.
30 TAC 116.10(11)(C)	Exclusion of maintenance and replacement of equipment.	3/13/1996 7/22/1998 9/4/2002	2/14/1996 6/17/1998 8/21/2002	Initial adoption ..... Repeal and readoption as Section 116.10(9)(C). Recodification to Section 116.10(11)(C).	7/18/2011—proposed approval.	Approval.
30 TAC 116.10(11)(D)	Exclusion of increase in annual hours of operation.	3/13/1996 7/22/1998 9/4/2002	2/14/1996 6/17/1998 8/21/2002	Initial adoption ..... Repeal and readoption as Section 116.10(9)(D). Recodification to Section 116.10(11)(D).	7/18/2011—proposed approval.	Approval.
30 TAC 116.10(11)(G)	Exclusion of certain changes natural gas processing, treating, or compression facilities.	3/13/1996 7/22/1998 9/4/2002	2/14/1996 6/17/1998 8/21/2002	Initial adoption ..... Repeal and readoption as Section 116.10(9)(G). Recodification to Section 116.10(11)(G).	9/23/2009—proposed disapproval.	Disapproval.

In a separate proposal published on September 23, 2009, 74 FR 48450, EPA proposed to disapprove severable provisions in Subparagraphs (A), (B), and (G) of the definition of ''modification of existing facility'' at 30 TAC 116.10(11). In light of revisions that were submitted on October 5, 2010, revising the language of Subparagraph (A) and eliminating Subparagraph (B), EPA will withdraw its proposed actions on Subparagraphs (A) and (B) in a separate action. Subparagraph (A) as it appears in the October 5, 2010, submittal will be evaluated and will be addressed in a separate future action. Based upon our proposed disapproval of 30 TAC 116.10(11)(G) and our evaluation of the comments received on that proposal, EPA is taking final action to disapprove 30 TAC 116.10(11)(G) submitted March 13, 1996; July 22, 1998; and September 4, 2002.

II. What action is EPA taking?

We have evaluated severable portions of the SIP submissions of 30 TAC 116.10(11), which include the introductory paragraph of the definition of ''modification of existing facility,'' and Subparagraphs (C) and (D) of that definition for consistency with the CAA, and NSR regulations for new and modified sources in 40 CFR part 51. We have also reviewed the rules for enforceability and legal sufficiency.

This action addresses severable portions of the definition of modification of existing facility under 30 TAC 116.10(11), including the introductory paragraph and Subparagraphs (C) and (D) of the definition submitted March 13, 1996; July 22, 1998; and September 4, 2002. A technical analysis of the submittals for this definition has found that these changes meet the CAA and 40 CFR part 51. EPA received two comments in support of this proposal and did not receive any adverse comments. Therefore, EPA approves as proposed the severable portions of the definition of ''modification of existing facility'' under 30 TAC 116.10(11), including the introductory paragraph of Section 116.10(11) and Subparagraphs (C) and (D) of this definition, submitted on March 13, 1996; July 22, 1998; and September 4, 2002. As discussed earlier, in a separate SIP submittal dated October 5, 2010, 30 TAC 116.10(11) Subparagraphs (C) and (D) were renamed as 30 TAC 116.10(9) and Subparagraphs (B) and (C), respectively. EPA is not acting on the changes submitted October 2010, and will address these revisions in a separate action.

In a separate proposal published on September 23, 2009 (74 FR 48450), EPA proposed to disapprove 30 TAC 116.10(11)(G). Based upon our proposed disapproval of this rule and our evaluation of the comments received on our proposed disapproval of Subsection (G), EPA is taking final action to disapprove 30 TAC 116.10(11)(G) submitted March 13, 1996; July 22, 1998; and September 4, 2002.

On September 23, 2009, 74 FR 48450, EPA also proposed to disapprove severable provisions in Subparagraphs (A) and (B) of the definition of ''modification of existing facility.'' In light of revisions that were submitted on October 5, 2010, revising the language of Subparagraph (A) and eliminating Subparagraph (B), EPA will withdraw its proposed actions on Subparagraphs (A) and (B) in a separate action. Subparagraph (A) as it appears in the October 5, 2010, submittal will be evaluated and will be addressed in a separate future action.

III. EPA's Evaluation of Severable Portions of the Definition of ''Modification of Existing Facility''

A. Approval of 30 TAC 116.10(11)—Introductory Paragraph of the Definition of ''Modification of Existing Facility''

1. What is the background of the introductory paragraph of 30 TAC 116.10(11)—introductory paragraph?

The TCEQ initially submitted the introductory paragraph of the general definition of ''modification of existing facility'' on March 13, 1996. On July 22, 1998, TCEQ repealed and resubmitted this definition as readopted at 30 TAC 116.10(9). On September 4, 2002, TCEQ submitted revisions that redesignated this definition to 30 TAC 116.10(11). The submitted regulatory definition of the introductory paragraph that we are addressing here provides that a modification of an existing facility is ''any physical change in, or change in

the method of operation of, a facility in a manner that increases the amount of air contaminants emitted by the facility into the atmosphere or which results in the emission of any air contaminant not previously emitted.''

2. What is EPA's evaluation of the submitted revisions to the introductory paragraph of 30 TAC 116.10(11)?

EPA approved the definition of ''facility'' in Subchapter A: Definitions on September 6, 2006 (71 FR 52698) as part of the Texas SIP. ''Facility'' is defined as ''[a] discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not a facility.'' See approved SIP at 30 TAC 116.10(6). The submitted regulatory definition for ''modification of existing facility'' also is in Subchapter A, Section 116.10. Therefore, ''existing facility'' is limited by the terms of the SIP definition of ''facility.'' In our evaluation of this introductory paragraph in the submitted regulatory definition of modification of existing facility, we compared it to how ''modification'' is defined in the CAA and in our regulations.

The CAA defines modification in Section 111(a)(4) as ''any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any pollutant not previously emitted.'' In 40 CFR 52.01(d), the phrases ''modification'' and ''modified source'' are defined as any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any air pollutant for which a national standard has been promulgated under part 50 of this chapter or which results in the emission of any such pollutant not previously emitted.

The introductory paragraph of 30 TAC 116.10(11) is substantially the same as the definitions in section 111(a)(4) of the Act and 40 CFR 52.01(d).

The existence of a different definition for ''major modification,'' in Section 116.12—Nonattainment and Prevention of Significant Review Definitions—that is applicable for Major NSR [4] serves to distinguish the provisions in the introductory paragraph of section 116.10(11) from the Major NSR Program and limit its application to Minor NSR.

In response to our proposed approval, we received comments from TIP and BCCAAG. The commenters agree that the regulatory language in 30 TAC 116.10(11) is consistent with the CAA and EPA regulations and that SIP approval is warranted.

Based upon the proposal and consideration of the comments we received, we are approving the introductory paragraph of 30 TAC 116.10(11), as submitted March 13, 1996; July 22, 1998; and September 4, 2002.

B. Approval of 30 TAC 116.10(11)(C)—Exclusion for Maintenance and Replacement of Equipment

1. What is the background of 30 TAC 116.10(11)(C)?

On March 13, 1996, this provision was submitted as Subparagraph (C) under the definition of ''modification of existing facility.'' In the July 22, 1998, submittal, the provision was repealed and resubmitted as 30 TAC 116.10(9)(C). On September 4, 2002, TCEQ submitted revisions that redesignated this definition to 30 TAC 116.10(11)(C). As submitted, Subparagraph (C) provides that maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere is not a modification to an existing facility.

2. What is EPA's evaluation of the submitted revisions to 30 TAC 116.10(11)(C)?

The submitted Subparagraph (C) mirrors the definition in the Texas Clean Air Act (TCCA). Under Subparagraph (C), any maintenance and repair of equipment components that increases emissions, or tends to increase emissions, will be considered a modification consistent with the introductory paragraph of 30 TAC 116.10(11). Accordingly, the limitation in Subparagraph (C) protects against increases in emissions and thereby does not interfere with attainment or reasonable further progress. The definition of ''major modification'' in Section 116.12 has a different exclusion for routine maintenance, repair, and replacement. The existence of a different exclusion in the Section 116.12 that is applicable for Major NSR serves to distinguish the provisions in paragraph (C) from the Major NSR Program and limit its application to Minor NSR.

In response to our proposed approval, we received comments from TIP and BCCAAG. The commenters agree that the regulatory language in 30 TAC 116.10(11)(C) is consistent with the CAA and EPA regulations and that SIP approval is warranted.

Based upon the proposal and consideration of the comments we received, we are finalizing our approval of 30 TAC 116.10(11)(C), as submitted March 13, 1996; July 22, 1998; and September 4, 2002.

C. Approval of 30 TAC 116.10(11)(D)—Exclusion for an Increase in Annual Hours of Operation

1. What is the background of 30 TAC 116.10(11)(D)?

On March 13, 1996, this provision was submitted as Subparagraph (D) under the definition of ''modification of existing facility.'' In the July 22, 1998, submittal, the provision was repealed and resubmitted as 30 TAC 116.10(9)(D). On September 4, 2002, TCEQ submitted revisions that redesignated this definition to 30 TAC 116.10(11)(D). As submitted, Subparagraph (D) provides that an increase in the annual hours of operation is not a modification to an existing facility, unless the existing facility has received a preconstruction permit or has been exempted, under TCAA, § 382.057, from preconstruction permit requirements.

2. What is EPA's evaluation of the submitted revisions to 30 TAC 116.10(11)(D)?

The submitted Subparagraph (D) mirrors the definition in the Texas Clean Air Act (TCCA). Subparagraph (D) is similar to 40 CFR 52.01(d)(2)(ii), which provides that an increase in the hours of operation shall not be considered a change in the method of operation. The operative language in the submitted Subparagraph (D) is substantially the same as 40 CFR 52.01(d)(2)(ii). Furthermore, Subparagraph (D) includes additional language that clarifies that an increase in hours of operation may be a modification for existing minor facilities having preconstruction permits or exemptions, under TCAA § 382.057 [5] for preconstruction permit requirements. This language limits the reach of the

[4] Section 116.12 as currently approved in the Texas SIP applies only to the Major NSR Program for Nonattainment Review. SIP revisions submitted February 1, 2006, and March 11, 2011, revised the definition to apply to both Nonattainment Review and Prevention of Significant Deterioration. EPA is currently reviewing these revisions and plans to act upon them shortly. The definitions in Section 116.12 are effective as State rules and the TCEQ implements them as part of its Major NSR Program.

[5] The term ''exemptions'' is a misnomer. Exemptions in Texas now are called Permits by Rule. An ''exemption'' since 1972 in Texas and in the Texas SIP, is an authorization to construct and/or modify if certain conditions are met.

exclusion in scenarios where an existing facility is subject to limitations on hours of operation under the terms of a preconstruction permit or an exemption. This is consistent with Federal requirements in 40 CFR 52.01(d)(2)(ii). Subparagraph (D) meets the Federal requirements as described above. Again, the definition of ''major modification'' in Section 116.12 has a different exclusion for an increase in the annual hours of operation. The existence of a different exclusion in the Section 116.12 that is applicable for Major NSR serves to distinguish the provisions in paragraph (D) from the Major NSR Program and limit its application to Minor NSR.

In response to our proposed approval, we received comments from TIP and BCCAAG. The commenters agree that the regulatory language in 30 TAC 116.10(11)(D) is consistent with the CAA and EPA regulations and that SIP approval is warranted.

Based upon the proposal and consideration of the comments we received, we are finalizing our approval of 30 TAC 116.10(11)(D), as submitted March 13, 1996; July 22, 1998; and September 4, 2002.

D. Disapproval of 30 TAC 116.10(11)(G)—Exclusions for Changes at Certain Natural Gas Processing, Treating, or Compression Facilities

1. What is the background of 30 TAC 116.10(11)(G)?

On March 13, 1996, this provision was submitted as Subparagraph (G) under the definition of ''modification of existing facility.'' In the July 22, 1998, submittal, the provision was repealed and resubmitted as 30 TAC 116.10(9)(D). On September 4, 2002, TCEQ submitted revisions that redesignated this definition to 30 TAC 116.10(11)(D). On September 23, 2009, EPA proposed to disapprove the submitted revisions relating to 30 TAC 116.10(11)(G).

2. What is EPA's evaluation of the submitted revisions to 30 TAC 116.10(11)(G)?

The submittals provide that changes at certain natural gas processing, treating, or compression facilities are not modifications if the change does not result in an annual emissions rate of any air contaminant in excess of the volume for grandfathered facilities. The ''annual emissions rate'' is the same as the ''volume emitted at maximum design capacity;'' therefore, this would provide an exemption for those sources from permit review for any emission increases at these facilities. The requirements of 40 CFR 51.160(e) allow a State to identify facilities which will be subject to review under its minor NSR program and require its minor NSR SIP to discuss the basis for determining which facilities will be subject to review. The submittals, however, do not contain an applicability statement or regulatory provision limiting this type of change to minor NSR. There is no explanation of the reason for exempting this type of change from the permitting SIP requirements. Without the submittal by the State of an analysis describing how this exemption does not negate the major NSR SIP requirements and meets the minor NSR SIP requirements in 40 CFR 51.160 and the Act's antibacksliding requirements in section 110(l), EPA proposed to disapprove this submitted definition.

In response to our proposed disapproval, we received comments from the UT Environmental Clinic (Clinic) and TCEQ. The Clinic supported the disapproval of this exemption from the definition of modification of existing facility because the exemption could apply to major modifications and because TCEQ did not demonstrate that the exemption will not interfere with attainment or cause a violation of a control strategy. EPA acknowledges that these comments support its basis for proposing disapproval of this exemption because it could allow major modifications without undergoing review that satisfies the applicable permitting requirements for Major NSR under 40 CFR 51.165 and/or 51.166, as applicable. The exemption may also allow a source to increase emissions without a demonstration that such change will not interfere with attainment or maintenance of a National Ambient Air Quality Standard (NAAQS) or cause a violation of a control strategy. The TCEQ commented that it will consider EPA's comments regarding its proposed disapproval of 30 TAC 116.10(11)(G), but provided no information which demonstrates that this provision meets the requirements for SIP approval.[6]

3. What are the grounds for disapproval of 30 TAC 116.10(11)(G)?

Based upon the September 23, 2009, proposal and the consideration of comments provided, EPA is disapproving the exemption in 30 TAC 116.10(11)(G) on the following grounds:

- This definition exempts changes at certain natural gas processing, treating, or compression facilities as non-modifications if the change does not result in an annual emissions rate of any air contaminant in excess of the volume for grandfathered facilities from the definition of modification of existing facility. However, TCEQ did not provide any discussion of the basis for this exemption as required by 40 CFR 51.160(e).
- The submitted definition includes no applicability statement or regulatory provision limiting this type of change to minor NSR.
- The submitted rule includes no demonstration that the exempted change at a natural gas processing, treating, or compression facility does not result in an annual emissions rate of any air contaminant in excess of the volume for grandfathered facilities, and does not interfere with attainment or maintenance of a NAAQS or cause a violation of a control strategy as required under 40 CFR 51.161(a).

Based upon the September 23, 2009, proposal, and consideration of the comments received, we are finalizing our disapproval of 30 TAC 116.10(11)(G) as submitted March 11, 1996; July 22, 1998; and September 4, 2002.

E. Response to Other Comments on the July 18, 2011, Proposal

TIP and BCCAAG commented that EPA should take into account the dramatic improvements in Texas's air quality in acting on the definition of ''modification of existing facility'' and other SIP revisions. The commenters assert that Texas's integrated air permitting program, including the definition which EPA now proposes to approve, has played a key role in Texas's air quality success. TIP and BCCAAG urge EPA to approve the entire ''modification of existing facility'' as part of this integrated program. The commenters cite to substantial reductions in several air pollutants and reductions in ambient concentrations in monitored levels of ozone, nitrogen dioxide, sulfur dioxide, and carbon monoxide from 1990 to 2009.

Our actions on the severable parts of the definition of ''modification of existing facility'' are based upon whether the definition meets the applicable requirements of the CAA, as discussed herein. EPA is required to review a SIP revision submission for compliance with the CAA and EPA regulations. CAA 110(k)(3). See also *BCCA Appeal Group* v. *EPA,* 355 F 3d. 817, 822 (5th Cir. 2003), *Natural Resource Defense Council* v. *Browner,* 57 F.3d 1122, 1123 (DC Cir. 1995).

[6] On October 5, 2010, TCEQ submitted a revision that renumbered 30 TAC 116.10(11)(G) to 30 TAC 116.10(9)(F), but made no changes to the substance of this provision.

The submitted data, even if accepted, does not show that gains are attributable to the definition of ''modification of existing facility,'' and the commenter's claim regarding the data does not take account of SIP-approved control strategies (both State and Federal programs) and other Federal and State programs. The approvals of revisions which we finalize today are based on our review of the Texas submittals following the analysis furnished in the proposal in accordance with the CAA.

IV. Final Action

Today, EPA is approving the following revisions to the Texas SIP to include severable provisions of the definition of ''modification of existing facility'' under 30 TAC 116.10(11), submitted March 13, 1996; July 22, 1998; and September 4, 2002. This includes the following:

- 30 TAC 116.10(11)—the introductory paragraph of the definition of ''modification of existing facility;''
- 30 TAC 116.10(11)(C)—Exclusion for maintenance and replacement of equipment; and
- 30 TAC 116.10(11)(D)—Exclusion for an increase in annual hours of operation.

Today, EPA is also disapproving the severable portion of definition of ''modification of existing facility'' under 30 TAC 116.10(11)(G), submitted March 13, 1996; July 22, 1998; and September 4, 2002.

Final action on these revisions on or before October 31, 2011, will meet EPA's obligation on the NSR Rules Revisions; 112(g) Revisions component of the May 21, 2009, Settlement Agreement between EPA and the Business Coalition for Clean Air Appeal Group, Texas Association of Business, and Texas Oil and Gas Association.

EPA is not taking further action on the following severable provisions of 30 TAC 116.10(11):

- 30 TAC 116.10(11)(E). EPA disapproved Subparagraph (E) in a separate action on April 14, 2010, 75 FR 19468. EPA will address any subsequent submittals containing Subparagraph (E) as newly revised in a separate action.
- 30 TAC 116.10(11)(F). EPA disapproved Subparagraph (F) in a separate action on July 15, 2010, 75 FR 41312. EPA will address any subsequent submittals containing Subparagraph (F) as newly revised in a separate action.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this SIP approval and disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply approves and disapproves certain State severable requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b). Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the States are already imposing.

Furthermore, as explained in this action, a severable portion of the submissions does not meet the requirements of the Act and EPA cannot approve the severable portion of the submissions. The final disapproval will not affect any existing State requirements applicable to small entities in the State of Texas. Federal disapproval of a severable portion of a State submittal does not affect its State enforceability. After considering the economic impacts of today's rulemaking on small entities, and because the Federal SIP disapproval does not create any new requirements or impact a substantial number of small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 ''for State, local, or tribal governments or the private sector.'' EPA has determined that the approval and disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action determines that pre-existing requirements under State or local law should not be approved as part of the Federally-approved SIP. It imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government.''

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves and disapproves severable portions of certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000) because the rule neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Therefore, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This SIP approval and disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 17, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: October 31, 2011.

Al Armendariz,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7402 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended under Chapter 116, Subchapter A, by revising the entry for Section 116.10 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State-approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116—Control of Air Pollution by Permits for New Construction or Modification Subchapter A—Definitions				
Section 116.10	General Definitions	8/21/2002	November 17, 2011, [Insert FR page number where document begins].	The SIP does not include paragraphs (1), (2), (3), (7)(F), (11)(A), (11)(B), (11)(E), (11)(F), (11)(G), and (16).
*	*	*	*	*

■ 3. Section 52.2273 is revised by adding a new paragraph (g) to read as follows:

§ 52.2273 Approval status.

* * * * *

(g) EPA has disapproved the Texas SIP revision submittals under 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification—Subchapter A—Definitions—Section 116.10(11)(G), adopted February 14, 1996, and submitted March 13, 1996; repealed and re-adopted June 17, 1998, and submitted July 22, 1998; and adopted August 21, 2002, and submitted September 4, 2002.

[FR Doc. 2011–29641 Filed 11–16–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 00–168, 00–44; FCC 11–162]

Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts an Order on Reconsideration that vacates Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement For Children's Television Programming Report (FCC Form 398), MB Docket No. 00–168, 00–44, FCC 07–205, *Report & Order,* (''*Order*''). The *Order* created a standardized form for the quarterly reporting of programming aired in response to issues facing a television station's community and a requirement that portions of each television station's public inspection file be placed on the Internet. The *Order* was never implemented.

DATES: Effective November 17, 2011.

FOR FURTHER INFORMATION CONTACT: *Holly Saurer, Holly.Saurer@fcc.gov* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Order on Reconsideration in MB Docket No. 00–168, 00–44, FCC 11–162, adopted October 27, 2011, and released October 27, 2011. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Final Rule

I. Introduction

1. In this *Order on Reconsideration* we take steps to modernize the way television broadcasters inform the public about how they are serving their communities. We vacate the prior *Report and Order,*[1] thereby resolving pending petitions for reconsideration of that order, re-codify the public file rules in existence prior to adoption of the *Report and Order,* and seek comment on the proposals set forth in a Further Notice of Proposed Rulemaking.

II. Background

2. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. Broadcasters are afforded considerable flexibility in how they meet that obligation, but they must maintain a public inspection file, which gives the public access to information about the station's operations and enables members of the public to engage in an active dialogue with broadcast licensees regarding broadcast service. Among other things, the public inspection file must contain an issues/programs list, which describes the ''programs that have provided the station's most significant treatment of community issues during the preceding three month period.'' The original *Notice of Proposed Rulemaking* in this proceeding grew out of a prior *Notice of Inquiry,* which explored the public interest obligations of broadcast television stations as they transitioned to digital.[2] In the 2000 *NPRM,* the

[1] *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Report and Order, 73 FR 13452 (2007) (''*Report and Order*''); *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Erratum, 73 FR 30316 (2007).

[2] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Notice of Proposed Rulemaking, 65 FR 62683 (2000) (''*NPRM*''); *In the Matter of Public Interest Obligations of TV*

Continued

Commission concluded that ''making information regarding how a television broadcast station serves the public interest easier to understand and more accessible will not only promote discussion between the licensee and its community, but will lessen the need for government involvement in ensuring that a station is meeting its public interest obligation.'' The Commission tentatively concluded to require television stations to use a standardized form to report on how they serve the public interest. The Commission also tentatively concluded to require television licensees to make the contents of their public inspection files, including the standardized form, available on their stations' Internet Web sites or, alternatively, on the Web site of their state broadcasters association. In 2007, the Commission adopted a *Report and Order* implementing these proposals.

3. Following the release of the *Report and Order,* the Commission received petitions for reconsideration from several industry petitioners and public interest advocates. The industry petitioners raised a number of issues regarding the standardized form and the online posting requirement, generally contending that the requirements were overly complex and burdensome. Public interest advocates argued that the political file [3] should be included in the online public file requirement rather than exempted as provided in the *Report and Order,* and that the standardized form should be designed to facilitate the downloading and aggregation of data for researchers. In addition, five parties appealed the *Report and Order,* and the cases were consolidated in the United States Court of Appeals for the DC Circuit. The DC Circuit granted a petition to hold the proceeding in abeyance while we review the petitions for reconsideration. Challenging the rules in a third forum, several parties opposed the information collection contained in the *Report and Order* at the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act. Because of the multiple petitions for reconsideration, the Commission has not transmitted the information collection to OMB for its approval, and therefore the rules adopted in the *Report and Order* have never gone into effect.[4]

4. In June 2011, a working group including Commission staff, scholars and consultants released ''The Information Needs of Communities'' (''*INC Report''*), a comprehensive report on the current state of the media landscape.[5] The *INC Report* discussed both the need to empower citizens to ensure that broadcasters serve their communities in exchange for the use of public spectrum, and also the need to remove unnecessary burdens on broadcasters who aim to serve their communities. The *INC Report* provided several recommendations relevant to this proceeding, including eliminating unnecessary paperwork and moving toward an online system for public disclosures in order to ensure greater public access. The *INC Report* also recommended requiring that when broadcasters allow advertisers to dictate content, they disclose the ''pay-for-play'' arrangements online as well as on the air in order to create a permanent, searchable record of these arrangements and afford easy access by consumers, competitors and watchdog groups to this information. The Report also suggested that governments at all levels collect and publish data in forms that make it easy for citizens, entrepreneurs, software developers, and reporters to access and analyze information in order to enable mechanisms that can present the data in more useful formats, and noted that greater transparency by government and media companies can help reduce the cost of reporting, empower consumers, and foster innovation.

5. In the *Order on Reconsideration,* we conclude, in light of the reconsideration petitions we received with respect to the *Report and Order* and the comments and replies thereto, that the best course of action is to vacate the rules adopted in the *Report and Order* and develop a new record upon which we can evaluate our public file and standardized form requirements.

III. Order on Reconsideration

6. We issued the 2007 *Report and Order* to modernize broadcasters' traditional public file requirement to improve the public's access to information on how the stations are serving their local communities. We remain dedicated to that objective and to bringing broadcast disclosure into the 21st century. Nonetheless, the reconsideration petitions we received from broadcasters and public interest advocates and the responses thereto have persuaded us to reexamine the balance we struck in 2007 between public access to station information and the burden providing such access imposes on broadcasters. In particular, the *Report and Order* was based upon an *NOI* and an *NPRM* that were issued over a decade ago, and the record upon which those rules were adopted does not reflect the rapid technological advances that have occurred over the last ten years. Furthermore, the *Report and Order* was issued approximately three and a half years ago, and since then we have seen even more technological and marketplace changes that may be pertinent to our consideration of broadcasters' public disclosure obligations. In light of these considerations, we conclude that the best course of action is to take a fresh look at the policy issues raised in this proceeding.

7. We further conclude that we should vacate the *Report and Order.* The rules adopted in that order cannot take effect without OMB approval of the information collection under the Paperwork Reduction Act, and we see no reason to undertake that process given our decision to take a fresh look at the issues. Accordingly, vacating the *Report and Order* will have no practical effect on any party. Moreover, the record compiled thus far in this proceeding will continue to be available to any party going forward, and it will also be incorporated into the new docket we will create to focus on the standardized form. In these circumstances, we see no benefit to keeping the *Report and Order* in place, and by vacating that decision, we remove any procedural or regulatory uncertainty that might otherwise arise if we failed to take action to respond to the reconsideration petitions that have been filed while moving forward to reevaluate the issues.[6] Although the

Broadcast Licensees, Notice of Inquiry, 65 FR 4211 (1999)(''*NOI*'').

[3] Sections 73.3526(e)(6), 73.3527(e)(5) and 73.1943 of the Commission's rules require that stations keep as part of the public inspection files a ''political file.''

[4] *See also* 47 CFR 73.3526, effective date nt. 2; 47 CFR 73.3526, effective date note; 47 CFR 73.1201, effective date note 2.

[5] ''The Information Needs of Communities: The Changing Media Landscape in a Broadband Age,'' by Steven Waldman and the Working Group on Information Needs of Communities (June 2011), available at *http://www.fcc.gov/infoneedsreport.* As noted in the INC Report, the views of the report ''do not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices.'' *Id.* at 362.

[6] The Commission has inherent authority to revisit its policy determinations at any time, and when it does so, it ''need not demonstrate to a court's satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.'' *FCC* v. *Fox Television Stations, Inc.,* 129 S. Ct. 1800, 1811 (2009). For these reasons, we do not believe that the *Report and Order* in any way binds

2007 rules never became effective, they appear in the Code of Federal Regulations (''CFR''), while the pre-existing public file rules, which remain in effect, were removed from the CFR. For purposes of clarification, these pre-existing public file rules are being added back to the CFR, as reflected in the rules as outlined in the document. We believe that it is important to re-codify the existing rules, so that the CFR reflects the rules in existence at this time, and so that the public and stations can clearly find the public file and station identification requirements.

8. For the foregoing reasons, we grant the petitions for reconsideration that were filed, to the extent our vacatur of the *Report and Order* grants the relief requested by the petitions. In all other respects, the reconsideration petitions are dismissed as moot.

IV. Procedural Matters

9. The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

10. Accordingly, *It Is Ordered* that pursuant to the Sections 4(i), 303 and 405 of the Communications Act, 47 U.S.C. 154(i), 303, and 405, the Report and Order released on January 24, 2008 in the above captioned proceeding is *Vacated* on our own motion, and 47 CFR 73.1201(b), 3526(b) and (e)(11) and 3527(b) and (e)(8) will be re-codified consistent with the rules outlined in this document.

11. *It Is Further Ordered* that pursuant to Sections 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 405, and Section 1.106 of the Commission's rules, 47 CFR 1.106, the Petitions for Reconsideration filed by the petitioners listed in Appendix A *Are Hereby Granted In Part and Are Otherwise Dismissed As Moot.*

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.1201 [Amended]

■ 2. Section 73.1201 is amended by removing paragraph (b)(3).

■ 3. Section 73.3526 is amended by removing paragraphs (b)(1) and (b)(2) and (e)(9)(iii); and revising paragraphs (b) introductory text and (e)(11)(i) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(b) *Location of the file.* The public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

* * * * *

(e)(11)(i) *TV issues/programs lists.* For commercial TV and Class A broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (*e.g.,* January 10 for the quarter October—December, April 10 for the quarter January—March, etc.) The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

■ 4. Section 73.3527 is amended by removing paragraphs (b)(1), (b)(2), (e)(8)(i) and (e)(8)(ii); and revising paragraphs (b) introductory text and (e)(8) introductory text to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(b) *Location of the file.* The public inspection file shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

* * * * *

(e)(8) *Issues/Programs Lists.* For nonexempt noncommercial educational broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (*e.g.,* January 10 for the quarter October–December, April 10 for the quarter January–March, etc.). The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

[FR Doc. 2011–29505 Filed 11–16–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA821

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea Subarea 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; apportionment of reserves; request for comments.

or constrains our ability to reexamine our policies based upon an updated record. In the same vein, our decision to vacate the *Report and Order* should not be interpreted as an affirmative rejection of the rules or policies contained therein. Thus, our decision to take a fresh look does not preclude us from deciding that certain aspects of the *Report and Order* were correctly decided and should be re-adopted.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to allow fishing operations to continue. It is intended to promote the goals and objectives of the fishery management plan for the Bering Sea and Aleutian Islands management area.

DATES: Effective November 14, 2011, through 2400 hrs, Alaska local time, December 31, 2011. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, November 29, 2011.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0271, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0271 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, *Attn:* Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (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 initial total allowable catch (ITAC) of Greenland turbot in the Bering Sea subarea was established as 2,975 metric tons (mt) by the final 2011 and 2012 harvest specifications for groundfish of the BSAI (76 FR 11139, March 1, 2011). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITAC for Greenland turbot in the Bering Sea subarea needs to be supplemented from the non-specified reserve in order to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 150 mt to the Greenland turbot ITAC in the Bering Sea subarea. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

The harvest specification for the 2011 Greenland turbot ITAC included in the harvest specifications for groundfish in the BSAI is revised as follows: 3,125 mt for Greenland turbot in the Bering Sea subarea.

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) and 679.20(b)(3)(iii)(A) 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 apportionment of the non-specified reserves of groundfish to the Greenland turbot fishery in the Bering Sea subarea. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 8, 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.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until November 29, 2011.

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: November 14, 2011.

Alan D. Risenhoover,

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

[FR Doc. 2011–29730 Filed 11–14–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 222
Thursday, November 17, 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

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–11–0006]

RIN 0563–AC32

Common Crop Insurance Regulations; Fresh Market Tomato (Dollar Plan) Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Fresh Market Tomato (Dollar Plan) Crop Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2013 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business December 19, 2011 and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–11–0006, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov*. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, *telephone* (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the

kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.139 Fresh Market Tomato (Dollar Plan) Crop Provisions, to be effective for the 2013 and succeeding crop years. Several requests have been made for changes to improve the coverage offered, address program integrity issues, simplify program administration, and improve clarity of the policy provisions.

The proposed changes are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Common Crop Insurance Policy Basic Provisions (Basic Provisions). Therefore, it is duplicative and no longer necessary in the Crop Provisions. Also FCIC proposes to remove all references to section titles of the Basic Provisions. This information is currently contained in parenthesis following references to section numbers of the Basic Provisions throughout the Crop Provisions. The section numbers should provide sufficient guidance to locate the applicable provision.

2. *Section 1*—FCIC proposes to add a new definition of ''allowable cost'' to specify the dollar amount per carton for harvesting, packing and handling costs (as shown in the Special Provisions) for the purpose of computing the total value of production to be counted. The allowable cost per carton contained in the Special Provisions will be subtracted from the price received for each carton of sold harvested production to obtain the value of production to count.

FCIC proposes to add a new definition of ''amount of insurance per acre'' because the term is currently used in the Crop Provisions but was not previously defined. The definition specifies the dollar amount of coverage per acre is obtained by multiplying the reference maximum dollar amount shown in the actuarial documents by the coverage level percentage you elect. In the settlement of claim section, the amount of insurance per acre minus the total dollar value of production to count per acre determines if an indemnity is payable to the insured.

FCIC proposes to add a new definition of ''fresh market tomatoes'' because the term is currently used in the Crop Provisions but was not previously defined. The definition specifies they are field grown mature green or ripe fresh market tomatoes that meet the Agricultural Marketing Service United States Standards for Grades of Fresh Tomatoes; and the applicable Florida Federal Marketing Order and Florida Tomato Committee Regulations, or their successors. The above Florida Federal Marketing Order and Florida Tomato Committee rules and regulations that currently apply to these field grown fresh market tomato types and varieties do not include ''greenhouse'', ''hydroponic, ''heirloom'' and other varieties of tomatoes that are not field grown and do not comply with these rules and regulations.

FCIC proposes to add a new definition of ''minimum value'' because the minimum value amount shown in the Special Provisions and used in the Settlement of Claim provisions was not previously defined. Minimum value is used to value appraised and unsold harvested production to count. In calculating the total value of all sold harvested production to count, the price received for each carton of fresh market tomatoes minus the allowable costs per carton cannot be less than the minimum value, unless the Minimum Value Option is elected.

FCIC proposes to add a new definition of ''penhookers'' because these are individuals who purchase the right to salvage fresh market tomatoes remaining in the field after the insureds complete their harvests on the unit. Any salvage value paid to the insured will be added to the final dollar value of the production to count.

FCIC proposes to add a new definition of ''price received'' to clarify that it is the gross dollar amount per carton received by the producer before deductions for allowable costs.

FCIC proposes to add a new definition of ''registered handler'' to identify those individuals who are specifically certified by the Florida Tomato Committee or successor entity to inspect and enforce all the handling regulations for shipment of fresh market tomatoes.

FCIC proposes to revise and clarify the definition of ''acre'' by removing the phrase ''43,560 square feet of land'' and replacing it with the phrase ''43,560 square feet of planted acreage.'' This change helps clarify that substantial square footage being used for other purposes such as roadways or irrigation canals should not be included in the calculation of planted acreage.

FCIC proposes to revise the definition of ''direct marketing'' to include ''registered handler'' in the list of examples of an intermediary.

FCIC proposes to revise the definition of ''harvest'' by replacing the phrase ''on the unit'' with the phrase ''from the plants'' and clarifying that any fresh market tomatoes salvaged by penhookers is not considered a harvest since the grower does not incur any picking or harvesting costs. However, any salvage value paid to the producer by the penhooker will be included in the total dollar value of production to count.

FCIC proposes to revise and clarify the definition of ''plant stand'' by replacing the word ''insurable'' with the word ''insured''.

FCIC proposes to revise and clarify the definition of ''potential production'' by removing paragraphs (a) and (b) in the current policy definition. The current crop provisions use the terminology ''classification size'' and ''6 x 7 (2–8/32 inch minimum diameter) or larger'' which excludes all other size classifications under the Agricultural Marketing Service United States Standards for Grades of Fresh Tomatoes, the Florida Federal Marketing Order, and the Florida Tomato Committee Regulations. FCIC also proposes to replace the phrase ''mature green or ripe tomatoes'' with the phrase ''field grown mature green or ripe fresh market tomatoes'' to clarify this is the primary growing practice recognized and governed by the Florida Tomato Committee Regulations, or successor entity. FCIC proposes to revise section 8 to limit insurability to field grown tomatoes.

FCIC proposes to remove the definition of ''planted acreage'' because this definition is contained in the Basic Provisions. Therefore, this definition is duplicative and no longer necessary in the Crop Provisions.

FCIC proposes to remove the definition of ''practical to replant'' because this definition is contained in the Basic Provisions. Therefore, this definition is duplicative and no longer necessary in the Crop Provisions.

3. *Section 3*—FCIC proposes to revise the table under section (3)(d) by removing the column ''Length of time if Direct Seeded'' because the use of transplanted tomatoes is now the primary planting method being used in the Florida Tomato Committee regulated area. FCIC historical data indicates only one ''direct seeded'' policy was insured in the regulated area in the last decade. However, a new provision is being proposed in section 8(c)(4) for direct seeded tomatoes to be insured by written agreement only. FCIC proposes to remove all other references to direct seeded from the policy.

FCIC proposes to revise section 3(e) to clarify any acreage of fresh market tomatoes damaged in the first, second, or third stage to the extent that the majority of producers in the area would not normally further care for the crop, the indemnity payable for such acreage will be based on the stage guarantee the plants achieved when the insured cause of loss occurred, even if the producer continues to care for the damaged tomatoes. This is consistent with the provisions of other similar crops policies. If the producer continues to care for the damaged tomato acreage, any appraised or harvested production will be included in the dollar value of production to count.

4. *Section 8*—FCIC proposes to revise the introductory paragraph to clarify only field grown mature green or ripe fresh market tomato types and varieties will be insurable as specified in the Special Provisions for which a premium rate is provided in the actuarial documents, and allowed by the Florida Tomato Committee.

Also, FCIC proposes to remove the current language in section 8(c)(4) because cherry, grape and plum field grown fresh market tomatoes will now be insurable if allowed by Special Provisions and premium rates are listed in the actuarial documents.

FCIC also proposes adding new language in section 8(c)(4) allowing direct seeded field grown fresh market tomatoes to be insured by written agreement.

5. *Section 9*—FCIC proposes to revise section 9(b)(1)(iii) by removing the direct seeded reference ''or 60 days of direct seeding'' because such tomatoes are only insurable by written agreement, which will contain the terms and conditions of insurance.

FCIC also proposes to add ''strawberries'' in section 9(b)(3) to the list of crops that require soil fumigation before planting fresh market tomatoes. Strawberries are susceptible to nematode damage and pose the same risk of nematodes to new fresh market tomato planted acreage as these other crops.

6. *Section 10*—FCIC proposes to clarify section 10(e) by stating ''Final harvest on the unit'' since this policy allows additional basic units by planting period and some counties have multiple planting periods.

FCIC also proposes to revise section 10(f) to remove the reference to direct seeding since the practice is proposed to be only insurable by written agreement.

7. *Section 11*—FCIC proposes to revise and clarify section 11(b)(2) by revising the current language to clarify that insurance will not be provided against any loss of production due to the failure to harvest in a timely manner or failure to market the tomatoes, unless such failure is due to an insured cause of loss that occurs during the insurance period. For example, the policy does not cover the inability to market the insured crop due to quarantine, boycott, or refusal of any person to accept production.

8. *Section 14(b)(4)(ii)*—FCIC proposes to remove the provisions pertaining to the 1998 and 1999 crop years because they are obsolete. This change allows the catastrophic risk percentage of coverage to be changed if necessary.

FCIC proposes to add an example of a claim for indemnity after section 14(b)(5).

FCIC proposes to revise the language in section 14(c)(2)(i) to explain appraised potential production will be determined for claim purposes on any fresh market tomato acreage that has not been harvested the required number of times as specified in the Special Provisions. FCIC also proposes removing the reference to ''ground-culture'' tomato planting since this planting practice is no longer used.

FCIC proposes to revise section 14(c)(3) by adding a new section 14(c)(4) to separate and clarify the settlement of claims procedures for sold harvested and unsold harvested production. Section 14(c)(3) describes the total value of all sold harvested production and the use of allowable costs in determining the total dollar value of production to count. The last sentence currently in section (14)(c)(3) is now the last sentence in section (14)(c)(4). Section 14(c)(4) as proposed will describe the total value of all unsold harvested production and using the minimum value shown in the Special Provisions in determining the total dollar value of production to count.

FCIC proposes adding a new section 14(c)(5) to clarify any salvage value paid to the insured by penhookers will be added to the total dollar value of production to count.

9. *Section 16*—FCIC proposes revising section 16(a)(1) and 16(b)(2) of the current policy Minimum Value Option by removing the Minimum Value Option II. Allowing the Minimum Value Option II price to go down to zero has resulted in unfavorable loss experience and program abuse. This change will improve the integrity of the Minimum Value Option benefit.

FCIC also proposes revising section (16)(b)(1)(ii) by changing the phrase ''For marketable production that is not sold,'' to ''For unsold harvested production,''. The new wording is consistent with the wording in section (14)(c)(4).

FCIC proposes to add an example of a claim for indemnity after paragraph 16(c).

Other minor changes have been made to make the provisions more effective and consistent with other similar Crop Provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, Fresh market tomato (dollar plan), Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2013 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.139 as follows:

a. Revise the introductory text;

b. Remove the paragraph immediately preceding section 1;

c. Amend section 1 by:

i. Adding definitions for ''allowable cost,'' ''amount of insurance per acre,'' ''fresh market tomatoes,'' ''minimum value,'' ''penhookers,'' ''price received,'' and ''registered handler;''

ii. Removing the definitions of ''planted acreage'' and ''practical to replant;''

iii. Revising the definitions of ''acre,'' ''direct marketing,'' ''harvest,'' ''plant stand,'' and ''potential production;'' and

iv. Amending the definition of ''crop year'' by removing the phrase ''of 'crop year' contained in section 1 (Definitions) of the Basic Provisions (§ 457.8)'' and adding the phrase ''contained in the Basic Provisions'' in its place.

d. Amend section 3 by:

i. Removing the phrases ''(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)'' and ''(§ 457.8)'' in paragraphs (a) and (c);

ii. Revising the table in paragraph (d); and

iii. Revising paragraph (e).

e. Amend section 4 by removing the phrases ''(Contract Changes)'' and ''(§ 457.8).''

f. Amend section 5 by removing the phrases ''(Life of Policy, Cancellation, and Termination)'' and ''(§ 457.8).''

g. Amend section 6 introductory text by removing the phrases ''(Report of Acreage)'' and ''(§ 457.8).''

h. Amend section 7 by:

i. Removing the phrases ''(Annual Premium)'' and ''(§ 457.8);'' and

ii. Removing the phrase ''(*e.g.,* fall direct-seeded irrigated))'' and adding the phrase ''(*e.g.,* fall transplanted irrigated)'' in its place.

i. Amend section 8 by:

i. Revising the introductory text; and

ii. Revising paragraph (c)(4).

j. Amend section 9 by:

i. Removing the phrases ''(Insurable Acreage)'' and ''(§ 457.8)'' in paragraphs (a) and (b);

ii. Removing the phrase ''or 60 days of direct seeding'' in paragraph (b)(1)(iii);

iii. Removing the word ''satisfied'' and adding the word ''met'' in its place in paragraph (b)(2); and

iv. Revising paragraph (b)(3).

k. Amend section 10 by:

i. Revising the introductory paragraph;

ii. Revising paragraph (e); and

iii. Revising paragraph (f).

l. Amend section 11 by:

i. Removing the phrases ''(Causes of Loss)'' and ''(§ 457.8)'' in paragraphs (a) and (b);

ii. Revising paragraph (b)(2).

m. Amend section 12(a) and 12(c) by removing the phrases ''(Replanting Payment)'' and ''(§ 457.8).''

n. Amend section 13 by removing the phrases ''(Duties in the Event of Damage or Loss)'' and ''(§ 457.8).''

o. Amend section 14 by:

i. Revising paragraph (b)(4)(ii);

ii. Adding an example following paragraph (b)(5);

iii. Revising paragraph (c)(2)(i);

iv. Revising paragraph (c)(3);

v. Adding a new paragraph (c)(4); and

vi. Adding a new paragraph (c)(5).

p. Revise section 16.

q. Adding an example following paragraph 16(c).

The revised and added text reads as follows:

§ 457.139 Fresh market tomato (dollar plan) crop insurance provisions.

The fresh market tomato (dollar plan) crop insurance provisions for the 2013 and succeeding crop years are as follows:

* * * * *

1. Definitions

Acre. 43,560 square feet of planted acreage when row widths do not exceed six feet. If row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Allowable cost. The dollar amount per carton for harvesting, packing, and handling as stated in the Special Provisions.

Amount of insurance per acre. The dollar amount of insurance per acre obtained by multiplying the reference maximum dollar amount shown in the actuarial documents by the coverage level percentage you elect.

* * * * *

Direct marketing. The sale of the insured crop directly to consumers without the intervention of an intermediary such as a registered handler, wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

* * * * *

Fresh Market Tomatoes. Field grown mature green or ripe fresh market tomatoes that meet the Agricultural Marketing Service United States Standards for Grades of Fresh Tomatoes; and the applicable Federal Marketing Order and Florida Tomato Committee Regulations, or their successors.

Harvest. The picking of tomatoes from the plants, excluding fresh market tomatoes salvaged by penhookers.

* * * * *

Minimum value. The dollar amount per carton shown in the Special Provisions we will use to value appraised and marketable production to count.

Penhookers. Individuals who purchase the right to salvage tomatoes remaining in the field after commercial harvests are completed.

Plant stand. The number of live plants per acre prior to the occurrence of an insured cause of loss.

* * * * *

Potential production. The number of cartons of mature green or ripe field grown fresh market tomatoes that the tomato plants will or would have produced per acre assuming normal growing conditions and practices by the end of the insurance period.

Price received. The gross dollar amount per carton received by the producer before deductions of allowable costs.

Registered handler. A person or entity officially certified by the Florida Tomato Committee, or successor entity, to inspect and enforce all the handling regulations for fresh market tomatoes, and report the required packout data to the Florida Tomato Committee.

* * * * *

3. Amounts of Insurance and Production Stages

* * * * *

(d) * * *

Stage	Percent of the amount of insurance per acre that you selected	Length of time if transplanted
1	50	From planting through the 29th day after planting.
2	75	From the 30th day after planting until the beginning of stage 3.
3	90	From the 60th day after planting until the beginning of the final stage.
Final	100	Begins the earlier of 75 days after planting, or the beginning of harvest.

(e) Any acreage of fresh market tomatoes damaged in the first, second, or third stage to the extent that the majority of producers in the area would not normally further care for the crop, the indemnity payable for such acreage will be based on the stage the plants had achieved when the insured damage occurred, even if the producer continues to care for the damaged tomatoes.

* * * * *

8. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the field grown fresh market tomato types and varieties in the county as specified in the Special Provisions for which a premium rate is provided in the actuarial documents:

* * * * *

(c) * * *

(4) Direct seeded fresh market tomatoes, unless insured by written agreement.

* * * * *

9. Insurable Acreage

* * * * *

(3) We will not insure any acreage on which tomatoes (except for replanted tomatoes in accordance with sections 9(b)(1) and (2)), peppers, eggplants, strawberries or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting the insured tomatoes.

10. Insurance Period

In lieu of section 11 of the Basic Provisions, coverage begins on each unit or part of a unit the later of the date we accept your application, or when the tomatoes are planted in each planting period. Coverage ends on each unit at the earliest of:

* * * * *

(e) Final harvest on the unit; or

(f) The calendar date for the end of insurance period that is 125 days after the date of transplanting or replanting with transplants.

11. Causes of Loss

* * * * *

(b) * * *

(2) Failure to harvest in a timely manner or failure to market the tomatoes, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period. For example, we will not pay an indemnity if you are unable to market the insured crop due to quarantine, boycott, or refusal of any person to accept production.

* * * * *

14. Settlement of Claim

* * * * *

(b) * * *

(4) * * *

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to count determined in accordance with section 14(c) by the percentage contained in the Special Provisions.

(5) * * *

For Example: You have a 100 percent share in 10.0 acres of fresh market tomatoes. You select a 70% coverage level of the reference maximum dollar amount of $7,500 per acre. The average price received is $10.00 per carton of tomatoes. Allowable costs are $4.25 per carton. Minimum value is $5.00 per carton. Your total production sold is 5,000 cartons (5,000 ÷ 10.0 = 500 cartons per acre) and you have an additional 1,000 cartons of unsold harvested production (1,000 ÷ 10.0 = 100 cartons per acre). Your loss is in the final stage of production. Your indemnity per acre is calculated as follows:

	$7,500 × 70% = dollar amount of insurance per acre	$5,250
14(c)(3)	500 cartons × $5.75 = value of sold production ($10 selling price minus $4.25 allowable cost)	2,875
14(c)(4)	100 cartons of unsold harvested production × $5 minimum value per carton	+500
	Value of production to count	3,375
14(b)(5)	Indemnity per acre = ($5,250 − $3,375) × 100% share	1,875
	$1,875 × 10.0 acres = $18,750 indemnity payment	18,750

(c) * * *

(2) * * *

(i) Potential production on any fresh market tomato acreage that has not been harvested the required number of times as specified in the Special Provisions.

* * * * *

(3) The total value of all sold harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of fresh market tomatoes in the load (this result may not be less than the minimum value shown in the Special Provisions for any carton of tomatoes), and multiplying this result by the number of cartons of fresh market tomatoes harvested.

(4) The total value of all unsold harvested production will be the dollar amount obtained by multiplying the number of cartons of such tomatoes on the unit by the minimum value shown in the Special Provisions for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable or sold will not be counted as production to count.

(5) Any penhooker salvage value paid to you will be added to the total dollar value of production to count.

* * * * *

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market tomatoes (dollar plan) under this option, and pay the additional premium indicated in the actuarial documents for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3) of these Crop Provisions, the total value of harvested production will be determined as follows:

(1) For sold harvested production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of fresh market tomatoes in the load (this result may not be less than the minimum value option price contained in the Special Provisions for any carton of tomatoes sold), and multiplying this result by the number of cartons of fresh market tomatoes sold; and

(2) For unsold harvested production, the dollar amount obtained by multiplying the number of cartons of such fresh market tomatoes on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable or sold will not be counted as production to count).

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

Example with Minimum Value Option: You have a 100 percent share in 10.0 acres of fresh market tomatoes. You select a 70% coverage level of the reference maximum dollar amount of $7,500 per acre. The average price received is $6.00 per carton of tomatoes. Allowable costs are $4.25 per carton. Minimum value is $5.00 per carton. The Minimum Value Option price is $2.00 per carton. Your total production sold is 5,000 cartons (5,000 ÷ 10.0 = 500 cartons per acre) and you have an additional 1,000 cartons of unsold harvested production (1,000 ÷ 10.0 = 100 cartons per acre of unsold marketable production). Your loss is in the final stage of production. Your indemnity per acre is calculated as follows:

	7,500 × 70% = dollar amount of insurance per acre	$5,250
16(b)(1)	500 cartons × $2 = value of sold production ($6 price received minus $4.25 allowable costs = $1.75 $2.00 minimum value option is greater than $1.75)	1,000
16(b)(2)	100 cartons of unsold harvested production × $5 minimum value per carton	+500
	Value of production to count	1,500
16(b)	Indemnity per acre = $5,250 − $1,500 = $3,750 × 100% share	3,750
	$3,750 × 10.0 acres = $37,500 indemnity payment	37,500

* * * * *

Signed in Washington, DC, on November 7, 2011.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011–29218 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–11–0008]

RIN 0563–AC35

Common Crop Insurance Regulations; Pecan Revenue Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Pecan Revenue Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2013 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business January 17, 2012 and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–11–0008, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Chief, Policy Administration Branch, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, *telephone* (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, 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.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J for the informal administrative review process of good farming practices as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.167 Pecan Revenue Crop Insurance Provisions, to be effective for the 2013 and succeeding crop years. The proposed changes are as follows:

1. *Section 1*—FCIC proposes to revise the definition of ''average gross sales per acre'' by removing specific crop years from the example. This change is being proposed because the crop years listed in the example are outdated. Removing the specific crop years does not change the meaning of the example. This proposed change will alleviate the need to change the crop years in the example each time the Pecan Revenue Crop Insurance Provisions are revised.

FCIC proposes to revise the definition of ''approved average revenue per acre'' by changing the maximum number of years of average gross sales used to calculate approved average revenue per acre from ten to six years. This change is being proposed based on recommendations from a FCIC contracted study that found that a shorter base period works as well or better for predicting actual yields for some perennial crops. The shorter base period will be more responsive to market trends and changes in the productive capacity of the trees.

FCIC proposes to remove the references to ''lowest available dollar span'' from the definition of ''approved average revenue per acre'' and replace it with the term ''T-revenue.'' The ''T-revenue'' will be used in place of the ''lowest available dollar span'' when sufficient records are not provided. FCIC will develop a ''T-revenue'' that will represent a value similar to the current ''lowest available dollar span.'' This change is being proposed to facilitate the implementation of a continuous rating methodology to be consistent with other policies. Under the current rating methodology a rate class is assigned based on which ''dollar span'' the insured's average approved revenue falls into. Removing references to ''dollar spans'' and developing a ''T-revenue'' is necessary in order to migrate to the continuous rating methodology because under the new continuous rating methodology ''dollar spans'' will no longer be used.

FCIC proposes to remove the definition of ''enterprise unit'' from the current Pecan Revenue Crop Insurance Provisions and use the definition of ''enterprise unit'' contained in the Common Crop Insurance Policy Basic Provisions. The Basic Provisions contain additional requirements to qualify for an ''enterprise unit'' that are not contained in the current definition of ''enterprise unit'' in the Pecan Revenue Crop Insurance Provisions. This change will make the unit structures under the Pecan Revenue Crop Insurance Provisions consistent

with other crop programs administered by FCIC.

FCIC proposes to revise the definition of ''market price'' by:

a. Removing subparagraph (2) of the definition that references the actual price received. With the proposed revision to section 13(d)(2), the price received will be used to value any production that is sold unless the price received is not verifiable by sales receipts or is determined to be inappropriate. Since market price will only be used to value unsold production or sold production in which the price received is inappropriate or unverifiable, it is not necessary to list the price received in the definition of market price;

b. Revising the introductory paragraph by removing the phrase ''the greater of'' and redesignating subparagraph (3) as subparagraph (1) to make Agricultural Marketing Service (AMS) prices the primary source for determining market price. FCIC proposes to add language to clarify the AMS price used must be from the nearest location and must be of similar quality, quantity and variety of in-shell pecans. FCIC proposes adding the phrase ''unless otherwise provided in the Special Provisions'' to the end of the first sentence of the subparagraph that references AMS prices to allow flexibility to alter this section should AMS change or discontinue their current pecan reports; and

c. Redesignating subparagraph (1) as subparagraph (2) and adding the phrase ''if AMS prices are not published for the week'' to the beginning of newly redesignated subparagraph (2). This proposed change will make this provision an alternative method of determining market price if for any reason AMS does not publish prices for the week. This change is being proposed because using the AMS price will provide a more reliable and consistent price to value appraised production.

FCIC proposes to remove the definition of ''set out'' because all other references to this term within the policy are proposed to be removed.

FCIC proposes to add the definition of ''transitional revenue (T-revenue)'' that will be used in place of the ''lowest available dollar span.'' The ''T-revenue'' will be an amount determined by FCIC and provided in the actuarial documents. FCIC plans to establish a ''T-revenue'' that is comparable to the current ''lowest available dollar span.'' The ''T-revenue'' may be adjusted as more revenue data is collected.

2. *Section 2*—FCIC proposes to revise section 2 to state that enterprise units are defined in accordance with the Basic Provisions and are available only if allowed by the Special Provisions. This change is necessary to make the Pecan Revenue Crop Insurance Provisions consistent with the Common Crop Insurance Policy Basic Provisions. FCIC intends to allow enterprise units through the Special Provisions.

FCIC proposes to revise section 2 to allow basic units to be divided into optional units if optional units are located on non-contiguous land, separate records of production are provided for at least the most recent consecutive two crop years that verify trees in the optional unit meet the minimum production requirement, and optional units are selected by the acreage reporting date for the first year of the two year coverage module. Optional units by non-contiguous land are being proposed at the request of producers. The proposed requirements to qualify for optional units are similar to those that are contained in the Basic Provisions, but due to the ''two-year coverage module,'' the requirements have been modified to be applicable to the Pecan Revenue Crop Insurance Provisions. Premium rates will be adjusted to compensate for any additional risk associated with optional units.

3. *Section 3*—FCIC proposes to revise section 3 by removing all references to the ''lowest available dollar span'' and replacing it with the term ''T-revenue.''

FCIC proposes to revise section 3(d)(1) by removing the provision that contains a factor used to reduce your average gross sales for acres that are sequentially thinned. The provision is being proposed to be removed because it is ambiguous and discourages good management practices. Language in sections 3(d)(3) and 6(b) provides consequences for sequential thinning when the thinning is expected to reduce gross sales below the approved average revenue.

FCIC proposes to add a new section 3(d)(1) that states if you fail to provide acceptable records for optional units, those units will be combined into basic units and your amount of insurance per acre will be recalculated for the two-year coverage module. This provision provides the consequence for failure to provide acceptable records for optional units which is consistent with other crop programs.

4. *Section 4*—FCIC proposes to amend section 4(b) by removing RMA's Web site address because this is defined in the Basic Provisions.

FCIC proposes to amend section 4(d) by adding the statement, ''if available from us, you may elect to receive these documents and changes electronically.'' This statement is being proposed to provide consistency with the Basic Provisions. Section 4 of the Basic Provisions provides that producers may elect to receive documents and changes electronically. However, the introductory paragraph of section 4 of the Pecan Revenue Crop Insurance Provisions contains the phrase, ''in lieu of the provisions contained in section 4 of the Basic Provisions.'' Therefore, in order to provide consistency with the Basic Provisions it is necessary to state that, ''if available from us, you may elect to receive these documents and changes electronically.''

5. *Section 6*—FCIC proposes to amend section 6 by removing the percentage associated with the reporting requirements for sequentially thinning because the threshold for sequentially thinning is proposed to be removed from section 3.

6. *Section 8*—FCIC proposes to amend section 8(d) by removing the minimum age requirements and adding a minimum level of production that must be obtained to qualify for insurance unless inspected and allowed by written agreement. This provision will protect program integrity because older trees that do not meet the minimum production requirement will no longer be insurable. Furthermore, this change will allow improved varieties that may come into production sooner to be insured regardless of age as long as they meet the minimum production requirement.

FCIC proposes to add a new section 8(e) to allow certain varieties or groups of varieties to be designated as uninsurable through the Special Provisions. This change is being proposed to address varieties that may be found to be unproductive or incompatible pollinators.

7. *Section 13*—FCIC proposes to amend section 13(b) by adding a statement indicating that if the insured is unable to provide separate acceptable records for any optional units, we will combine all units for which such records were not provided. FCIC also proposes adding a statement to this section stating that for any basic unit, we will allocate commingled production or revenue to each basic unit in proportion to our liability on the harvested acreage for each unit. This is standard language contained in most policies that allow optional units. These provisions are being proposed to clarify the consequences of failure to provide separate acceptable records.

FCIC proposes to revise section 13(d)(2)(i) by changing the basis by which price is determined for sold production from market price to price

received. This change is being proposed to address concerns that the indemnity is not calculated on the same basis by which the guarantee is set. The guarantee is based on the price received for sold production, but indemnities are determined using the market price. FCIC also proposes adding a parenthetical stating that if the price received is not verifiable by sales receipts or is determined to be inappropriate for the quality of pecans sold, the market price will be used. FCIC intends to provide additional guidance in the 2013 Pecan Revenue Loss Adjustment Standards Handbook as to when a price should be considered inappropriate. The guidance will create a minimum threshold that the price received must meet and will be based on a percentage of the AMS price.

FCIC proposes to revise the example at the end of section 13 by replacing dates with generic numbers for the crop year. FCIC also proposes to revise the example by changing the historical average pounds per acre and average gross sales per acre to reflect an alternate bearing pattern. FCIC further proposes to revise the example by adding insured causes of loss to the explanation of indemnity calculation to illustrate that claims are only paid if losses are the result of an insured cause. FCIC also proposes to change the example to illustrate that the price received will be used to value sold production.

List of Subjects in 7 CFR Part 457

Crop insurance, Pecan revenue, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2013 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.167 as follows:

a. Amend the introductory text by removing ''2005'' and adding ''2013'' in its place;

b. Add definition in section 1 for ''transitional revenue (T-revenue)'';

c. Revise the definitions in section 1 of ''average gross sales per acre,'' ''approved average revenue per acre,'' and ''market price'';

d. Amend section 1 by removing the definitions of ''enterprise unit'' and ''set out'';

e. Revise section 2(a)(1);

f. Amend section 2(a)(2) by removing the period at the end of the sentence and adding the term ''; or'' in its place;

g. Add a new section 2(a)(3);

h. Amend the introductory text of section 3 by adding a comma following the phrase ''In lieu of section 3 of the Basic Provisions'';

i. Revise section 3(d)(1);

j. Amend section 3(d)(2) by removing the phrase ''lowest available dollar span amount provided in the actuarial documents'' and adding the term ''T-revenue'' in its place;

k. Amend section 3(f)(1) by removing the phrase ''lowest available dollar span provided in the actuarial table'' and adding the term ''T-revenue'' in its place;

l. Amend section 3(h) by adding a hyphen between the words ''high'' and ''risk'' in all four instances they appear;

m. Revise section 4(b);

n. Amend section 4(d) by adding the sentence, ''If available from us, you may elect to receive these documents and changes electronically.'' following the sentence, ''If changes are made that will be effective for a subsequent two-year coverage module, such copies will be provided not later than 30 days prior to the cancellation date.'';

o. Revise sections 6(a)(1) and 6(b);

p. Revise section 8(d);

q. Amend section 8 by redesignating paragraphs (e) and (f) as (f) and (g) respectively, and adding a new paragraph (e);

r. Revise section 13(b);

s. Revise section 13(d)(2)(i);

t. Revise the example at the end of section 13; and

u. Amend section 16 by removing the space between ''Not'' and ''withstanding.''

The revised and added text reads as follows:

§ 457.167 Pecan revenue crop insurance provisions.

The pecan revenue crop insurance provisions for the 2013 and succeeding crop years are as follows:

* * * * *

1. Definitions

* * * * *

Average gross sales per acre. Your gross sales of pecans for a crop year divided by your net acres of pecans grown during that crop year. For example, if for the crop year, your gross sales were $100,000 and your net acres of pecans were 100, then your average gross sales per acre for the crop year would be $1,000.

Approved average revenue per acre. The total of your average gross sales per acre based on at least the most recent consecutive four years of sales records building to six years and dividing that result by the number of years of average gross sales per acre. If you provide more than four years of sales records, they must be the most recent consecutive six years of sales records. If you do not provide at least four years of gross sales records, your approved average revenue will be:

(1) The average of the two most recent consecutive years of your gross sales per acre and two years of the T-revenue; or

(2) If you do not provide any gross sales records, the T-revenue.

* * * * *

Market price. The market price is:

(1) The average of the AMS prices for the nearest location for similar quality, quantity, and variety of in-shell pecans published during the week you sell any of your pecans if the price received is determined to be inappropriate, you harvest your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, unless otherwise provided in the Special Provisions. For example, if you harvest production on November 14 but do not sell the production, the average of the AMS prices for the week containing November 14 will be used to determine the market price for the production harvested on November 14; or

(2) If AMS prices are not published for the week, the average price per pound for in-shell pecans of the same variety or varieties insured offered by buyers on the day you sell any of your pecans if the price received is determined to be inappropriate, you harvest any of your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, in the area in which you normally market the pecans (If buyers are not available in your immediate area, we will use the average in-shell price per pound offered by buyers nearest to your area).

* * * * *

Transitional revenue (T-revenue). A value determined by FCIC and published in the actuarial documents.

* * * * *

2. Unit Division

(a) * * *

(1) An enterprise unit as defined in section 1 of the Basic Provisions, if allowed by the Special Provisions;

(2) * * *

(3) In lieu of the requirements contained in section 34(b) of the Basic Provisions, basic units may be divided into optional units if, for each optional unit, the following criteria are met:

(i) Each optional unit you select must be located on non-contiguous land;

(ii) Separate records of production are provided for at least the most recent consecutive two crop years. The records will be used to verify that trees from each unit meet the minimum production requirement contained in section 8(d) and to establish the approved average revenue per acre for the optional units selected; and

(iii) Optional units are selected and identified on the acreage report by the acreage reporting date of the first year of the two-year coverage module (Units will be determined when the acreage is reported, but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason).

* * * * *

3. Insurance Guarantees and Coverage Levels for Determining Indemnities

* * * * *

(d) * * *

(1) You fail to provide acceptable records required for optional units, which will result in optional units being combined into basic units at the time of discovery and your amount of insurance per acre will be recalculated for the two-year coverage module.

* * * * *

4. Contract Changes

* * * * *

(b) Any changes in policy provisions, amounts of insurance, premium rates, and program dates (except as allowed herein or as specified in section 3) can be viewed on RMA's Web site not later than the contract change date contained in these Crop Provisions. We may revise this information after the contract change date to correct clerical errors.

* * * * *

6. Report of Acreage

(a) * * *

(1) Any damage to trees, removal of trees, change in practices, sequential thinning or any other action that may reduce the gross sales below the approved average revenue upon which the amount of insurance per acre is based and the number of affected acres;

* * * * *

(b) We will reduce the amount of your insurable acreage based on our estimate of the removal of a contiguous block of trees or damage to trees of the insured crop. We will reduce your amount of insurance per acre based on our estimate of the expected reduction in gross sales from a change in practice or sequential thinning.

* * * * *

8. Insured Crop

* * * * *

(d) That are grown on trees that have produced at least 600 pounds of pecans in-shell per acre (or an amount provided in the Special Provisions) in at least one of the previous four crop years, unless we inspect and allow insurance by written agreement. This amount of production must be achieved subsequent to any top work that occurs within a unit;

(e) That are grown on varieties or a grouping of varieties within a unit that are not designated as uninsurable in the Special Provisions;

* * * * *

13. Settlement of Claim

* * * * *

(b) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable records for any:

(1) Optional units, we will combine all optional units for which such records were not provided; or

(2) Basic unit, we will allocate commingled production or revenue to each basic unit in proportion to our liability on the harvested acreage for each unit.

* * * * *

(d) * * *

(2) * * *

(i) The dollar amount obtained by multiplying the number of pounds of pecans sold by the price received for each day the pecans were sold (if the price received is not verifiable by sales receipts or is determined to be inappropriate by us for the quality of pecans sold the market price will be used);

* * * * *

PECAN REVENUE EXAMPLE

Year	Acres	Average pounds per acre	Average gross sales per acre
4	100	750	$1,050
3	100	625	625
2	100	1250	750
1	100	200	250
Total Average Gross Sales Per Acre =			2,675

The approved average revenue equals the total average gross sales per acre divided by the number of years ($2,675 ÷ 4 = $669).

The amount of insurance per acre equals the approved average revenue multiplied by the coverage level percent ($669 × .65 = $435).

Assume pecan trees in the unit experienced damage to blooms due to a late freeze causing low production. You produced, harvested, and sold 300 pounds per acre of pecans from 70 acres and received an actual price of $0.75 per pound. On the other 30 acres, the pecans suffered damage due to drought. You elected not to harvest the other 30 acres of pecans. The 30 acres were appraised at 100 pounds per acre and on the day of the appraisal the average AMS price was $0.65. The total dollar value of production to count is (300 pounds of pecans × $0.75 × 70 net acres) + (100 pounds × $0.65 × 30 net acres) = $15,750 + $1,950 = $17,700.

The indemnity would be:

The amount of insurance per acre multiplied by the net acres minus the dollar value of the total production to count equals the dollar amount of indemnity ($435 × 100 = $43,500.00 − $17,700.00 = $25,800).

* * * * *

Signed in Washington, DC, on November 4, 2011.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011–29217 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1140

[Docket No. FDA–2011–N–0493]

RIN 0910–AG40

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the Agency's regulations to allow the manufacturer of a cigarette or smokeless tobacco product with a trade or brand name that is also the trade or brand name of a nontobacco product to continue to use the name if the tobacco product was sold in the United States on or before June 22, 2009. FDA further proposes to amend the Agency's regulations to ensure that a manufacturer of a cigarette or smokeless tobacco product may continue to use its trade or brand name even if that name is subsequently registered with the United States Patent and Trademark Office (USPTO) or subsequently used for a nontobacco product.

DATES: Submit either electronic or written comments by January 31, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0493 and/or RIN 0910–AG40 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

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

Instructions: All submissions received must include the Agency name, Docket No. FDA–2011–N–0493, and RIN 0910–AG40, for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Gail Schmerfeld, Center for Tobacco Products, 9200 Corporate Blvd., Rockville, MD 20850–3229, 1–(877) 287–1373, *gail.schmerfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health generally and to reduce tobacco use by minors.

Section 102 of the Tobacco Control Act required FDA to publish a final rule regarding cigarettes and smokeless tobacco identical in its provisions to the ''Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents'' (61 FR 44396, August 28, 1996) (1996 final rule), with certain specified exceptions. None of the specified exceptions affect the substance of § 897.16(a) (21 CFR 897.16(a)) of the 1996 final rule. Thus, § 1140.16(a) (21 CFR 1140.16(a)) in the reissued 1996 final rule is identical to § 897.16(a) of the 1996 final rule: ''*Restriction on product names.* A manufacturer shall not use a trade or brand name of a nontobacco product as the trade or brand name for a cigarette or smokeless tobacco product, except for a tobacco product whose trade or brand name was on both a tobacco product and a nontobacco product that were sold in the United States on January 1, 1995.''

This provision, like other provisions in the 1996 final rule, was intended to ensure that the restrictions on sale and distribution to children and adolescents were not undermined by how the product was presented to the public (61 FR 44396 at 44444). If a manufacturer was permitted to use a popular nontobacco product trade name and put it on a tobacco product, the manufacturer could attempt to exploit the imagery or consumer identification attached to the nontobacco product to make the tobacco product appeal to young people (Id.).

FDA included the January 1, 1995, date in § 897.16(a) of the 1996 final rule so that the restriction would not apply to cigarette and smokeless tobacco products that already were using trade or brand names that were also on nontobacco product (60 FR 41314 at 41324 (August 11, 1995), 61 FR 44396 at 44444)). FDA's intent was to prospectively prohibit tobacco manufacturers from using nontobacco trade or brand names, whether used on tangible products or for services, on cigarettes and smokeless tobacco products (Id.).[1] Thus, the section permitted manufacturers to continue using a nontobacco trade or brand name for its cigarettes or smokeless tobacco product if the name was on both a tobacco product and a nontobacco product sold in the United States on or before January 1, 1995 (61 FR 44396 at 44444).

FDA also intended that this provision of the 1996 final rule would apply only to trade names in use in the United States (61 FR 44396 at 44445). In the preamble to the 1996 final rule, FDA acknowledged that it would be unreasonable for the regulations to encompass all possible nontobacco product trade names, regardless of their nationality or whether the trade name was a registered trademark. Neither FDA nor manufacturers would be able to ensure that the name was not used outside the United States.

FDA is proposing to amend § 1140.16(a) to change the grandfather date from January 1, 1995, to June 22, 2009, in recognition of the fact that 14 years elapsed since the publication of the 1996 final rule. Using the January 1995 date significantly changes § 1140.16(a), from a provision that was intended to apply prospectively to one that applies retroactively. The proposed rule would amend the section to allow cigarettes and smokeless tobacco products sold in the United States on or before June 22, 2009, to continue to be sold under their trade or brand name, even if the trade or brand name was also

[1] FDA intended to construe this grandfather exception narrowly such that, if the trade or brand name of a pre-existing nontobacco product was ''Old Time Country Store,'' the grandfather exception would not apply to a cigarette product called ''Old Time'' because ''Old Time'' was not identical to the name of the pre-existing nontobacco product (61 FR 44396 at 44445).

used for a nontobacco product sold during that time. Thus, the proposed amendment would restore the FDA's original intention that the restriction apply prospectively only.

FDA is also proposing to amend § 1140.16(a) to ensure that a manufacturer may continue to use the trade or brand name of its cigarette or smokeless tobacco product if the trade or brand name is later registered with the USPTO or used on a nontobacco product.[2] Thus, a tobacco manufacturer would not be required to monitor whether a trade or brand name is registered for a nontobacco product after it initiates the sale of its tobacco product under a particular trade or brand name. In order to ensure that tobacco companies can comply with, and FDA can enforce, the proposed restriction, the proposed amendment would make explicit that the prohibition on the use of a nontobacco trade or brand name turns on whether such name is ''registered,'' that is, whether it is listed in the USPTO's registration listing. FDA believes that this proposed change is consistent with the intent of the provision as originally issued in 1996 to prevent tobacco product manufacturers from exploiting the imagery and consumer identification associated with the trade or brand name of a nontobacco product. Thus, the provision should apply to situations where the use of the trade or brand name on the nontobacco product precedes the sale of a tobacco product with the same trade or brand name and should not restrict trade or brand names of tobacco products in other situations.

In addition, FDA is proposing to amend § 1140.16(a) to permit manufacturers to request an exemption from the restriction based on information that adequately demonstrates that their proposed trade or brand name does not substantially appeal to children or adolescents. The goal of the restriction is to ensure that manufacturers cannot exploit the imagery or consumer identification attached to the nontobacco product to make the tobacco product appeal to young people. If the manufacturer demonstrates in a written submission to the Director of FDA's Center for Tobacco Products that the proposed name (*e.g.,* through the associated imagery or consumer identification attached to the nontobacco product) does not have substantial appeal to young people, then the potential for such exploitation is unlikely and the request for an exception would be granted.

[2] USPTO registers trade or brand names for both goods and services.

As originally proposed, and as amended, the restriction on product names is intended to limit the sales and distribution of cigarettes and smokeless tobacco to children and adolescents. The State's interest in preventing the use of tobacco products by minors is well established. *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 161 (2000) (''[FDA] has amply demonstrated that tobacco use, particularly among children and adolescents, poses perhaps the single most significant threat to public health in the United States.''); *Lorillard Tobacco Co.* v. *Reilly,* 533 U.S. 525, 564 (2001) (''The State's interest in preventing underage tobacco use is substantial, and even compelling.''). The proposed restriction on the use of nontobacco product names provides a reasonable means to effect the goal of preventing the use of tobacco in minors.

Tobacco use continues to be the single leading preventable cause of death and disease in the United States (Ref. 1). More than 80 percent of established adult smokers begin smoking before age 18 years (Ref. 1) and, of those adolescents who continue to smoke regularly, approximately 50 percent will die from smoking-attributable disease (Ref. 2). Among children, data from the 2009 Youth Risk Behavior Survey, a nationally representative survey of students in grades 9 through 12 in the United States, showed that almost half (46.3 percent) of U.S. high school students had tried cigarette smoking, and an estimated 19.5 percent of students were current cigarette smokers (Ref. 3). Overall, approximately 7.3 percent of high school students in 2009 were frequent cigarette users, and 11.2 percent of students under the age of 18 had been daily smokers at some point during their lifetime. Furthermore, followup studies of youth smokers have indicated that a significant number of students who are light smokers (i.e., students who are not daily smokers or who smoke less than 10 cigarettes per day) in high school will become heavy smokers after leaving high school (Ref. 4). In 2009, nearly 9 percent of high school students used a smokeless tobacco product (*e.g.,* chewing tobacco, snuff, or dip) (Ref. 5). The Surgeon General reports that adolescents who use smokeless tobacco are more likely than nonusers to become cigarette smokers (Ref. 5).

Research supports the conclusion that tobacco advertising and promotion contribute to youth smoking initiation (Refs. 6 at p. 131, 7, 8, 9, and 10). The cigarette industry spends billions of dollars on advertising and promotion each year (Ref. 11). The National Cancer Institute (NCI) Monograph 19 stated that ''tobacco advertising forms part of an integrated marketing communications strategy combining sponsorship, brand merchandising, brand stretching, packaging, point-of-sale promotions, and product placement'' (Ref. 12 at p. 7). With respect to marketing tobacco to children and adolescents, Monograph 19 concluded among other things, that: (1) Tobacco advertising targets the psychological needs of adolescents (e.g., popularity) and ''adolescents who believe that smoking can satisfy their psychological needs, or whose desired image of themselves is similar to their image of smokers, are more likely to smoke cigarettes'' and (2) even brief exposure to tobacco advertising influences adolescents' intentions to smoke (Ref. 12 at pp. 280 and 281).

Brand equity, which consists of company name, brand, symbols, and slogans, and their underlying associations, is a primary source of competitive advantage and future earnings (Ref. 13). Researchers have found that by the time children reach 11 or 12 years of age, they are decoding consumption symbols based on brand names, forming impressions of product owners based on the image and meanings of the brand name identified with the product (Ref. 14).

As new marketing restrictions under the reissued final rule go into effect, the incentive to use other means such as brand name extension increases. Experience shows that, when faced with restrictions on marketing and advertising, tobacco firms shift their promotional efforts away from restricted practices and into a different mix of activities that are permissible (Ref. 15).

In light of the new regulations restricting the sale and distribution of cigarettes and smokeless tobacco products, one possible way for a tobacco company to attempt to gain immediate cachet with the youth market would be to purchase or license the name of a nontobacco product that has already established brand equity with youth. As FDA explained in issuing the original version of the rule, the restriction on the use of a nontobacco brand name sought to limit the elements of marketing and advertising ''that resonate most strongly with the needs of those under 18 to establish an appropriate image and to create a sense of acceptance and belonging.'' 61 FR 44396 at 44444 (1996). For example, the name of a popular motorcycle or cosmetic brand, if used on a tobacco product, may create immediate interest and appeal in the youth market. This would allow the tobacco companies to again capitalize on the susceptibility of this age group to

certain advertising and marketing practices, and to the appeal of brands in particular. Accordingly, the proposed restriction on the use of nontobacco product names is one means of preventing tobacco companies from circumventing the sale and distribution restrictions implemented in the reissued 1996 final rule.

As amended, the brand name provision permits tobacco products sold on or before the June 22, 2009, the date of enactment of the Tobacco Control Act, to continue to be marketed with their current brand name. This change in date restores the prospective intent of the 1996 provision. Further, neither the reissued 1996 final rule, nor the proposed amendment, would affect any aspect of marketing; the only effect of the proposed rule change would be to allow some additional brand names that are not allowed under the reissued 1996 final rule. Finally, requiring companies, when introducing new tobacco products, to research other uses of the same brand name is reasonable and does not significantly affect the way companies can introduce new tobacco products.

In addition, by amending the rule to allow tobacco companies to continue to use the trade or brand name of its cigarette or smokeless tobacco product after that brand name is later registered by another company with the USPTO or used on a nontobacco product, FDA seeks to prevent companies who manufacture products other than tobacco from unfairly exploiting the rule to the detriment of tobacco companies. Accordingly, once a tobacco product is introduced to the market under a particular brand name, the subsequent introduction of a nontobacco product under the same name, or the registration of that brand name for a nontobacco product, would not make the continued marketing of the tobacco product under the same brand name a violation of this rule.

Furthermore, by amending the rule to allow manufacturers to seek an exemption from the restriction upon a demonstration that the proposed name does not have substantial appeal to children or adolescents, FDA seeks to target the restriction to achieve the specific intended goal.

II. Legal Authority

FDA's authority to issue this proposed rule is provided by section 102 of the Tobacco Control Act. Sections 102(a)(3) and (a)(4) provide that FDA may amend the reissued 1996 final rule in accordance with the Administrative Procedure Act requirements for notice and comment rulemaking (chapter 5 of title 5 of the United States Code). In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives FDA general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

III. FDA Enforcement of the Brand Name Provision

On May 7, 2010, FDA announced the availability of the guidance entitled ''Enforcement Policy Concerning Certain Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco'' (75 FR 25271, May 7, 2010). Persons with access to the Internet may obtain an electronic version of that guidance document at either *http://www.regulations.gov* or *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*. FDA issued the guidance in part because it was aware of concerns regarding § 1140.16(a). The guidance discusses FDA's enforcement discretion policy concerning § 1140.16(a) while it considers what changes to the section, if any, would be appropriate to address those concerns. Specifically, the guidance provides that FDA intends to exercise its enforcement discretion concerning § 1140.16(a) not to commence enforcement actions under this provision where: (1) The trade or brand name of the cigarettes or smokeless tobacco product was registered, or the product was marketed, in the United States on or before June 22, 2009; or (2) The first marketing or registration in the United States of the tobacco product occurs before the first marketing or registration in the United States of the nontobacco product bearing the same name; provided, however, that the tobacco and nontobacco product are not owned, manufactured, or distributed by the same, related, or affiliated entities including as a licensee.

IV. Environmental Impact

FDA has carefully considered the potential environmental impacts of this rule and determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule would not impose any direct or indirect costs on industry or government, but rather would only change the date on which products were exempted from complying with the brand name prohibition in the reissued 1996 final rule and ensure that cigarette and smokeless tobacco brands may continue to use a trade or brand name that is subsequently used, or subsequently registered for use, on a nontobacco product, the Agency proposes to certify that the rule would not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Affected Products

FDA has identified 17 cigarette and smokeless tobacco products that are out of compliance with § 1140.16(a) of the reissued 1996 final rule, which became effective on June 22, 2010, but that would be in compliance under the proposed amendment. These products were introduced between January 1, 1995 (the date when products were grandfathered in under the 1996 final rule), and June 22, 2009 (the grandfather date set forth in this proposed amendment), and they share names with nontobacco products presently

registered with the USPTO.[3] The 17 product names appear in table 1 of this **Federal Register** document.[4]

TABLE 1—PRODUCTS AFFECTED BY THE PROPOSED RULE

Cigarette or smokeless tobacco brand	Year of introduction	Examples of nontobacco products with same name**
Complete	2004	Golf Balls, Disposable Adult Briefs and Underwear.
Eclipse	1996	Insect Traps, Oxygen Concentrators for Medical Use.
Exact	2001	Ink and Toner, Medical and Surgical Instruments.
Exalt*	2001	Display Racks, Cattle Vaccines.
Grand Prix*	2008	Apparel for Horseback Riding, Car Wash Services.
Kayak*	1999	Internet Travel Services, Protective Swimming Pool Liners.
King's	1995	All-Purpose Flour, Safety Apparatus.
Lone Star	2002	Welding Machines, Beer.
Longhorn*	2003	Investment and Financial Services, Apparel.
Premis	2004	Integrated Circuits, Hospital Accounting Software.
Pro*	2008	Bicycles and Bicycle Accessories, Fireworks.
Quest	2003	Software, Snowboards.
Revel*	2001	Loudspeakers, Bedding and Bathroom Accessories.
Roger	1999	Apparel, Pilot Training Services.
Stonewall*	2001	Concrete Blocks for Retaining Walls, Turf and Herbicide.
Tahoe	2000	Cookies, Hearth and Fireplace Products.
Thunder	2009	Earmuffs, Potato Chips.

* Smokeless Tobacco Product.
** List is not exhaustive.
Sources: Refs. 16 through 22.

Table 1 includes 10 cigarette brands. Data from the 2005 National Survey on Drug Use and Health (NSDUH) indicate that each of the 9 cigarette brands in this list that had been introduced by 2005 was the usual cigarette choice for less than (probably significantly less than) 1.9 percent of smokers (Ref. 23).[5] Results from the 2008 Maxwell Reports, the primary private source of cigarette sales data, are consistent with those from the NSDUH (Ref 24).[6] There are no reported data indicating that any of the brands listed in table 1 are brands popular with youth. Several sources agree that the most popular brands among youth are Marlboro, Newport, and Camel (Refs. 23 and 25).

Table 1 includes seven smokeless tobacco brands. Five of them were introduced before 2005. The 2005 NSDUH identifies the 15 brands used most often by past-month smokeless tobacco users (Ref. 26). The only brand from table 1, among the five introduced prior to 2005, reported separately in the NSDUH data is Longhorn, which had an overall share of 0.7 percent. Among persons aged 12 to 17, it had a share of only 0.4 percent. The remaining brand shares were too small to be reported individually.

B. Benefits of the Proposed Rule

The proposed rule would allow the manufacturers of cigarettes and smokeless tobacco products listed in table 1 of this **Federal Register** document to avoid incurring the costs associated with changing their products' names. Relevant types of costs may include label redesign, market-testing new names, and additional promotional spending to inform customers of name changes. Furthermore, because the proposed amendment ensures that manufacturers may continue to use a trade or brand name for their tobacco product even if that name is subsequently used or registered for use with the USPTO, it would allow an unknown number of additional producers to avoid these name change costs.

Another benefit of the rule accrues to consumers of tobacco products that are out of compliance with the reissued 1996 final rule but are not profitable enough to justify the cost of a name change. Without this proposed amendment, such products could be discontinued and their consumers (other than those who quit using tobacco products) would have to switch to less-preferred brands.

C. Costs of the Proposed Rule

The costs imposed on society by the proposed rule can take the following forms: (1) Reduced producer profits (sales revenues minus production cost) that are not offset by increased profits of other firms or (2) losses borne by consumers. Costs in the form of reduced producer profits are likely to be zero since the proposed amendment would allow firms to avoid incurring production costs associated with renaming their products (as discussed in section V.B of this **Federal Register** document) and the proposed amendment would not change total sales of cigarettes and smokeless tobacco products (though sales may shift between particular brands as discussed in section V.D of this **Federal Register** document).

Losses borne by consumers take the form of health and life expectancy effects. To the extent that (a) Young people initiate tobacco use based on imagery from nontobacco products that

[3] Registrations were current as of September 22, 2010.

[4] There are additional tobacco products that share names with nontobacco products whose names are not registered with the USPTO.

[5] NSDUH is a large, nationally representative survey conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA). While its primary purpose relates to drug use in the United States, it also provides information regarding cigarette use. Individuals aged 12 and above who had smoked within the past month were asked about their usual brand choice during that time period. The data indicate that the top 10 brands account for the usual choice of over 80 percent of respondents, with shares ranging from 42.4 percent for Marlboro to 1.9 percent for Salem and USA Gold. None of the brands listed in table 1 appears in the list of top 10 brands. Accordingly, the shares must be less than 1.9 percent, and we believe that the shares are likely substantially less than that given the brands' relative obscurity.

[6] Maxwell lists 2008's 14 highest-selling cigarette brands, the smallest of which (Misty) had a 1.4 percent market share (4.87 billion units sold). Since none of the brands appearing in table 1 are among the top 14 ranked by Maxwell, each would have had a market share no higher than 1.4 percent.

share brand names with cigarettes and smokeless tobacco and (b) current users of these products continue consuming tobacco due only to brand loyalty, morbidity and mortality will increase, most notably among those new tobacco users but also among individuals exposed to passive smoking. FDA anticipates, however, these types of costs due to changing the grandfather date will be negligible since sales of the affected tobacco products are low overall and are expected to remain low in the future.[7] Moreover, given the addictive nature of tobacco and the lack of strong brand imagery associated with the affected products, brand loyalty is unlikely to be a primary factor in the continuance of tobacco consumption by established users of these products. Thus, FDA estimates the total cost of the proposed amendment to be near zero.

D. Distributional Effects of the Proposed Rule

In the absence of the proposed amendment, name changes would be required for the 17 products listed in table 1 of this **Federal Register** document. If current consumers of these products do not switch to the renamed products, it is likely, given the addictive nature of tobacco, that at least some would start consuming other brands of cigarettes or smokeless tobacco.[8] The amendment, by preventing this shift in sales, maintains value for the producers of table 1 products, instead of transferring value to producers of substitute products as would occur under the rule as originally published.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires Agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 916(a)(2) of the FD&C Act (21 U.S.C. 387p) expressly preempts any State or local requirement ''which is different from, or in addition to, any requirement under [Chapter IX of the FD&C Act] relating to'', among other things, misbranding. This express preemption provision, however, ''does not apply to requirements relating to'' among other things ''the sale, distribution, * * * access to, [or] the advertising and promotion of, * * * tobacco products.'' If this proposed rule is made final, the final rule would modify the existing restrictions on the sale and distribution of cigarettes and smokeless tobacco products. The failure to comply with those restrictions, as modified, renders the product misbranded under the FD&C Act.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Requests for Comments

FDA is requesting comments on this proposed rule. In drafting this proposal, FDA was aware of concerns that had been raised by § 1140.16(a) of the reissued 1996 final rule, including claims raised in litigation brought in federal district court challenging the constitutionality of the rule. After considering these concerns and claims, FDA is proposing to narrow the scope of the existing rule.

The current rule is intended to ensure that other restrictions on the sale and distribution of cigarettes and smokeless tobacco products to children and adolescents are not undermined by a tobacco manufacturer attempting to exploit the imagery or consumer identification attached to a nontobacco product. We request comments, including any data or information, on whether the proposal adequately addresses this goal, including topics such as the importance of brand names to children and adolescents, criteria FDA could use to evaluate whether a particular brand name has appeal to children and adolescents and under what circumstances a brand name might acquire appeal to children and adolescents, the vulnerability of children and adolescents to targeted marketing strategies, and instances where brand names have been used to attract the youth market.

With respect to the request for exemption process in proposed § 1140.16(a)(3), the Agency requests comments on the standard manufacturers should be required to meet to qualify for the exemption (whether substantial appeal to youth or some other standard), as well as the criteria and specific types of information that should be required to demonstrate that a name does not exceed the standard in its appeal to youth. FDA also requests comments on alternative approaches to narrowing the restriction, such as prohibiting use of a registered nontobacco brand name on a tobacco product only if such name is registered to the same, related, or affiliated entity or is used under a licensing agreement (under the assumption that non-affiliated companies would protect their registered brand names that have strong imagery or consumer identification). If you suggest this or an alternative approach, you should address the basis for the limitation, such as by providing data or information showing how this limitation will ensure that manufacturers do not exploit the imagery or consumer identification attached to a nontobacco product.

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.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m. Monday through Friday. (FDA has verified Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Centers for Disease Control and Prevention, ''Tobacco Use Among Middle and High School Students—United States, 2000–2009,'' *Morbidity and Mortality Weekly Report,* 59(33); 1063–1068, August 27, 2010, available at *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5933a2.htm.*
2. Centers for Disease Control and Prevention, ''Trends in Smoking Initiation Among Adolescents and Young Adults—United States, 1980–1989,'' *Morbidity and Mortality Weekly Report,* 44(28); 521–525, July 21, 1995, available at *http://www.cdc.gov/mmwr/preview/mmwrhtml/00038190.htm.*
3. Centers for Disease Control and Prevention, ''Youth Risk Behavior Surveillance—United States, 2009,'' *Morbidity and Mortality Weekly Report,*

[7] Most of the nontobacco products with which they share names (examples are listed in table 1) are not widely-recognized consumer products and lack strong brand equity; consequently, consumers, including youth, are not likely to identify the nontobacco product names with particular brand images, much less be motivated by them to initiate or continue tobacco use.

[8] If a discontinued product has a low sales volume, there are a large array of similar products on the market to which consumers could switch.

59 (No. SS–5): June 4, 2010, available at *http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf.*

4. Johnston, L.D., *et al.,* ''Smoking Continues Gradual Decline Among U.S. Teens, Smokeless Tobacco Threatens a Comeback,'' University of Michigan News Service: Ann Arbor, MI, December 14, 2009, available at *http://www.monitoringthefuture.org/data/09data.html#2009data-cigs.*
5. Centers for Disease Control and Prevention, ''Tobacco Use and the Health of Young People,'' July 5, 2011, available at *http://www.cdc.gov/HealthyYouth/tobacco/facts.htm.*
6. 1994 Institute of Medicine, Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths,'' Washington, DC: National Academy Press (1994), (''[T]obacco advertising and promotion undoubtedly contribute to the multiple and convergent psychosocial influences that lead children and youths to begin using these products and to become addicted to them.'')
7. Finding 2673, *United States* v. *Philip Morris,* 449 F. Supp 2d 1, 990 (D.D.C. 2006) (''[M]arketing has been and continues to be enormously effective in influencing young people to smoke.''), *aff'd in relevant part,* 566 F.3d 1095 (D.C. Cir. 2009) (*per curiam*), *cert. denied,* 130 S. Ct. 3501 (2010).
8. Shadel, W.G. and Tharp-Taylor, S., ''How Does Exposure to Cigarette Advertising Contribute to Smoking in Adolescents? The Role of Developing Self-Concept and Identification With Advertising Models,'' *Addictive Behavior,* 34(11); 932–937, November 2009.
9. Krugman, Dean M., *et al.,* ''Understanding the Role of Cigarette Promotion and Youth Smoking in a Changing Marketing Environment,'' *Journal of Health Communications,* 10:261–278, 2005 (''Advertising and promotion continue to play an important role in selling cigarettes to youth even after the 1998 MSA [Master Settlement Agreement].'')
10. Henriksen, Lisa, *et al.,* ''A Longitudinal Study of Exposure to Retail Cigarette Advertising and Smoking Initiation,'' *Pediatrics,* 126(2); 232–238, August 2010, available at *http://pediatrics.aappublications.org/cgi/content/abstract/126/2/232.*
11. Federal Trade Commission Cigarette Report for 2007 and 2008 (issued 2011), available at *http://www.ftc.gov/os/2011/07/110729cigarettereport.pdf,* and Federal Trade Commission Smokeless Tobacco Report for 2007 and 2008 (issued 2011), available at *http://www.ftc.gov/os/2011/07/110729smokelesstobaccoreport.pdf* (In 2008, the tobacco industry spent $9.94 billion on advertising and promotion of cigarettes, and another $547.9 million for smokeless tobacco products.)
12. National Cancer Institute, ''The Role of Media in Promoting and Reducing Tobacco Use,'' NCI Tobacco Monograph Series, Monograph 19, NIH Publication No. 07–6242, 2008, available at *http://cancercontrol.cancer.gov/TCRB/monographs/19/index.html.*
13. Aaker, David A., ''Managing Brand Equity: Capitalizing on the Value of a Brand Name,'' *The Free Press,* 1991.
14. Achenreiner, Gwen B., and John, Deborah R., ''The Meaning of Brand Names to Children: A Developmental Investigation,'' *Journal of Consumer Psychology* 13(3), 205–219, 217, 2003.
15. Lee, R.G., Taylor, V, and McGetrick, R., ''Toward Reducing Youth Exposure to Tobacco Messages: Examining the Breadth of Brand and Nonbrand Communication,'' *Journal of Health Communication,* Vol. 9:461–479, 466, 2004. (''In summary, our examination of product brand communications indicates that in the wake of the MSA [Master Settlement Agreement], tobacco firms have channeled their promotional efforts away from restricted media and into a different mix of activities that are permissible, in a fashion similar to the changes after the 1971 broadcast ban. * * * These redistributed industry promotional activities not only work against the objectives of the MSA, but also contribute to the breadth of protobacco messages facing youth.'')
16. Burritt, Chris, ''Swedish Match Targets Wall Street Smokers With Snus Tobacco,'' Bloomberg News Service, March 16, 2010, *http://www.bloomberg.com/apps/news?pid=conewsstory&tkr+MO:US&sid=aDwD6ER.R4_Y.*
17. ''Form 10–K for Star Scientific, Inc,'' Yahoo! Finance, March 16, 2010.
18. ''Indian Tribe Launches New Cigarette Brand,'' *All Business,* April 20, 2004, available at *http://www.allbusiness.com/retail-trade/food-stores/4482001-1.html.*
19. Pederson, L.L. and D.E. Nelson, ''Literature Review and Summary of Perceptions, Attitudes, Beliefs, and Marketing of Potentially Reduced Exposure Products: Communication Implications,'' *Nicotine & Tobacco Research,* 9(5): 525–534, May 2007.
20. Roerty, Gerard J., *et al.,* Letter to Lawrence Deyton, Director of the Center for Tobacco Products, October 22, 2009.
21. Tobacco Products Wikiproducts Site, available at *http://tobaccoproducts.org/index.php/Main_Page.*
22. United States Patent and Trademark Office, Trademark Electronic Search System (TESS), available at *http://tess2.uspto.gov/bin/gate.exe?f=searchstr&state=4004:9eb3t4.1.1.*
23. SAMHSA, Office of Applied Studies, *The NSDUH Report: Cigarette Brand Preferences in 2005,* January 12, 2007, *http://www.oas.samhsa.gov/2k7/cigBrands/cigBrands.pdf.*
24. Maxwell, John C, *The Maxwell Report: Year-End and Fourth Quarter 2008 Sales Estimates for the Cigarette Industry,* Richmond, VA: John C. Maxwell, Jr., February 2009.
25. O'Hegarty, M., *et al.,* ''Cigarette Brand Preference Among Middle and High School Students Who Are Established Smokers: United States, 2004 and 2006,'' *Morbidity and Mortality Weekly Report,* 58 (5): 112–115, February 13, 2009, *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5805a3.htm.*
26. SAMHSA, Office of Applied Studies, ''*Results From the 2005 National Survey on Drug Use and Health: Detailed Tables,''* September 2006, *http://www.oas.samhsa.gov/NSDUH/2k5nsduh/tabs/Sect7peTabs58to67.pdf.*

List of Subjects in 21 CFR Part 1140

Advertising, Labeling, Smoking, Tobacco.

Therefore, under the Federal Food, Drug, and Cosmetic Act, as amended by section 102 of the Tobacco Control Act, and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1140 be amended as follows:

PART 1140—CIGARETTES AND SMOKELESS TOBACCO

1. The authority citation for 21 CFR part 1140 reads as follows:

Authority: 21 U.S.C. 301 *et seq.,* Sec. 102, Pub. L. 111–31, 123 Stat. 1776.

2. In § 1140.16, revise paragraph (a) to read as follows:

§ 1140.16 Conditions of manufacture, sale, and distribution.

(a) *Restriction on product names.* (1) Except as provided in paragraph (a)(2) or (a)(3) of this section, a manufacturer shall not use a trade or brand name for a cigarette or smokeless tobacco product if that name was registered with the United States Patent and Trademark Office for a nontobacco product on the date the tobacco product was first sold in the United States.

(2) Paragraph (a)(1) of this section does not apply to a cigarette or smokeless tobacco product sold on or before June 22, 2009.

(3) A manufacturer may request an exemption from the restriction on use of a trade or brand name in paragraph (a)(1) of this section. Such request must be in writing to the Director of the Center for Tobacco Products and contain sufficient information to demonstrate that the trade or brand name that is registered for a nontobacco product does not, based on its use for the nontobacco product, have a substantial appeal to children or adolescents.

* * * * *

Dated: November 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–29702 Filed 11–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR–5507–P–01]

RIN 2577–AC84

Public Housing Energy Audits

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise HUD's energy audit requirements applicable to HUD's public housing program for the purpose of clarifying such requirements, as well as identifying energy-efficient measures that need to be addressed in the audit and procedures for improved coordination with physical needs assessments. In addition, the rule moves the energy audit requirements to a different part of HUD's title of the Code of Federal Regulations.

DATES: *Comment Due Date:* January 17, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Riddel, Director, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000; *telephone number* (202) 402–7378 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Because of the increasing importance of energy conservation, HUD is taking a more proactive approach toward encouraging energy efficiency in its housing programs. In order for public housing agencies (PHAs) to improve their capital planning processes, HUD determined that there is a need for stronger energy audit data.

Under existing regulations, all PHAs must complete an energy audit for each PHA-owned project under management at least once every 5 years. The existing regulations also require that standards for energy audits be equivalent to state standards. However, state standards for energy audits are variable or nonexistent (see, for example, the map of state energy codes by the Department of Energy at *http://www.energycodes.gov/states/*). Accordingly, it is HUD's view that energy audit standards present an area where additional guidance will produce more useful results.

In this rule, HUD proposes the energy conservation measures (ECMs) that a PHA must consider at a minimum when performing an energy audit. This rule also proposes certain minimum qualifications for energy auditors procured by PHAs to perform energy audits.

While this rule proposes ECMs that must be considered, as well as certain standards for energy audits and minimum qualifications for energy auditors, HUD specifically seeks public comment on whether there are other standards and qualifications that HUD should consider adopting.

HUD will be publishing separately a proposed rule on physical needs assessments (PNAs) that will require the completion of PNAs in conjunction with energy audits in order to integrate the audit properly with the PNA. The PNA rule proposes to require data derived from the energy audit to be included in a PNA, to facilitate the identification of cost-effective ECMs. ECMs also include water-related efficiency measures. If a PNA and energy audit are performed together, there could be cost savings to PHAs to the extent that many of the same components are reviewed for each. Through this rule and the PNA rule, HUD seeks to have PHAs move toward coordinating the performance of PNAs and energy audits with each other, to maximize the effective use of this type of information.

HUD specifically seeks comments from PHAs and other interested parties as to an appropriate time frame for performance and submission requirements.

Coordination between an energy auditor and PNA provider is considered to be important in the capital improvement decision-making process. As the consulting industry that services PHAs and the public housing program is introduced to coordinated or integrated PNAs and energy audits, the costs associated with performing both of these assessments may be reduced. Since energy conservation products are often newer technology whose prices tend to be reduced over time and because utility costs are more volatile than general costs, 2 years is considered by HUD to be the maximum time frame between the performance of an energy audit and a PNA that maintains cost and pricing alignment. In addition, coordination between an energy auditor and PNA provider is considered to be important for the evaluation of technical issues in the selection of component products and the sequencing of improvements. Coordination of the timing of these activities may reduce the possibility of additional cost to the PHA for consulting services outside of the contract cycle of professional providers.

HUD is interested in receiving feedback concerning the feasibility of requiring PHAs to coordinate the performance of energy audits and PNAs. HUD specifically invites comment on the potential benefits, feasibility, or challenges of preparing energy audits in conjunction with PNAs. HUD also specifically seeks public comment on how quickly energy audit information becomes obsolete for cost projection and strategic planning in a PNA.

II. This Proposed Rule

A. Overview of Changes

This proposed rule moves the regulations pertaining to energy audit requirements, which are currently codified in 24 CFR 965.302, to 24 CFR 905.300(b)(10)–905.300(b)(15), and clarifies HUD's requirements for energy audits performed in conjunction with PNAs.

Also through this rule, HUD proposes to modify these regulations to:

(1) Define an energy audit, ECMs, and ''green'' measures.

(2) Establish content and submission requirements for an energy audit, and facilitate the integration of the energy audit with the PNA that PHAs are required to conduct every 5 years. While many states have not adopted auditing standards (see *http://www.energycodes.gov/states/*), the PHA would still be required to comply with standards adopted for their state, where applicable. HUD is not at this time prescribing a specific energy audit form, so long as the required data is collected, and so long as energy auditing systems and formats are available from a number of sources, including the Department of Energy, Building Performance Institute (BPI), and the Residential Energy Services Network (RESNET).

(3) Define Core ECMs that must be considered and require further evaluation of those ECMs that have the potential for cost-effective implementation. Core ECMs generally represent commonplace conservation measures that have demonstrated track records of reducing energy and water consumption in a cost-effective manner and that can be routinely evaluated by an energy auditor. This rule defines Core ECMs in broad categories. Examples within the categories include: Changes to the building envelope such as insulation; energy-efficient mechanical equipment; low-flow water devices and other water conservation measures; energy-efficient lighting systems, including compact fluorescent lighting and motion controls; and Energy Star-certified appliances. As technology advances over time, HUD will provide further examples of ECMs in guidance.

(4) Recognize Advanced ECMs that may be addressed. PHAs are encouraged, but not required to consider Advanced ECMs, which represent alternative measures comprising advanced or experimental technology which, compared to the Core ECMs, can be more challenging to evaluate and implement. These are not alternatives that auditors would normally consider unless directed to do so, or unless there were local precedents that caused the measures to become commonly accepted local alternatives. Examples of Advanced ECMs include renewable energy technologies, such as solar and geothermal power, and green construction.

(5) Require that ECMs identified in the energy audit as cost-effective be organized into those with: Paybacks of 12 years or less, paybacks of greater than 12 and less than or equal to 20 years, and paybacks of more than 20 years. The 12-year and 20-year benchmarks correspond with the benchmarks for an Energy Performance Contract (EPC).

(6) Establish minimum qualifications for an energy auditor, and

(7) Provide for extension of the requirement to complete an initial energy audit in instances where industry capacity is a constraint.

This rule would not require PHAs to implement particular ECMs; however, the energy audit must provide PHAs with accurate information about ECMs for the PHAs to consider. It is HUD's position that when PHAs capture the cost-effectiveness data for ECMs, PHAs will implement the measures more frequently.

The proposed rule would require payback analysis for Core ECMs. Current guidance for a payback analysis is contained in the HUD publication ''Energy Conservation for Housing—A Workbook,'' dated September, 1998 (available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/phecc/resources*), and this proposed rule would clarify and modify that guidance. The payback analysis in the proposed rule would recognize that for a replacement component, the incremental cost of a more efficient component should be used to determine cost-effectiveness. For example, if an Energy Star appliance costs $100 more than a standard appliance with the same estimated life and the component has to be replaced, in order for the Energy Star appliance to be cost-effective, it must cost $100 less to operate than the standard component over the designated payback period.

The result of a payback analysis would be considered in the context of this rule as a threshold for further evaluation of an ECM. A more detailed cost analysis may be conducted that includes complete lifecycle cost analysis; however, the baseline audit requires only that those lifecycle costs be generally identified, not that they be subjected to detailed cost analysis.

The proposed rule would not prevent PHAs from pursuing more advanced utility conservation and green measures, at their option. In making the distinction between Core ECMs and Advanced ECMs, HUD is recognizing extensive opportunities in public housing for simple cost-effective energy conservation improvements, while acknowledging that more advanced work may be possible in certain circumstances. The engineering and implementation costs of advanced technologies often make them impractical outside of the context of a comprehensive redevelopment, remodeling, or incentivized program, such as an EPC or targeted grant program. HUD's view is that it is preferable to concentrate limited funding on improvements that have been proven to be generally cost-effective and broadly available to PHAs. PHAs have different priorities and local requirements with respect to utility conservation and green improvements. Many improvements, while not providing monetary cost effectiveness, provide benefits in the form of an improved living environment for residents or a contribution to broader societal environmental goals. HUD recognizes those benefits, and encourages PHAs to consider a wide variety of measures. HUD's Office of Healthy Homes and Lead Hazard Control and the Environmental Protection Agency's Indoor Air Quality Standards, as well as Office of Public and Indian Housing (PIH) notices on green building, are useful resources for a PHA that is considering a program of green improvements.

While it is HUD's position that the performance of the energy audit at the same time as the PNA would be more efficient for PHAs, particularly in circumstances where a single provider can perform both services, HUD also recognizes that circumstances may not allow a PHA to perform both services together. Accordingly, this rule does not require the performance of the energy audit simultaneously with the PNA. HUD recognizes circumstances where an energy audit would be performed outside the 5-year cycle, such as an energy audit performed in relation to an EPC or another development project, or

to meet another HUD requirement. As in the case of a PNA, the first energy audit under the new final rule resulting from this proposed rule is likely to be the most costly and require the most intensive effort, with subsequent updates benefitting from the information collected in prior audits. HUD also recognizes that the capacity of the energy auditing industry might be limited in some areas, and allows for a delay in the performance of the audit in cases where local shortages in these professional services exist.

The rule does not propose to require an investment grade energy audit such as one that might be prepared for an energy performance contract or in order to evaluate a financial transaction. HUD is especially interested in receiving comments about appropriate energy audit requirements, as well as certification requirements and professional standards for energy auditors. HUD is interested in hearing from both the energy auditing industry and entities that have experience managing a real estate portfolio and have integrated energy audits into their planning process. HUD is also interested in receiving comments about any multiple purposes for which portfolio managers have used energy audits. HUD also invites comments about the proposed categories of ECMs that should be addressed in an energy audit, and conservation measures that are appropriate for use on a nationwide basis. HUD further invites comments from public housing and other interested parties on the needed capacity for performing integrated energy audits and PNAs.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

Reporting and Recordkeeping Burden:

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
905.300(b)(10) [1]	620	1	65	40,300
905.300(b)(14) [2]	620	1	25	15,500
905.300(b)(14)(vii) [3]	62	1	45	2,790
900.300(b)(15) [4]	62	1	45	2,790
Total Paperwork Burden for the New Rule				61,380
Total Burden from Previous Rule (24 CFR 965.302) [5]				29,440
Total additional burden as a result of this rule				31,940

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permittingelectronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–5361) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, *Fax number:* (202) 395–6947, and

Collette Pollard, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Regulatory Planning and Review

OMB reviewed this proposed rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). This rule was determined to be a

[1] Burden of energy audit performed once every 5 years for each of 3,200 PHAs, including data collection and site inspection.

[2] Burden of analysis and comprehensive report.

[3] Optional burden of expanded analysis as directed by PHA, estimated to be exercised by 10 percent of respondents.

[4] Optional burden of considering green measures as directed by PHA, estimated to be exercised by 10 percent of respondents.

[5] OMB Control No. 2577–0062.

''significant regulatory action,'' as defined in 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

This proposed rule would revise HUD's energy audit requirements applicable to HUD's public housing program for the purpose of clarifying such requirements and defining energy-efficient measures and audit procedures. It is estimated that the cost burden to PHAs could be up to $40 million every 5 years or $8 million annually. Notwithstanding the relatively modest cost to perform energy audits, there is a potential for PHAs to realize substantial savings. Each year, about $1.2 billion is budgeted for utilities for housing authorities. Assuming that this rule is effective and energy audits are successfully translated into energy savings, where, for example, only 10 percent efficiency and cost were achieved, it would translate into about $120 million in budget savings annually that could be affected to other uses. When tenant-paid utilities are included, the annual savings may be up to $173 million under the same conditions. Notwithstanding the potential benefit, this proposed rule is not economically significant as defined by Executive Order 12866 and OMB Circular A–4.

The potential costs of the rule are as follows. The new Energy Audit Rule does not change the current requirement that all PHAs perform an energy audit at least once every 5 years. However, there will be an economic impact to the extent that the new standards for performance exceed the standard of performance for the state in which each PHA is located.

The cost to perform the enhanced energy audit can be approximated using existing examples and HUD's own experience. HUD's Office of Affordable Housing Preservation (OAHP) manages the Green Retrofit Program (GRP), which involves OAHP direct engagement of providers to perform Physical Needs Assessment and Energy Audits for affordable housing projects. The GRP energy audit includes all of the components generally understood to be found in a baseline energy audit. HUD is using the GRP format as a source for the development of energy audit standards to be used in public housing, and the energy audit standards in the new rule will be comparable in complexity/comprehensiveness. OAHP has shared a summary of its costs to perform PNAs during Fiscal Year 2009/10 using its format for a set of 66 projects nationwide. These projects averaged 96 units per project. The average cost for the energy audit portion of the GRP for these projects was reported as $3,314 per project or $32.86 per unit.

In the absence of detailed cost figures for the energy audits currently being performed by PHAs, the most conservative approach to estimating the burden is to use the GRP figure of $32.86 per unit. Even without a mitigating adjustment for the current economic investment that PHAs are making to this activity, the economic burden to PHAs would be $39,864,536 ($32.86 × 1,213,163) every 5 years, or $7,972,907 annually. A mitigating adjustment of 50 percent to account for the existing burden is not an unreasonable assumption. Such an adjustment would reduce the 5-year and annual additional burden to $19,932,268 and $3,986,453, respectively.

There are also benefits to the rule. Nationwide, PHA-paid utility costs total around $1.3 billion annually, or about 25 percent of the costs to operate public housing. It is estimated that an additional $430 million in utility costs are paid by residents, but indirectly are paid by PHAs in the form of utility allowances that reduce resident rents. Assuming that this rule is effective and, for example, only 10 percent efficiency were achieved, that would translate into about $173 million in budget savings annually that could be realized and affected to other uses.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

This proposed rule that does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. All PHAs have been required to complete energy audits, which essentially review building systems for the purpose of assessing whether the project would benefit from energy conservation measures. This rule also clarifies the scope of the energy audit that would be made pursuant to the existing energy audit requirements, rather than creating a new requirement for PHAs. To the extent that the standards for the energy audit pursuant to this rule are more burdensome than the current state standards required for energy audits, there may be some incremental cost to some PHAs to perform audits to this standard. However, this cost would be miniscule fraction of each PHA's capital grant, and so would not be a significant economic impact. For example, making the most conservative assumption—that each small PHA would be required to hire an independent auditor rather than using existing staff time—the incremental cost would be $32.86 per unit per 5 years, or $6.57 per unit per year. The capital fund grant averages $1595 per unit, per year, so that the cost as a percentage of capital grant is only 0.4 percent. In actuality, the costs may be lower, because at least some small PHAs will have the staff resources to perform the audit in-house.

Notwithstanding the determination that this rule would not have a significant impact on PHAs, HUD specifically invites any comments regarding any less burdensome alternatives to this rule that will meet

HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 905 is 14.872.

List of Subjects in 24 CFR 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 905, as proposed to be revised at 76 FR 6661, February 7, 2011, as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

1. The authority statement for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, and 3535(d).

Subpart C—General Program Requirements

2. Amend § 905.300 by adding paragraphs (b)(10) through (b)(15) to read as follows:

§ 905.300 Capital Fund submission requirements.

* * * * *

(b) * * *

(10) *Energy audits.* All PHAs shall complete an energy audit for each PHA-owned project under management, not less than once every 5 years, unless otherwise specified in this part.

(i) Energy audits consist of reviews of building systems to evaluate and identify projected costs, savings, and payback periods related to implementing any of a variety of potential energy conservation measures. Energy audits required by this part may, but are not required to, also identify green measures, or measures that do not result in energy savings, but which instead result in environmental benefits, such as improving indoor air quality.

(ii) The purpose of this subpart is to provide minimum standards with respect to the performance of energy audits. PHAs are not required to implement any specific energy conservation measure identified in an energy audit, except to the extent required by other statutes, rules, or regulations. An energy audit, however, must provide PHA staff with accurate information about the condition of the PHA's properties with respect to energy conservation measures and to the payback associated with energy conservation measures. The audit may also provide information about the environmental or potential health benefits of green measures.

(iii) PHAs shall integrate utility management with capital planning, to maximize energy conservation and efficiency measures in a comprehensive approach to building design, development, and maintenance. Energy audits shall be conducted in conjunction with HUD's required PNA. Any planned, ongoing, or completed energy, utility, and green improvements must be captured in the PNA in a form and manner prescribed by HUD.

(iv) PHAs shall not be required to complete an energy audit for any project that is less than 5 years old at the time the PHA is required to complete the energy audit. PHAs shall not be required to complete an energy audit for any project for which a removal from the public housing inventory has been approved by HUD, such as a demolition, disposition, conversion to homeownership, or other conversion action.

(v) The first two energy audits completed under this section shall be completed in accordance with a time frame delineated by HUD.

(vi) When a PHA is required to submit an energy audit pursuant to this part for the first time, a PHA has the option of submitting an existing audit completed within the last 2 years if:

(A) The audit meets the data requirements under this section; and

(B) The audit was completed by an auditor that meets the requirements of this section.

(vii) When a PHA is required to complete and submit an energy audit for the first time, a PHA may request an additional 2 years to submit the audit if it cannot find a qualified auditor. To obtain HUD's approval, a PHA must provide documentation to its field office that demonstrates it issued a well-structured Request for Proposal (RFP) in accordance with 24 CFR 85.36, and received no bids from qualified respondents.

(11) *Energy and water conservation measures (ECMs).* ECMs are devices, systems, or processes that may reduce utility and energy consumption. For the purposes of this subpart, ECMs include ''Core ECMs'' and ''Advanced ECMs.''

(12) Core ECMs are defined as broadly available energy conservation measures that have proven track records of reducing energy and water consumption in a cost-effective manner. Core ECMs include, but are not limited to, the following ECM categories:

(i) Building envelope (ECMs such as, but not limited to, wall or attic insulation, roofs, storm doors, weatherization, radiant barriers, and windows);

(ii) Heating, cooling, and other mechanical equipment systems and controls (ECMs such as, but not limited to, energy efficient furnaces, air handlers, fans, condensers, boilers, hot water heaters, programmable thermostats, equipment refurbishment and commissioning, duct sealing, duct insulation, pipe insulation, water heating controls, and ventilation);

(iii) Water conservation (ECMs such as, but not limited to, low flow toilets, faucets, showerheads, and alternate irrigation);

(iv) Power, lighting systems, and controls (ECMs such as, but not limited to, compact fluorescent lighting, LED fixtures and exit signage, photocell controls, and motion controls);

(v) Appliances (ECMs such as, but not limited, to Energy Star-rated refrigerators, clothes washers, and dishwashers).

(13) Advanced ECMs are defined as alternative measures comprising advanced or experimental technology which, compared to Core ECMs, can be more challenging to evaluate and implement. These are not alternatives that auditors would normally consider unless directed to do so, or unless there were local precedents that caused the measures to become commonly accepted local alternatives. Advanced ECMs include, but are not limited to:

(i) Fuel conversions;

(ii) Conservation technologies (*e.g.,* green construction techniques, building energy management systems, and xeriscaping [6]); and

[6] Xeriscaping is the conservation of landscape irrigation water through creative and efficient landscape design.

(iii) Energy generating technologies and renewable energy systems (*e.g.,* solar, geothermal, and cogeneration [7]).

(14) *Energy audit technical requirements and reporting.* (i) An energy audit shall analyze utility consumption, review property and building data, and evaluate Core ECMs that could result in cost-effective energy and water conservation. At the option of the PHA, an energy audit may also evaluate Advanced ECMs and green measures.

(ii) Energy audits for public housing shall at a minimum consider the Core ECMs and provide a comprehensive assessment report that includes:

(A) A summary review of the findings of any previous energy audits;

(B) An assessment of the existing property physical components affecting energy consumption, including an evaluation of the performance and condition of components within the Core ECM categories.

(C) An assessment of building operations, maintenance, and resident education as it relates to energy conservation and green practices;

(D) Analysis of fuel, electricity, and water bills and usage for at least the PHA-held accounts for trend analysis and industry benchmarking, and for tenant-held accounts where usage information is in the possession of the PHA;

(E) Identification and evaluation of all energy conservation measures considered, which shall include at least those that have the potential for cost-effective implementation;

(F) Categorization of recommended energy conservation measures into improvements with payback periods of 12 years or less, greater than 12 and less than or equal to 20 years, and more than 20 years;

(G) Projected cost of ECMs, and where a standard (less energy-efficient) building component is available, the projected cost of the standard component and the incremental cost of the ECM;

(H) Projected annual savings in water consumption;

(I) Projected annual energy consumption savings in the appropriate unit of measurement (*i.e.,* kilowatt-hours, British Thermal Unit (BTU),[8] gallons, cubic feet etc.) for recommended ECMs;

(J) Projected annual savings in dollars for recommended ECMs;

(K) Expected useful life of all ECMs and green measures;

(L) Identification of life cycle costs or savings of ECMs and green measures, including disposal costs and maintenance costs; and

(M) Energy auditor recommendations for optimal sequencing of ECM implementation for maximum benefit.

(iii) The energy audit will identify related physical work items that must be implemented at the same time to assure that a specific ECM can provide the maximum savings calculated, as well as to maintain health and safety (*e.g.,* the installation of an energy-efficient boiler may require that new, wider distribution lines be installed or rerouted to maximize the potential savings that could be realized from the boiler; and a weatherization project may require adjustments to ventilation systems to maintain adequate fresh air exchange). These complementary activities should be viewed as part of an improvement package required to achieve the overall energy savings.

(iv) Data and findings from prior energy audits that are deemed reliable and remain valid may be carried over to subsequent audits.

(v) Where ECMs would replace existing components at the end of their useful life, the payback period shall be calculated by dividing the incremental cost of replacement with an ECM as compared with a standard component, by the projected annual savings of the ECM as compared with a standard component. Where ECMs would replace existing components before the end of their useful life (early replacement), the payback period calculation shall be modified to add the value of the remaining useful life of the component being replaced to the incremental cost of the ECM. This payback period calculation shall be modified in a manner acceptable to HUD. Where ECMs would improve a project by adding new systems or new functionality, such as in the case of energy-generating equipment, the payback period shall be calculated by dividing the total cost of the ECM by the projected annual savings.

(vi) The energy audit shall differentiate between activities that are routine operating and maintenance activities and ECMs that are capital expenditures and can be financed with capital funds. Cleaning or changing air filters on certain mechanical equipment is a routine operational maintenance function that may result in energy conservation but is not an eligible capital expense.

(vii) For purposes of this part, the potential for cost-effective implementation of an energy conservation measure must be evaluated when the payback period is equal to or less than the estimated useful life of the component or 12 years, whichever is less. Complete lifecycle cost analysis to refine cost impacts of energy conservation measures is recommended for those measures initially determined to be cost-effective.

(viii) The energy auditor shall report on a project-level basis. The energy auditor shall submit a baseline report to the PHA and may submit an expanded report, as noted below. The report shall include the elements in § 905.300(b)(14)(i) for at least the ECMs identified in § 905.300(b)(14)(i)(D). The baseline report shall include a recommendation as to whether the PHA should complete more extensive engineering reviews to determine whether consideration of Advanced ECMs or others would be warranted. The energy auditor's recommendation shall be based upon the potential lifecycle cost savings of the ECMs, the complexity associated with implementing the ECMs, and the age and condition of the project as a whole. If the PHA directs the energy auditor to complete additional analysis on these ECMs, the energy audit shall be expanded to include that analysis.

(ix) There may be occasions outside of the 5-year cycle when an energy audit is appropriate and necessary to comply with state-specific energy policies, participate in local utility company incentive programs, pursue an energy performance contract, or evaluate the financial condition of a project. Nothing in this subpart is to be construed as prohibiting an energy audit at any time that the PHA determines it to be in the interest of the project.

(x) Capital or operating funds may be used for energy audits whenever they are performed.

(xi) Energy audits required in this section do not need to be investment grade energy audits,[9] but must cover all projects, and be sufficient to determine projected savings and to prioritize potential work based on the goals and objectives identified by the PHA (*e.g.,* quickest payback, largest payback, speed of implementation, *etc.*). Any energy audit may rely on data from a HUD-required prior energy audit (such as described in part § 905.300(b)(14)(i)

[7] Cogeneration is the use of the byproduct of energy generation, primarily thermal energy, for other purposes that would normally require additional energy.

[8] A BTU is defined as the amount of heat required to raise the temperature of 1 pound (0.454 kg) of liquid water by 1 °F (0.556 °C) at a constant pressure of one atmosphere.

[9] Investment Grade Energy Audits are prepared specifically to support a financial transaction such as an energy performance contract.

or performed in relation to an energy performance contract) conducted on the same property, if the previous audit was completed within 2 years of the time of a required PNA or energy audit, and if the previous audit meets the data requirements of the audits prescribed by this section.

(xii) While the timing of an energy audit is coordinated with a PNA, there are several instances when HUD may require a current or updated energy audit. These include but are not limited to:

(A) When requesting HUD permission to transfer excess cash from one project to another;

(B) At the direction of HUD, when HUD energy consumption data or industry benchmarks indicate that a project's energy consumption levels are excessive when compared to similar projects within the project's climatic zone;

(C) When required to substantiate an exception to the Total Development Cost Limit in reference to 24 CFR 941.306; and

(D) When the PHA is substandard under any applicable performance rating system used by HUD to assess project-level performance both in terms of operations and financial condition.

(xiii) The energy auditor shall be experienced in the performance of residential building energy audits and shall hold a current, valid certification from a state energy audit certifying agency for the state where the property is located or a nationally recognized energy audit certification provider, or hold other certification acceptable to HUD or expressed in HUD guidance.

(15) *Green measures.* (i) Green measures are products, systems or processes that do not necessarily conserve energy, but result in other environmental benefits. These include, for example: use of low volatility or nonvolatile organic compound cabinets, flooring, paints, or sealants; physical changes required to effectively implement integrated pest management; and hazardous waste or construction debris removal processes.

(ii) An energy audit shall identify green measures if the PHA directs the energy auditor to include them in the energy audit, but they are not required to be included. Where an energy audit includes green measures, it shall identify the projected cost of the green measure, and where a standard building component is available, it shall identify the projected cost for the standard component and the incremental cost of the green measure.

Dated: October 21, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–29640 Filed 11–16–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC37

Privacy Act; Implementation

AGENCY: Office of the Secretary, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury (Treasury) amends this part to partially exempt a new Internal Revenue Service (IRS) system of records entitled ''Treasury/IRS 37.111—Preparer Tax Identification Number Records'' from certain provisions of the Privacy Act.

DATES: Comments must be received no later than December 19, 2011.

ADDRESSES: Please submit comments to David R. Williams, Director, Return Preparer Office, 1111 Constitution Ave. NW., Washington, DC 20224. Phone: (202) 927–6428 (not a toll-free number). Comments will be made available for inspection at the IRS Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 622–5164 (not a toll-free number). You may also submit comments through the Federal rulemaking portal at *http://www.regulations.gov* (follow the instructions for submitting comments).

FOR FURTHER INFORMATION CONTACT: David R. Williams, Director, Return Preparer Office, 1111 Constitution Ave. NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system is investigatory material compiled for law enforcement purposes. Treasury is hereby giving notice of a proposed rule to exempt ''Treasury/IRS 37.111—Preparer Tax Identification Number Records'' from certain provisions of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(k)(2). The proposed exemption pursuant to 5 U.S.C. 552a(k)(2) is from provisions (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) because the system contains investigatory material compiled for law enforcement purposes. The following are the reasons why this system of records maintained by the IRS is exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974:

(1) 5 U.S.C. 552a(c)(3). These provisions of the Privacy Act provide for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his/her request. The reasons for exempting this system of records from the foregoing provisions are:

(i) The release of disclosure accounting would put the subject of an investigation on notice that an investigation exists and that such person is the subject of that investigation.

(ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to which disclosure was made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the alteration or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating the subject and the scope of the investigation and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(d)(1)–(4), (e)(4)(G), (e)(4)(H), and (f). These provisions of the Privacy Act relate to an individual's right to be notified of:

(i) The existence of records pertaining to such individual,

(ii) Requirements for identifying an individual who requested access to records,

(iii) The agency procedures relating to access to and amendment of records,

(iv) The content of the information contained in such records, and

(v) The civil remedies available to the individual in the event of an adverse determination by an agency concerning access to or amendment of information contained in record systems.

The reasons for exempting this system of records from the foregoing provisions are that notifying an individual (at the individual's request) of the existence of an investigative file pertaining to such

individual or to granting access to an investigative file pertaining to such individual could:

(i) Interfere with investigative and enforcement proceedings,

(ii) Deprive codefendants of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of the personal privacy of others,

(iv) Disclose the identity of confidential sources and reveal confidential information supplied by such sources,

(v) Disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting this system of records from the foregoing are as follows:

(i) The IRS will limit the system to those records that are needed for compliance with the provisions of Title 26, 31 U.S.C. 330, and regulations applicable to paid tax return preparers. However, an exemption from the foregoing is needed because, particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when first received may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(5) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons an exemption from this provision has been claimed, are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures.

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

Treasury will publish the notice of the proposed new system of records separately in the **Federal Register**.

Pursuant to Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612, do not apply.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

(g) * * *

(1) * * *

(viii) * * *

Number	Name of system
* * * * *	
IRS 37.111	Preparer Tax Identification Number Records.

* * * * *

Dated: October 24, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2011–29384 Filed 11–16–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 158 and 161

[EPA–HQ–OPP–2010–0427; FRL–8886–1]

RIN 2070–AJ26

Prions; Proposed Amendment To Clarify Product Performance Data for Products With Prion-Related Claims and Availability of Draft Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: As a supplement to the proposed rule to declare a prion (*i.e.,* proteinaceous infectious particle) a ''pest'' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and to amend its regulations to expressly include prion within the regulatory definition of pest, EPA is now proposing to amend its product performance data requirements to clarify that efficacy data are required for all products with prion-related claims. The existing product performance data requirements already require efficacy data to be submitted when the ''pesticide product bears a claim to control pest microorganisms that pose a threat to human health and whose presence cannot readily be observed by the user including, but not limited to, microorganisms infectious to man in any area of the inanimate environment. * * *'' Since this general requirement applies to products with prion-related claims, EPA is proposing to amend the regulation to specifically identify that efficacy data are required for products with prion-related claims. In addition, EPA is announcing the availability for public review and comment of draft test guidelines concerning the generation of product performance data for prion-related products.

DATES: Comments must be received on or before January 17, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0427, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S.

Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0427. 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 email. 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 email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5448; *fax number:* (703) 308–6467; *email address: kempter.carlton@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you apply for or own pesticide registrations. Potentially affected entities may include, but are not limited to:

- Producers of pesticide products (NAICS code 32532).
- Producers of antimicrobial pesticides (NAICS code 32561).
- Veterinary testing laboratories (NAICS code 541940).
- Medical pathology laboratories (NAICS code 621511).
- Taxidermists, independent (NAICS code 711510).
- Surgeons (NAICS code 621111).
- Dental surgeons (NAICS code 621210).

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What is a Prion?

Prions (''proteinaceous infectious particles'') may occur in the central nervous system tissues of animals as an abnormal (''misfolded''), infectious form of prion protein. Prion protein in its normal form, or conformation, can be designated PrP^{c} (''cellular'' isoform) while abnormal conformations of prion proteins are generally called prions. Different types of prions are commonly designated by the type of diseases they produce, such as PrP^{Sc} (prions associated with scrapie) and PrP^{BSE} (prions associated with bovine spongiform encephalopathy—mad cow disease).

In the disease process, prions (such as PrP^{sc}) recruit normal prion proteins (PrP^{c}) and convert them into prions (*e.g.,* another copy of PrP^{Sc}). This recruitment and conversion process results in the progressive accumulation of disease-producing prions. When this process takes place in the brain, it causes disease that slowly progresses from neuronal dysfunction and degeneration to death. These neurodegenerative prion diseases are known collectively as transmissible spongiform encephalopathies (TSE). TSE's include scrapie disease in sheep,

bovine spongiform encephalopathy (BSE) in cattle, chronic wasting disease (CWD) in deer and elk, kuru and variant Creutzfeld-Jakob Disease (vCJD) in humans, and similar diseases in other animals. EPA and other agencies are concerned that animal-related prions may spread to other animals (*e.g.,* scrapie to sheep, CWD to cervids) or to humans (*e.g.,* BSE), and that human-related prions may be passed to other humans (*e.g.,* kuru or CJD). These diseases are always fatal in humans and animals alike, and there are no known treatments or cures.

B. Regulatory History of Products With Prion-Related Claims

On September 10, 2003, EPA determined that a prion should be considered to be a ''pest'' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*) and that products intended to inactivate prions (*i.e.,* ''prion products'') should be regulated under FIFRA (Ref. 1).

On January 26, 2011 (76 FR 4602) (FRL–8850–4), to eliminate any confusion about the status of prion-related products under FIFRA, EPA issued a proposed rule that, when finalized, would declare a prion a ''pest'' under FIFRA, and amend EPA's regulations to expressly include prion within the regulatory definition of pest. EPA currently considers a prion to be a pest under FIFRA; in addition, a product intended to reduce the infectivity of any prion on inanimate surfaces (*i.e.,* a ''prion-related product'') is considered to be a pesticide and regulated as such. Subject to some exceptions, any pesticide product must be registered or exempted under FIFRA sections 3, 24(c), or 18 before the product may be distributed or sold in the United States.

C. Data Requirements for Pesticides

First promulgated in 1984, EPA's pesticide data requirements outline the kinds of data and related information typically needed to register a pesticide. Since there is much variety in pesticide chemistry, exposure, and hazard, the requirements are designed to be flexible. Test notes to the data requirements tables explain the conditions under which data are typically needed. Essentially, the data requirements identify the questions that the applicant will need to answer regarding a pesticide product before the Agency can register it.

At this time, the data requirements for conventional, biochemical, and microbial pesticides are codified in 40 CFR part 158, and data requirements for antimicrobial pesticides are codified in 40 CFR part 161. In addition, part 158 contains general provisions concerning data for the pesticides covered by the regulation (subpart A), instructions on how to use the data tables in the regulation (subpart B), and a series of data tables that identify data requirements tailored to specific kinds of pesticides, *i.e.,* conventional pesticides (subparts D–O), biochemical pesticides (subpart U), microbial pesticides (subpart V), and several reserved subparts as placeholders for future tailoring of the data requirements that is underway to facilitate the utility of the data tables for pesticide registrants.

On October 26, 2007, EPA revised the structure of part 158 and the data requirements for conventional pesticides (72 FR 60934) (FRL–8106–5), and biochemical pesticides and microbial pesticides (72 FR 60988) (FRL–8109–8). In conjunction with those revisions, EPA also transferred intact the original 1984 pesticide data requirements that had been in part 158 into a new part 161, entitled ''Data Requirements for Antimicrobial Pesticides'' (72 FR 60251, October 24, 2007) (FRL–8116–2). In essence, part 161 is intended to be transitional by preserving the existing data requirements applicable to antimicrobial pesticides until a new final regulation that tailors the data requirements for antimicrobial pesticides is promulgated. On October 8, 2008 (73 FR 59382), EPA proposed to establish data requirements specific to antimicrobial pesticide chemicals in 40 CFR part 158, subpart W and to remove part 161.

D. Test Guidelines Used To Develop Data for Submission to EPA

EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) has issued a series of harmonized test guidelines for use in the testing of pesticides and toxic substances, and the development of test data for submission to the Agency. The OCSPP harmonized test guidelines are documents that specify methods that EPA recommends be used to generate data that are submitted to EPA to support the registration of a pesticide under FIFRA (7 U.S.C. 136 *et seq.*), setting of a tolerance or tolerance exemption for pesticide residues under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a), or the decision making process for an industrial chemical under the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*).

The OCSPP harmonized test guidelines are developed by EPA scientists and non-EPA individuals with a particular interest or expertise in the subject matter covered, including representatives from the scientific community, industry, non-profit organizations, and other governments. Some of these guidelines harmonize EPA's test methods with guidelines established by the Organization for Economic Cooperation and Development (OECD), an international organization whose membership includes most industrialized nations which maintain comprehensive testing methods for pesticides and industrial chemicals. When necessary, significant scientific issues are presented for external peer review to the FIFRA Scientific Advisory Panel (SAP) or to another group of scientific experts for that particular topic.

The OCSPP harmonized test guidelines serve as a compendium of accepted scientific methodologies and protocols for conducting the studies routinely used for generating data on pesticides and industrial chemicals regulated under FIFRA, FFDCA, and TSCA, and may also be useful for voluntary testing purposes.

Under FIFRA and FFDCA, studies conducted according to the OCSPP test guidelines or another approved protocol may be used in satisfying FIFRA data requirements in 40 CFR part 158 and 40 CFR part 161, Data-Call-In's issued pursuant to FIFRA section 3(c)(2)(B), as needed to satisfy data requirements appropriate for specific pesticide registration applications, or for satisfying data requirements to demonstrate the safety of a tolerance or tolerance exemption under FFDCA section 408.

As a guidance document, the test guidelines are not binding on either EPA or any outside parties. At places in the guidance, the Agency uses the word ''should.'' In the guidance, use of ''should'' with regard to an action means that the action is recommended rather than mandatory. The procedures contained in the test guidelines are recommended for generating the data that are the subject of the test guideline, but EPA recognizes that departures may be appropriate in specific situations. EPA will consider alternatives to the recommendations described in the test guidelines on a case-by-case basis, after assessing whether the alternative will provide the data necessary to inform the regulatory decision that must be made.

The OCSPP harmonized test guidelines can be accessed online at *http://epa.gov/ocspp/pubs/frs/home/testmeth.htm.* Please note that although

collectively referred to as the ''OCSPP Test Guidelines,'' the individual guidelines issued before April 22, 2010, use ''OPPTS'' in the titles. On April 22, 2010, the office name changed from ''Office of Prevention, Pesticides, and Toxic Substances'' or ''OPPTS'' to ''Office of Chemical Safety and Pollution Prevention'' and ''OCSPP.''

III. Proposed Data Requirement

A. What is the agency's authority for taking this action?

This action is issued under the authority of sections 2 through 34 of FIFRA (7 U.S.C. 136–136y). In particular, the proposed rule is issued pursuant to FIFRA section 25(a) (7 U.S.C. 136w(a)).

B. What action is the agency taking?

EPA is proposing to amend its pesticide data requirement regulations to clarify that efficacy data are required to support the registration of all end-use products that are intended to be used on inanimate items and/or environmental surfaces, and which bear label claims to reduce the infectivity of prions. Specifically, EPA proposes to amend the data requirements for product performance testing that are currently found in 40 CFR 158.400 and 40 CFR 161.640 by inserting an entry in the data tables to more clearly specify that efficacy data are required for prion-related products.

Currently, EPA's regulations at 40 CFR 158.400(e)(1) and 161.640(b)(1) require efficacy data to be submitted when the ''pesticide product bears a claim to control pest microorganisms that pose a threat to human health and whose presence cannot readily be observed by the user including, but not limited to, microorganisms infectious to man in any area of the inanimate environment. * * *'' Because a prion-related product would bear a claim to reduce the infectivity of prions (that poses a threat to human health), an applicant or registrant would be required by existing regulations to submit valid data that demonstrate that its prion-related product is effective. As such, this amendment simply provides more specificity for those who are considering whether to register a product for use on inanimate items and/or environmental surfaces and make claims that the product will reduce the infectivity of prions.

As indicated in Unit II.C., EPA issued a proposed rule in 2008 (73 FR 59382, October 8, 2008) that proposed to codify the data requirements for antimicrobial pesticide chemicals in 40 CFR part 158, subpart W. That 2008 proposed rule also proposed the following:

- To remove the existing data requirements for antimicrobial pesticide chemicals that currently appear in 40 CFR part 161 (see 73 FR at 59446).
- To amend the table in 40 CFR 158.400(d) by removing the category ''Efficacy of antimicrobial agents'' and all of the entries under that category (see 73 FR at 59431).
- To create a new provision and table to address product performance data for antimicrobial agents in 40 CFR 158.2220 (see 73 FR at 59432).

EPA is therefore also presenting an alternate proposal to amend the table that proposed to consolidate the product performance data requirements for antimicrobials in proposed 40 CFR 158.2220 to include an entry in the proposed data table at 40 CFR 158.2220(c) to specify that efficacy data are required for prion-related products.

In summary, EPA is proposing to more clearly specify that efficacy data are required for prion-related products by either:

- Inserting a new entry in the data tables that are currently found in 40 CFR 158.400 and 40 CFR 161.640.
- If the 2008 proposal concerning proposed 40 CFR 158.2220 has been finalized, by inserting a new entry in the data table that was proposed to be included in 40 CFR 158.2220.

IV. Draft Test Guidelines

EPA is also announcing the availability of draft test guidelines for public review and comment that the Agency intends to include in the OCSPP harmonized test guidelines described in Unit II.D., as part of the 810 Series of Product Performance Test Guidelines. Specifically, the draft guidelines address product performance tests for products with prion-related claims and are identified as ''Product Performance Test Guidelines; OCSPP 810.2700: Products with Prion-Related Claims'' (Ref. 2). The guidelines for products with prion-related claims are designed to provide the data and information needed to assess the efficacy of antimicrobial pesticides intended to be used on inanimate items and/or environmental surfaces, and which bear label claims to reduce the infectivity of prions.

On March 31 and April 1, 2009, EPA presented its draft test guidelines to the FIFRA SAP for peer review (Ref. 3), along with a ''white paper'' summarizing the most relevant scientific studies and publications related to the issue of whether a prion is a pest in support of the separate proposed rule on that issue. The SAP provided comments on the draft guidance document on June 29, 2009 (Ref. 4). EPA has considered the SAP's recommendations and incorporated changes, as appropriate (Ref. 5). In addition, the draft test guidelines underwent interagency review in 2010.

With this document, EPA is providing an opportunity for public review and comment on the revised draft test guidelines.

V. FIFRA Review Requirements

In accordance with FIFRA sections 25(a), 25(d), and 21(b), the Agency submitted a draft of this proposed rule to the Committee on Agriculture in the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry in the United States Senate, the Secretary of Agriculture, the FIFRA Scientific Advisory Panel (SAP), and the Secretary of Health and Human Services. The SAP and the Secretaries of Agriculture and Health and Human Services waived review of this proposed rule.

VI. Statutory and Executive Order Reviews

This action only proposes to amend an existing regulation to include more specificity regarding an existing efficacy data requirement for products intending to make prion-related claims. It does not otherwise propose to amend or impose any other requirements. The proposed rule will not otherwise involve any significant policy or legal issues, and will not impact existing costs. As such, the Office of Management and Budget (OMB) has determined that this is not a ''significant regulatory action'' under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) and this action is therefore not subject to review under Executive Orders 12866 and 13563, entitled *Improving Regulation and Regulatory Review* (76 FR 3821, January 21, 2011).

Nor does it impose or change any information collection burden that requires additional review by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection activities contained in the regulation are already approved under information collection instruments related to: (1) The submission of data to EPA in to establish a tolerance or an exemption from the requirement to have a tolerance currently approved under 2070–0024 (EPA ICR No. 0276); (2) the activities associated with the application for a new or amended registration of a pesticide currently approved under OMB Control No. 2070–0060 (EPA ICR

No. 0277); (3) the activities associated with the application for an experimental use permit currently approved under OMB Control No. 2070–0040 (EPA ICR No. 0276); and (4) activities associated with the generation of data in response to a Data-Call-In currently approved under OMB Control No. 2070–0174 (EPA ICR No. 2288). 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 certain EPA regulations in 40 CFR are listed in 40 CFR part 9 and in the **Federal Register**, as appropriate.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed rule does not have a significant adverse economic impact on a substantial number of small entities. The proposed amendment does not change existing impacts. In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency. EPA solicits comments specifically about potential small business impacts.

State, local, and tribal governments are rarely pesticide applicants or registrants, so this proposed rule is not expected to affect these governments. Accordingly, pursuant to Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538), EPA has determined that this action is not subject to the requirements in sections 202 and 205 because it does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any 1 year. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. For the same reasons, EPA has determined that this proposed rule does not have ''federalism implications'' as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. Thus, Executive Order 13132 does not apply to this proposed rule. Nor does it have ''tribal implications'' as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 22951, November 9, 2000). EPA is not aware of any tribal governments which are pesticide registrants. Thus, Executive Order 13175 does not apply to this action.

Since this action is not economically significant under Executive Order 12866, it is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), and Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

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

This action does not have an adverse impact on the environmental and health conditions in low-income and minority communities. Therefore, this action does not involve special consideration of environmental justice related issues as specified in Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

VII. References

As indicated under **ADDRESSES**, a docket has been established for this rulemaking under docket ID number EPA–HQ–OPP–2010–0427. The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. Environmental Protection Agency. 2004. Considerations of Prions as a Pest under FIFRA. Memorandum to the Record from Susan B. Hazen, Principal Deputy Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances. April 29, 2004.
2. U.S. Environmental Protection Agency. 2010. Product Performance Test Guidelines, Series 810, Draft OCSPP No. 810.2700, entitled ''Products with Prion Related Claims.'' Draft dated November 12, 2010.
3. U.S. Environmental Protection Agency. 2009. Product Performance Test Guidelines, Series 810, Draft OCSPP No. 810.2400, entitled ''Products with Prion Related Claims.'' Draft dated February 23, 2009.
4. U.S. Environmental Protection Agency. 2009. Transmittal of Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting Held March 31–April 1, 2009 on ''Scientific Issues Associated with Designating a Prion as a 'Pest' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and Related Efficacy Test Methods.'' Memorandum from Myrta R. Christian, Designated Federal Official, FIFRA Scientific Advisory Panel, Office of Science Coordination and Policy, to Debbie Edwards, Ph.D., Director, Office of Pesticide Programs. June 29, 2009. See *http://www.epa.gov/scipoly/sap/meetings/2009/march/033109panelmembers.html.*
5. U.S. Environmental Protection Agency. 2010. EPA Responses to Comments by the FIFRA Scientific Advisory Panel Concerning ''Scientific Information Concerning the Issue of Whether Prions Are a 'Pest' under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).'' February 17, 2010.

List of Subjects in 40 CFR Parts 158 and 161

Environmental protection, Administrative practice and procedures, Agricultural commodities, Chemical testing, Pesticides and pests, Reporting and recordkeeping requirements, Test guidelines.

Dated: October 31, 2011.

Lisa P. Jackson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 158—[AMENDED]

1. The authority citation for part 158 continues to read as follows:

Authority: 7 U.S.C. 136–136y, 21 U.S.C. 346a.

2. In § 158.400(d), amend the table under the category ''Efficacy of antimicrobial agents'' by adding a new entry at the end of the category to read as follows:

§ 158.400 Product performance data requirements table.

* * * * *

(d) * * *

TABLE—PRODUCT PERFORMANCE DATA REQUIREMENTS

Guideline No.	Data requirement	Use pattern									Test substance to support		Test note No.
		Terrestrial		Aquatic		Greenhouse		Forestry	Residential outdoor	Indoor	MP	EP	
		Food crop	Non-food crop	Food	Non-food	Food crop	Non-food crop						
Efficacy of antimicrobial agents													
*	*	*	*	*	*	*	*	*	*	*	*	*	
810.2700	Products with prion-related claims.	NR	NR	NR	NR	NR	NR	NR	NR	R	NR	EP	.....
*	*	*	*	*	*	*	*	*	*	*	*	*	

* * * * *

3. As proposed at 73 FR 59432, October 8, 2008, § 158.2220(c) is further amended by adding a new entry at the end of the table to read as follows:

§ 158.2220 Product performance.

* * * * *

(c) * * *

TABLE—ANTIMICROBIAL PRODUCT PERFORMANCE DATA REQUIREMENTS

Guideline No.	Data requirement	All use patterns	Test substance
*	*	*	*
810.2700	Products with prion-related claims	R	EP.

PART 161—[AMENDED]

4. The authority citation for part 161 is revised to read as follows:

Authority: 7 U.S.C. 136–136y, 21 U.S.C. 346a

5. In § 161.640(a), amend the table under the category ''Efficacy of antimicrobial agents'' by adding a new entry at the end of the category to read as follows:

§ 161.640 Product performance data requirements table.

(a) * * *

Kind of data required	(b) Notes	General use patterns									Test substance		Guideline reference No.
		Terrestrial		Aquatic		Greenhouse		Forestry	Domestic outdoor	Indoor	Data to support MP	Data to support EP	
		Food crop	Non-food crop	Food	Non-food	Food crop	Non-food crop						
Efficacy of anti-microbial agent													
*		*		*		*		*		*		*	
Products with prion-related claims.	.....	.....	.....	.....	.....	.....	.....	.....	.....	R	.....	EP *	810.2700
*		*		*		*		*		*		*	

* * * * *

[FR Doc. 2011–29463 Filed 11–16–11; 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–2009–0083; MO 92210–0–0009]

RIN 1018–AV84

Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for the Three Forks Springsnail and San Bernardino Springsnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the April 12, 2011, proposed endangered status and designation of critical habitat for the Three Forks springsnail (*Pyrgulopsis trivialis*) and the San Bernardino springsnail (*Pyrgulopsis bernardina*) under the Endangered Species Act of 1973, as amended (Act). We are proposing to revise the previously proposed critical habitat for the Three Forks springsnail by increasing the size of the Boneyard Bog Springs Unit to 5.3 acres (2.1 hectares), and by adding an additional unit, the Boneyard Creek Springs Unit. In total, we are proposing to designate as critical habitat 17.1 acres (6.9 hectares) for the Three Forks springsnail. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received on or before December 19, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R2–ES–2009–0083, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2009–0083; 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 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 information).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone (602) 242–0210; facsimile (602) 242–2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and designation of critical habitat for the Three Forks springsnail and San Bernardino springsnail that published in the **Federal Register** on April 12, 2011 (76 FR 20464), revisions to the proposed critical habitat, our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the Three Forks springsnail and San Bernardino springsnail;

(b) The amount and distribution of the species' habitat;

(c) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts, that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

If you submitted comments or information on the proposed rule (76 FR 20464; April 12, 2011) during the initial comment period from April 12, 2011, to June 13, 2011, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by email or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you

submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2009–0083, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2009–0083, or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the proposed listing and designation of critical habitat for Three Forks springsnail and San Bernardino springsnail in this document. For more information on previous Federal actions concerning these species, refer to the proposed designation of critical habitat published in the **Federal Register** on April 12, 2011 (76 FR 20464), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R2–ES–2009–0083) or from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On April 12, 2011 (76 FR 20464), we published a proposed rule to list as endangered and designate critical habitat for the Three Forks springsnail and San Bernardino springsnail. We proposed to designate approximately 11.1 acres (ac) (4.5 hectares (ha)) in Arizona in two units located in Apache County as critical habitat for Three Forks springsnail and 2.013 ac (0.815 ha) in four units located in Cochise County as critical habitat for San Bernardino springsnail. That proposal had a 60-day comment period, ending June 13, 2011. We received no requests for a public hearing, and, therefore, no public hearing will take place.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

New Information and Changes From the Previously Proposed Critical Habitat

In this document, we are notifying the public of changes to the proposed critical habitat rule. In the April 12, 2011, proposed rule (76 FR 20464), we mentioned that springsnails of the same genus as the Three Forks springsnail were recently found in a spring along Boneyard Creek between Three Forks Springs and Boneyard Bog Springs (Myers 2010, p. 1), but additional analysis was needed for a definitive determination of its taxonomy. Building on the field work of Myers (2010), Myers (2011, p. 5) found additional populations of *Pyrgulopsis* springsnails along Boneyard Creek. These additional populations are located in the same watershed and in between the two previously known locations, Three Forks Springs and Boneyard Bog Springs. The new populations found in Boneyard Creek are less than 1 mile (mi) (1.6 kilometer (km)) downstream from Boneyard Bog Springs and less than 2 mi (3.2 km) upstream of Three Forks Springs. Due to the proximity of these new populations in relation to Three Forks Springs and Boneyard Bog Springs, we believe that they are the same species. Two different species of springsnails occurring together in the same area is very rare (Liu *et al.* 2003, p. 2779). If there were different species of springsnails occurring together in this watershed, we can reasonably assume that other springsnail species would have been previously found in either the Three Forks Springs or Boneyard Bog Springs. Based on this information, we believe that the new populations of springsnails found in Boneyard Creek are Three Forks springsnails species.

Also, since publication of the April 12, 2011, proposed rule (76 FR 20464), we have new information regarding the taxonomy of springsnails in Sonora, Mexico. We mentioned in the proposed rule that a springsnail belonging to the same family as the San Bernardino springsnail occurs in two cienegas, or spring ecosystems, in Sonora, Mexico, about 0.25 miles (mi) (0.4 kilometers (km)) south of the San Bernardino National Wildlife Refuge, but additional research was needed to verify if they were the same species as San Bernardino springsnails. Since publication of the proposed rule, we have new information that verifies springsnails in the two cienegas (spring ecosystems in the desert Southwest) in Sonora, Mexico, are San Bernardino springsnails (Varela Romero and Myers 2010, p. 10). However, we will not designate critical habitat for the species in either of those cienegas, because we do not designate critical habitat outside the United States. As such, there are no changes to critical habitat as proposed on April 12, 2011, for the San Bernardino springsnail.

We are proposing to revise our proposed critical habitat designation for the Three Forks springsnail by increasing the size of the Boneyard Bog Springs Unit from 5.0 ac (2.0 ha) to 5.3 ac (2.1 ha) to capture an additional springhead that was discovered since the publication of the proposed rule. In addition, we are proposing a new unit, Boneyard Springs Creek Unit, which is approximately 5.8 ac (2.3 ha) in size, to encompass the newly discovered populations of Three Forks springsnails described above. In total, we are proposing to designate as critical habitat 17.1 ac (6.9 ha) for the Three Forks springsnail. For a full description of the previously proposed units for this species, please see the proposed critical habitat rule (76 FR 20464; April 12, 2011).

In the proposed listing and designation of critical habitat rule (76 FR 20464; April 12, 2011), we identified specific sites that were currently occupied by Three Forks and San Bernardino springsnails, which contained the physical and biological features that are essential to the conservation of the species, and which may require special management considerations or protection. Subsequent to the publication of the proposed listing and critical habitat rule, we discovered new populations of Three Forks springsnails in areas that contain the essential physical and biological features. Therefore, the purpose of this proposed revision to the proposed critical habitat is to include these new areas that are currently occupied by Three Forks springsnail, contain the physical or biological features essential to the conservation of

the species, and meet the definition of critical habitat. We believe the additional unit included in the proposed designation would provide for the conservation of Three Forks springsnail by:

(1) Maintaining the physical and biological features essential to the conservation of the species where the species is known to occur, and

(2) Maintaining the current distribution, thus preserving genetic variation throughout the range of the species and minimizing the potential effects of local extirpation.

Proposed Critical Habitat Designation

We are proposing to revise the previously proposed critical habitat for the Three Forks springsnail by increasing the size of the Boneyard Bog Springs Unit, and by adding an additional unit, the Boneyard Creek Springs Unit. The proposed critical habitat units constitute our current and best assessment of the areas that meet the definition of critical habitat for the species. Proposed critical habitat for the Three Forks Spring Unit for the Three Forks springsnail, and all previously proposed units for the San Bernardino springsnail, are unchanged from our descriptions in the April 12, 2011, proposed rule (76 FR 20464), and are not repeated in this document. We present below brief descriptions of the revised Boneyard Bog Springs Unit and the new Boneyard Creek Springs Unit, and reasons why they meet the definition of critical habitat for the Three Forks springsnail.

Boneyard Bog Springs Unit

The proposed Boneyard Bog Springs Unit is a complex of springs, spring runs, spring seeps, and the segment of Boneyard Creek connecting them, and a small amount of upland area encircling them to make them a single unit of approximately 5.3 ac (2.1 ha), in the vicinity of UTM Zone 12 coordinate 659970, 3750730, in Apache County, Arizona. The entire unit is in Federal ownership and managed by the Apache-Sitgreaves National Forests of the U.S. Forest Service. The unit encompasses eight major springheads and spring runs, each of which flows several yards (meters) to Boneyard Creek, a tributary of the Black River. The spring complex contains spring seeps along the spring runs and the tributary. We are proposing to designate a single critical habitat unit that includes the springheads, spring runs, seeps, and that portion of Boneyard Creek that connects the spring runs. Boneyard Creek is occupied where spring seeps are present along it, and the proposed unit provides for springsnail movement among the occupied seeps, spring runs, and springs, and is essential for habitat connectivity. The area within the proposed unit contains approximately 3.3 feet (ft) (1.0 meter (m)) in width of upland area adjacent to the springheads, spring runs, spring seeps, and tributary segment. The moist soils and vegetation in the adjacent uplands are essential to the species because they produce food for the snails and protect the substrate.

Threats to the Three Forks springsnail in this unit that may require special management of the physical and biological features include wildfire, fire retardant used to fight wildfires, elk grazing, predation by nonnative crayfish, and potential competition from nonnative snails. Also, human-caused changes to the adjacent uplands, which may pose a threat to the aquatic habitats in this proposed unit, can be managed through conservation efforts by Arizona Game and Fish Department and through consultations between the U.S. Forest Service and the U.S. Fish and Wildlife Service under section 7 of the Act. This proposed unit contains all the primary constituent elements and supports all of the Three Forks springsnail's life processes.

Boneyard Creek Springs Unit

The proposed Boneyard Creek Springs Unit is a complex of springs, spring runs, spring seeps, and the segment of Boneyard Creek connecting them, and a small amount of upland area encompassing them, in a single unit of approximately 5.8 ac (2.3 ha), in the vicinity of UTM Zone 12 coordinate 658300, 3749790, in Apache County, Arizona. The entire unit is in Federal ownership and managed by the Apache-Sitgreaves National Forests of the U.S. Forest Service. The unit encompasses at least 11 major springheads and spring runs, which each flow a distance of several yards (meters) to Boneyard Creek, a tributary of the Black River. The spring complex contains spring seeps along the spring runs and the tributary. We are proposing to designate a single critical habitat unit that includes the springheads, spring runs, seeps, and that portion of Boneyard Creek that connects the spring runs. Boneyard Creek is occupied where there are spring seeps along it and provides for springsnail movement among the occupied seeps, spring runs, and springs, and is essential for habitat connectivity. The area within the proposed unit contains approximately 3.3 ft (1.0 m) in width of upland area adjacent to the springheads, spring runs, spring seeps, and tributary segment. The moist soils and vegetation in the adjacent uplands are essential to the species, because they produce food for the snails and protect the substrate they use.

Threats to the Three Forks springsnail in this unit that may require special management of the physical and biological features include wildfire, fire retardant used to fight wildfires, elk grazing, predation by nonnative crayfish, and potential competition from nonnative snails. Also, human-caused changes to the adjacent uplands, which might pose a threat to the aquatic habitats, can be managed through conservation efforts by Arizona Game and Fish Department and through consultations between U.S. Forest Service and U.S. Fish and Wildlife Service under section 7 of the Act. This proposed unit contains all the primary constituent elements and supports all of the Three Forks springsnail's life processes.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of Three Forks springsnail and San Bernardino springsnail, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus

exists, increased habitat protection for the species due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Three Forks springsnail and San Bernardino springsnail. The DEA describes the economic impacts of all potential conservation efforts for the Three Forks springsnail and San Bernardino springsnail; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. Thus, the analysis forecasts both baseline and incremental impacts likely to occur if we finalize the proposed listing and critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2, ''Framework for the Analysis,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Three Forks springsnail and San Bernardino springsnail over the next 12 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 12-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of Three Forks springsnail and San Bernardino springsnail conservation efforts associated with the following categories of activity: (1) Pesticide use, (2) groundwater pumping, (3) wildfire suppression, and (4) management of ungulate grazing. Additionally, the DEA quantifies economic impacts of additional administrative costs associated with the following categories of activity: (1) Additional effort to address adverse modification in a new consultation, and (2) incremental consultation resulting entirely from critical habitat designation. Total undiscounted costs are estimated at $70,700. The estimated costs are limited to administrative impacts that are likely to result from the designation of critical habitat.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our April 12, 2011, proposed rule (76 FR 20464), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our preliminary regulatory flexibility analysis. Based on comments we receive, we may revise this determination as part of our final rule.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that

might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Three Forks springsnail and San Bernardino springsnail would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as ranch operations. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the springsnails are present, once the species are listed, the Federal agencies are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Three Forks springsnail and San Bernardino springsnail. Currently, livestock grazing is excluding from all units so no cattle operators will be impacted by the designation of critical habitat. The DEA does not anticipate impacts to small entities as a result of this designation, as all units are on State or federally owned land. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on small business entities. Therefore, an initial regulatory flexibility analysis is not required.

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, which was proposed to be amended at 76 FR 20464, April 12, 2011, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.95(f), amend the proposed entry for ''Three Forks Springsnail (*Pyrgulopsis trivialis*),'' which we proposed at 76 FR 20464 on April 12, 2011, by:

a. Revising proposed paragraph (f)(5);

b. Revising proposed paragraph (f)(7); and

c. Adding a new paragraph (f)(8), to read as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Three Forks Springsnail (*Pyrgulopsis trivialis*)

* * * * *

(5) **Note:** Index map of critical habitat for the Three Forks springsnail follows:

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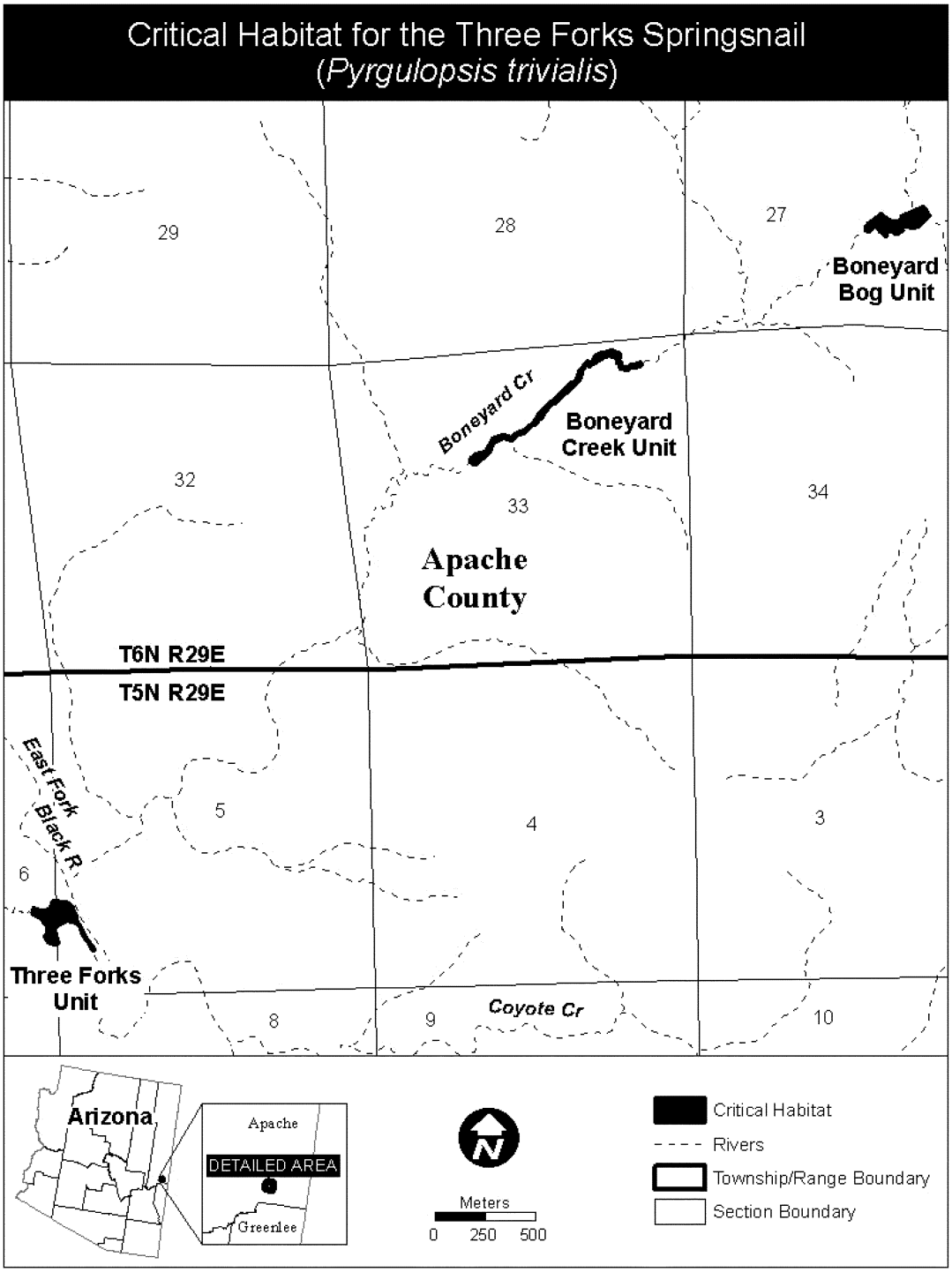

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* * * * *

(7) Boneyard Bog Springs Unit (2.1 ha; 5.3 ac). The Boneyard Bog Springs Unit consists of all areas within boundary points with the following coordinates in UTM Zone 12 with the units in meters using North American Datum of 1983 (NAD 83): 659968, 3750753; 659990, 3750731; 660021, 3750713; 660060, 3750717; 660070, 3750742; 660176, 3750787; 660190, 3750781; 660199, 3750758; 660208, 3750744; 660159, 3750685; 660125, 3750680; 660088, 3750684; 660081, 3750690; 660072, 3750691; 660072, 3750676; 660076, 3750675; 660076, 3750664; 660069, 3750664; 660067, 3750663; 660060, 3750654; 660052, 3750648; 660034, 3750649; 660029, 3750654; 660027, 3750663; 660008, 3750659; 659997, 3750649; 659997, 3750639; 659988, 3750639; 659982, 3750641; 659958, 3750660; 659954, 3750671; 659945, 3750675; 659942, 3750688; 659933, 3750685; 659904, 3750662; 659889, 3750669; 659885, 3750687; 659902, 3750702; 659919, 3750712; Thence returning to 659968, 3750753.

(8) Boneyard Creek Springs Unit (2.3 ha; 5.8 ac). The Boneyard Creek Springs Unit consists of all areas within boundary points with the following coordinates in UTM Zone 12 with the units in meters using North American Datum of 1983 (NAD 83): 658758,

3750008; 658765, 3749996; 658763, 3749984; 658732, 3749975; 658714, 3749981; 658698, 3749968; 658661, 3749971; 658655, 3749981; 658655, 3749998; 658642, 3750000; 658638, 3750024; 658623, 3750034; 658606, 3750036; 658580, 3750029; 658568, 3750020; 658553, 3750013; 658537, 3750005; 658519, 3749993; 658507, 3749985; 658492, 3749992; 658479, 3749976; 658469, 3749960; 658467, 3749945; 658460, 3749935; 658452, 3749913; 658405, 3749863; 658371, 3749841; 658343, 3749805; 658312, 3749789; 658273, 3749741; 658272, 3749733; 658268, 3749725; 658261, 3749722; 658254, 3749720; 658242, 3749699; 658211, 3749682; 658184, 3749655; 658140, 3749634; 658119, 3749610; 658074, 3749624; 658024, 3749603; 657999, 3749549; 657932, 3749492; 657916, 3749492; 657904, 3749509; 657912, 3749527; 657933, 3749545; 657982, 3749559; 658020, 3749623; 658072, 3749642; 658111, 3749632; 658129, 3749649; 658174, 3749667; 658201, 3749691; 658223, 3749705; 658246, 3749743; 658311, 3749811; 658336, 3749826; 658403, 3749893; 658410, 3749904; 658420, 3749908; 658434, 3749917; 658447, 3749962; 658473, 3749991; 658493, 3750013; 658509, 3750003; 658523, 3750019; 658528, 3750030; 658538, 3750043; 658564, 3750055; 658584, 3750053; 658598, 3750061; 658616, 3750068; 658657, 3750052; 658658, 3750032; 658656, 3750020; 658667, 3750002; 658666, 3749982; 658692, 3749984; 658712, 3749994; 658730, 3749994; Thence returning to 658758, 3750008.

* * * * *

Dated: November 8, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–29780 Filed 11–16–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 222
Thursday, November 17, 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

Submission for OMB Review; Comment Request

November 10, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the 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 burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Marking, Labeling, and Packaging of Meat, Poultry, and Egg Products.

OMB Control Number: 0583–0092.

Summary Of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statues mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

Need And Use Of The Information: FSIS will collect information to ensure that meat, poultry, and egg products are accurately labeled. To control the manufacture of marking devices bearing official marks, FSIS requires that official meat and poultry establishments and the manufacturers of such marking devices complete FSIS form 5200–7, Authorization Certificate and FSIS form 7234–1, Application for Approval of Labels, Marking or Device and FSIS Form 8822–4 Request for Label Reconsideration. If the information is not collected it would reduce the effectiveness of the meat, poultry, and egg products inspection program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 7,536.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 128,267.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–29653 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 10, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the 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 burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Swine 2012 Study.

OMB Control Number: 0579–0315.

Summary of Collection: Collection and dissemination of animal health data and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry. The National Animal Health Monitoring System (NAHMS) will initiate the fifth national data collection of swine through the Swine 2012 Study. The Swine 2012 study is part of an ongoing series of NAHMS studies on the U.S.

Swine population. APHIS will collect information using several forms.

Need and use of the Information: The information collected through the Swine 2012 study will be analyzed and organized into descriptive reports and will be disseminated by APHIS to the producers, stakeholders, academia, veterinarians, and any other interested parties. The data collected will also be used to measure change over time from the previous NAHM's Swine studies. Without this type of national data, the U.S.' ability to detect trends in management, production, and health status that increases/decreases farm economy either directly or indirectly would be reduced to nonexistent.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10,875.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 11,728.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–29654 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Colorado Serum Company of Denver, Colorado, an exclusive license to U.S. Patent Application Serial No. 12/487,179, ''THE USE OF GNRH AND ANALOGS THEREOF FOR THE PREVENTION AND TREATMENT OF PET FERRET ADRENOCORTICAL HYPERPLASIA'', filed on June 18, 2009.

DATES: Comments must be received on or before December 19, 2011.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; *telephone:* (301) 504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Colorado Serum Company of Denver, Colorado has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2011–29697 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the California Table Grape Commission of Fresno, California, an exclusive license to the variety of table grape claimed in U.S. Plant Patent Application Serial No. 13/199,300, ''Grapevine Denominated Valley Pearl,'' filed on August 25, 2011.

DATES: Comments must be received on or before December 19, 2011.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; *telephone:* (301) 504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this variety as the California Table Grape Commission of Fresno, California has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2011–29734 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0026]

Codex Alimentarius Commission: Meeting of the Ad Hoc Intergovernmental Codex Task Force on Animal Feeding

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Center for Veterinary Medicine (CVM), Food and Drug Administration (FDA), are sponsoring a public meeting on January 18, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 6th Session of the Ad Hoc Intergovernmental Task Force on Animal Feeding (AFTF) of the Codex Alimentarius Commission (Codex), which will be held in Berne Switzerland, February 20–24, 2012. The Under Secretary for Food Safety and the Center for Veterinary Medicine, FDA, recognize the importance of providing interested parties the opportunity to obtain background information on the 6th Session of the AFTF and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, January 18, 2012, from 1 p.m.–3 p.m.

ADDRESSES: The public meeting will be held in the Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250. Documents related to the 6th Session of the AFTF will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org.*

Daniel McChesney, U.S. Delegate to the 6th Session of the AFTF, invites

U.S. interested parties to submit their comments electronically to the following email address *Daniel.McChesney@fda.hhs.gov*.

Call-In Number:

If you wish to participate in the public meeting for the 6th Session of the AFTF by conference call, please use the call-in number and participant code listed below.

Call-in Number: 1–(888) 858–2144

Participant Code: 6208658

FOR FURTHER INFORMATION ABOUT THE 6th SESSION OF THE AFTF CONTACT: Daniel G. McChesney, Director, Office of Surveillance and Compliance, Center for Veterinary Medicine, FDA, 7529 Standish Place, Rockville, MD 20855, *telephone:* (240) 453–6830, *fax:* (240) 453–6880, *email: Daniel.McChesney@fda.hhs.gov*.

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Doreen Chen-Moulec, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, *telephone:* (202) 205–7760, *fax:* (202) 720–3157, *email: uscodex@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The AFTF is responsible for:

(a) The development of guidelines intended for governments on how to apply the existing Codex risk assessment methodologies to the various types of hazards related to contaminants/residues in feed ingredients, including feed additives used in feeding stuffs for food producing animals. The guidelines should include specific science based risk assessment criteria to apply to feed contaminants/residues. These criteria should be consistent with existing Codex methodologies.

The guidelines should also consider the need to address the establishment of rates of transfer and accumulation from feed to edible tissues in animal-derived products according to the characteristics of the hazard.

The guidelines should be drawn up in such a way as to enable countries to prioritize and assess risks based upon local conditions, use, exposure of animals and the impact, if any, on human health.

(b) Develop a prioritized list of hazards in feed ingredients and feed additives for governmental use. The list should contain hazards of international relevance that are reasonably likely to occur, and are thus likely to warrant future attention.

In doing so, due consideration should be given to the prioritized list of hazards as recommended by the FAO/WHO Expert Meeting on Animal Feed Impact on Food Safety. Clear criteria should be used to prioritize the list of hazards and to take account of the potential transfer of contaminants/residues in feed to edible animal products (*e.g.* meat, fish meat, milk and eggs).

The AFTF is hosted by Switzerland.

Issues to be Discussed at the Public Meeting

The following items on the agenda for the 6th Session of the AFTF will be discussed during the public meeting:

- Matters referred to the AFTF by Codex and other Codex Committees and Task Forces.
- Report on activities of the FAO, WHO and other International Intergovernmental Organizations.
- Proposed draft guidelines on application of risk assessment for feed.
- Proposed draft prioritized list of hazards in feed.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat before the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the January 18, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Daniel McChesney, U.S. Delegate for the 6th Session of the AFTF (see **ADDRESSES**). Written comments should state that they relate to activities of the 6th Session of the AFTF.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status (Not all prohibited bases apply to all programs).

Persons with disabilities who require alternative means for communication of program information (Braille, large print, and audiotape) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at*http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at*http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on: November 14, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–29711 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Suspend the Distillers Co-Products Survey and All Associated Reports

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of suspension of data collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) to suspend the Distillers Co-Products survey currently approved under docket 0535–0247.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333, or through the NASS OMB Clearance Officer at *ombofficer@nass.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Suspension of Distillers Co-Products Survey.

OMB Control Number: 0535–0247.

Expiration Date of Approval: September 30, 2014.

Type of Request: To suspend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to conduct surveys in order to prepare national, State, and county estimates of crop and livestock production, disposition, prices, and collect information on related environmental and economic factors.

Timeline: NASS will suspend this information collection as of November 17, 2011 due to increased budget constraints. Also, NASS will not publish any publications that would normally be generated from these data collections, unless there is a change in the anticipated budget shortfall.

Authority: These data were collected under authority of 7 U.S.C. 2204(a) (General Duties of the Secretary of Agriculture). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: There will be no further public reporting burden for this collection of information.

Signed at Washington, DC, October 25, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–29779 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Reduce the Frequency of Chemical Use Surveys and All Associated Reports

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of reduction in data collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) to reduce the currently approved information collections for chemical use surveys approved under OMB # 0535–0218. The chemical use surveys included in this docket are: Agricultural Resource Management Survey Phase II (ARMS II), Vegetable Chemical Use Survey, Fruit Chemical Use Survey, and Post Harvest Chemical Use Survey. The Post Harvest survey was suspended under a previous notice.

The ARMS II Chemical Use Survey is normally conducted every year and it consists of two versions; Production Practices and Costs Report (PPCR), and the Production Practices Report (PPR). The PPR component is conducted with NASS-only funding to gather field crop chemical use data. The PPCR is co-funded by a cooperative agreement with the USDA Economic Research Service (ERS). The PPCR component efficiently collects costs associated with the various production practices to complete the cost of production estimates for ARMS targeted crop commodities. The ARMS Phase II–PPCR efficiently collects detailed cropping practice and cost data by focusing on field-level and expanding to whole farm, thus greatly reducing respondent burden while maintaining accuracy of reported data.

For the 2011 crop year, NASS is making no changes to the Fruit Chemical Use survey and Field Crops Chemical Use survey. Barley and sorghum are the targeted crops for Field Crops Chemical Use survey. Please note that wheat and soybeans were originally in the 2011 crop year but were moved to 2012 crop year due to current budget cuts.

Background Information

Crop year	NASS commodity	ERS commodity (PPCR)
2011	Fruit	Barley, Sorghum.
2012	Wheat (PPR) and Soybeans	Soybeans.
2013	Vegetable	Rice and Peanuts.
2014	Cotton	Cotton.
2015	Corn and Potatoes (PPR)	To be determined (Corn and Dairy).
2016	Fruit	To be determined (Wheat).
2017	Wheat (PPR) and Soybeans	To be determined (Soybeans).
2018	Corn and Potatoes	To be determined.
2019	Vegetable	To be determined.
2020	Cotton	To be determined.

The crop rotations were determined using the current long range data collection plan. Each of the field crops will be collected three times during the 10 year plan except cotton which will be collected only twice. With the current plan, each commodity would be collected five times. With the proposed crop rotation, fruit and vegetables chemical use would each be collected twice in the 10 year plan while currently the data would be collected five times each.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333, or through the NASS OMB Clearance Officer at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Reduction in the Frequency of the Chemical Use Surveys Currently Approved.

OMB Control Numbers: 0535–0218.

Expiration Dates of Approval: December 31, 2011.

Type of Request: To reduce the frequency of some of the chemical use surveys currently approved, along with the resulting publications.

Abstract: The primary functions of the National Agricultural Statistics Service include the collection of data and the preparation and issuance of state and national estimates of crop and livestock production, disposition, prices, and environmental and economic factors.

Timeline: NASS will suspend this information collection as of November 17, 2011 due to budget constraints. NASS will not issue any publications that would normally be generated from any of the suspended chemical use surveys, unless there is a change in the anticipated budget shortfall.

Authority: These data were collected under authority of 7 U.S.C. 2204(a) (General Duties of the Secretary of Agriculture). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: There will be no further public reporting burden for this collection of information.

Signed at Washington, DC, October 25, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–29743 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Suspend the Bee and Honey Surveys and All Associated Reports

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of suspension of data collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) to suspend the currently approved information collection for Bee and Honey data.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333, or through the NASS OMB Clearance Officer at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Suspension of the Bee and Honey Surveys and Publications.

OMB Control Number: 0535–0153.

Expiration Dates of Approval: May 31, 2013.

Type of Request: To suspend the currently approved information collection for bee and honey data and the resulting publications.

Abstract: The primary functions of the National Agricultural Statistics Service include the collection of data and the preparation and issuance of state and national estimates of crop and livestock production, disposition, prices, and environmental and economic factors.

Timeline: NASS will suspend this information collection as of November 17, 2011 due to budget constraints. NASS will not issue any publications that would normally be generated from the Bee and Honey surveys, unless there is a change in the anticipated budget shortfall.

Authority: These data were collected under authority of 7 U.S.C. 2204(a) (General Duties of the Secretary of Agriculture). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: There will be no further public reporting burden for this collection of information.

Signed at Washington, DC, October 25, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–29744 Filed 11–16–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 17, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; *telephone:* (202) 482–4161.

SUPPLEMENTARY INFORMATION

Background

On July 1, 2010, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy.[1] Pursuant to requests from interested parties, the Department published in the **Federal Register** the notice of initiation and deferral of this antidumping duty administrative review with respect to Pastificio Attilio Mastromauro-Pasta Granoro S.r.L. (''Granoro'') for the period July 1, 2009, through June 30, 2010.[2] On August 26, 2011, the Department published the notice of initiation for the deferred administrative review of pasta from Italy in the **Federal Register.**[3] On November 7, 2011, Granoro withdrew its request for a deferred review of pasta from Italy for the period July 1, 2009, to June 30, 2010.[4]

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by Instituto per la Certificazione Etica e Ambientale. Effective July 1, 2008, gluten free pasta is also excluded from this order. *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 74 FR 41120 (August 14, 2009). The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 38074 (July 1, 2010).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review,* 75 FR 53274, (August 31, 2010) (''*Initiation Notice*'').

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011)(''*Deferred Review Initiation Notice*'').

[4] *See* Letter from Granoro to the Department entitled ''Pasta from Italy: Withdraw of Request for Administrative Review of Antidumping Order,'' dated November 7, 2011.

HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Partial Rescission of the 2009–2010 Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The instant review was initiated on August 26, 2011. *See Deferred Review Initiation Notice*. Granoro's request for withdrawal falls within the 90-day deadline for rescission by the Department, and no other party requested an administrative review of Granoro. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this deferred review of the antidumping duty order on certain pasta from Italy for Granoro.[5]

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For Granoro, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2009, through June 30, 2010, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[5] *See, e.g., Certain Lined Paper Products From India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 21781 (May 11, 2009); *see also Carbon Steel Butt-Weld Pipe Fittings from Thailand: Notice of Rescission of Antidumping Duty Administrative Review,* 74 FR 7218 (February 13, 2009).

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1), and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 9, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–29741 Filed 11–16–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Open Meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will hold a meeting to review subcommittee work identifying proposed programs or policies to focus on in developing its next set of recommendations to the Secretary of Commerce. The recommendations will generally relate to the development and administration of programs and policies to support the competitiveness of the U.S. renewable energy and energy efficiency industries, including specific challenges associated with exporting. The Committee will also discuss its workplan for the remainder of its 2011–2012 charter.

DATES: Wednesday, November 30, 2011, from 8:30 a.m. to 3:30 p.m. Eastern Standard Time (EST)

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Room 4830, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jen Derstine, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–3889; *email: jennifer.derstine@trade.gov*. This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to OEEI at (202) 482–3889.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the RE&EEAC pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on July 14, 2010. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to enhance the international competitiveness of the U.S. renewable energy and energy efficiency industries.

Topics to be considered: The agenda for the November 30, 2011 RE&EEAC meeting is as follows:

Closed Session (8:30 a.m.–9:30 a.m.).

Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. 552b(c)(9)(B) of the Government in the Sunshine Act.

Open Session (9:30 a.m.–3:30 p.m.).

1. Report of Subcommittees.

2. Discussion of RE&EEAC Workplan through July 2012.

3. Discussion of Guiding Questions.

4. Public comment period.

The meeting room is disabled-accessible. Public seating for the open session of the meeting is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Jen Derstine at the contact information above by 5 p.m. EST on Wednesday, November 23, 2011, in order to pre-register for clearance into the building. Please specify any request for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill. A limited amount of time, from 3 p.m. until 3:30 p.m., will be available for pertinent brief oral comments from members of the public attending the meeting.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to jennifer.derstine@trade.gov or to the Renewable Energy and Energy Efficiency Advisory Committee, Office

of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, Room 4053; 1401 Constitution Avenue NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. EST on Wednesday, November 23, 2011, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on November 2, 2011, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b (c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. (10)(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

Copies of RE&EEAC meeting minutes will be available within 30 days of the meeting.

Dated: November 14, 2011.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2011–29725 Filed 11–16–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Automotive Parts and Components Business Development Mission to Russia

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS), is organizing an Automotive Parts and Components Business Development Mission to Russia on April 23–28, 2012. Led by a senior Department of Commerce official, this mission is designed to provide an opportunity to explore Russia's rapidly expanding car and truck assembly market to a diverse cross section of companies selling goods and services into the automotive sector, including but not limited to: Components for vehicle manufacture, replacement parts, aftermarket products, repair equipment, capital equipment used for vehicle manufacture, testing equipment, and software and engineering services.

Mission participants will benefit from expert briefings on the Russian market as well as on current developments in Russia's emerging auto sector. The mission program will include opportunities to meet key Russian Government officials and decision-makers, one-on-one meetings with potential business partners and site visits to automotive assembly plants and component manufacturers. The U.S. and Foreign Commercial Service is targeting a minimum of 15 and a maximum of 20 U.S. companies.

Commercial Setting

During Soviet times, average citizens spent years on waiting lists for the 4 or 5 models of available cars, most based on 1960s technology. Quality control was minimal.

In 2010, automobile ownership in Russia—a country of 140 million consumers—grew to more than 244 vehicles per 1,000 inhabitants, 70% higher than the 2001 rate of 140 vehicles per 1,000 inhabitants. This compares to around 850 cars for every 1,000 Americans. Sales of cars and trucks in Russia are currently growing at an annual rate of 30 percent. Approximately 34 million cars are on Russian roads today, of which 14 million are foreign brands.

While sales of Russian automobiles declined in 2008, due to the world-wide financial crisis and recession, car sales have picked up again as the Russian economy recovers. In 2010, Russian customers purchased 1.9 million cars. This figure includes 646,000 new Russian cars and 1.25 million foreign cars, both imported and produced in Russia. Importers forecast continued rapid growth of approximately 20 percent in 2011. If these trends continue, most experts project Russia will be the largest automotive market in Europe in the next few years.

Prior to the global financial crisis that started in 2008, Russia's economy was growing at a healthy pace. Annual GDP growth averaged 7.5 percent from 2001–2007. In 2008 and 2009, Russia experienced negative GDP growth. However, Russia's economy began to grow again in late 2010, experiencing GDP growth of 3.8% in the last two quarters of 2010. Economists now forecast Russia's economy, supported by higher prices for oil, gas and raw materials, to continue growing at around 4% annually in the near term.

Russia's giant auto plants remained largely unaffected by the economic turmoil that followed the collapse of the Soviet Union. During the inflationary 1990s, auto parts became a valuable barter commodity. As the Russian market opened to imports, the few wealthy Russians able to afford imported vehicles opted for new foreign cars. At the same time, imported used cars began to compete with new Russian cars in the rapidly expanding mass market. The financial crisis of 1998 and the significant devaluation of the Russian ruble made imports more expensive and thus provided a stimulus to Russian manufacturers.

Russia's auto industry has largely been centered in the city of Togliatti in the Samara region and in Nizhny Novgorod. The giant AvtoVaz factory, one of Russia's largest industrial enterprises, is located in the city of Togliatti. The plant reported output of 517,000 cars in 2010 and accounted for 30 percent of Russia's automotive output. AvtoVaz produces cars in the $5,000 to $15,000 range for the Russian market and exports about 8% of its output to the former Soviet republics.

The GAZ plant in Nizhny Novgorod has ceased production of passenger vehicles. The last Volga Sibir—a modified version of the Chrysler Sebring sedan—rolled off the assembly line October 31, 2010. The factory continues to produce the popular Gazelle line of light trucks and minivans, and the company also produces general purpose heavy trucks that are used in a variety of industries.

UAZ in Ulyanovsk produces light utility and military vehicles. The UAZ–469 all terrain vehicle was the standard off-road vehicle for the Soviet armed forces and was used by armies around the world due to its reputation for reliability and ease of maintenance. Today, the company's UAZ Hunter is a successor vehicle to the 469 made for the consumer market, and it has also introduced the UAZ Patriot—a mid-size SUV with an economical price. UAZ produced 49,000 vehicles in 2010.

Russia's largest automotive corporation KAMAZ is ranked 13th among the world's heavy truck producers and is number 8 in the production of diesel engines. Its trucks have won the Dakar Rally a record 10 times. It is the largest manufacturer of heavy trucks in the former Soviet Union. Its massive factory in Naberezhny Chelny, Tatarstan has production capacity for over 100,000 vehicles. The company's diesel engine plants include wholly-owned subsidiary

Kamaz-Diesel and Cummins- Kama, a joint venture with the U.S. company Cummins.

Foreign automakers have taken notice of the Russian automotive market's potential for significant growth and are building assembly plants to meet the increasing Russian demand for high quality automobiles. General Motors has a $335 million plant in Togliatti, a joint venture with Russian auto giant AvtoVaz that produces an inexpensive SUV, under the Chevrolet—Niva brand, which is based on an AvtoVaz-designed platform. The GM/AvtoVaz joint venture manufactures 60,000 vehicles for the Russian market and for export through AvtoVaz' s dealerships throughout the former Soviet Union and GM's distribution network. GM's newest plant was built in St. Petersburg in 2008. It has a production capacity of 50,000 cars, and currently produces four models: two SUVs—Chevrolet Captiva and Opel Antara—and two sedans—Chevrolet Cruze and Opel Astra.

Both GM and AvtoVaz have an interest in working with the more than 200 automotive component manufacturer suppliers in the Samara region to improve the quality of their products and upgrade their technology.

Ford opened its first assembly plant in Russia in 2002 near St. Petersburg. The plant has a capacity of 125,000 vehicles and currently produces two models—Ford Focus and Ford Mondeo. In 2010, the Ford Focus was Russia's most popular foreign car, and its 5th top seller overall. Assembled in Russia from foreign-made parts and with a sticker price of $16,000–$25,000, the Russian-made Ford Focus is significantly less expensive than the price of similar imports. Consequently, Ford is working with local components manufacturers to develop their capabilities as suppliers, and is encouraging Western manufacturers to consider establishing facilities in Russia. In February 2011, Ford announced its intention to form a joint venture with Sollers OJSC to produce cars in Russia under the Ford nameplate. This proposed joint venture will produce cars under the Ford brand at the Ford plant outside St. Petersburg and at Sollers's plant in Tartarstan. It will also produce engines; operate a stamping facility that will provide a higher level of local parts content for Ford vehicles built in Russia; and establish research and development activities.

In addition to Ford and GM, major international OEMs have made significant investments in St. Petersburg and surrounding Leningrad Oblast, turning it into a new automotive assembly ''cluster.'' Nissan, Toyota and Hyundai opened new plants in St. Petersburg or in Leningrad oblast between 2007 and 2009. Toyota's facility, located near the GM plant in Shushary, was built in 2009, and has a capacity of 50,000 vehicles. It currently produces the Toyota Camry. Nissan opened its 50,000 vehicle plant to produce the Nissan X–Trail and the Nissan Teanna in St. Petersburg's Kamenka district in 2009. Hyundai is the latest arrival. It opened its 100,000 car plant also in the Kamenka district in 2010 to produce the Solaris, a sub-compact car designed specifically for the Russian market. Significantly, Hyundai has also brought with it a number of Korean automotive suppliers that will help it to meet Russian government demands for increased localization of foreign automotive assembly in Russia.

Investments by European manufacturers have also created another automotive ''cluster'' in Kaluga. Volkswagen Group has invested more than 500 million Euro in its 150,000 capacity plant where it produces the Volkswagen Passat and the Skoda Octavia. Volvo's truck assembly plant, which opened in 2009, has an annual capacity of 10,000 Volvo and 5,000 Renault trucks. PSA Peugeot Citroen opened its plant in March 2010 to build Peugeot 308s for the Russian market, as well as Citroen and Mitsubishi brand cars.

There are also a number of smaller international automotive ventures in Russia. In the Russian ''exclave'' of Kaliningrad, the Autotor joint venture with KIA and BMW assembled 170,211 cars in 2010 and plans to assemble 240,000 in 2011. In Taganrog, Tagas is assembling several Hyundai models: the Accent and Sonata sedans, the Porter LCV and Aerotown and County buses. Tagas produced 31,000 vehicles in 2010, and plans to double production to 60,000 in 2011. Scania's plant in St. Petersburg has capacity to produce 1,500 trucks per year.

Western tire makers are also operating in Russia. The French Michelin built a plant outside Moscow in 2004 that makes 2 million tires per year. Finland's Nokian Tyres is expanding its plant near St. Petersburg to produce 10 million tires per year by the end of 2011. Goodyear has a joint venture with a Russian tire maker in Yaroslavl and has explored building a tire factory there. Michelin's plant was built with the help of a $20 million investment from the EBRD, which has targeted the Russian automotive sector for strategic investment.

Bosch, with its Russian joint venture partner, supplies 82 percent of the Russian ignition plug market from its 30 million—unit capacity plant in Saratov. Lear manufactures car seats in a facility within GAZ's plant in Nizhny Novgorod. Outside of that town, Ingersoll Rand makes power tools and steering columns. Delphi produces wire harnesses at its plant in Samara, while in St. Petersburg, Johnson Controls and Tenneco make, respectively, car seats and exhaust systems.

Given the current dynamics in this automotive sector, the U.S. Commercial Service strongly believes that significant opportunities for growth and expansion exist in Russia for U.S. manufacturers of automotive parts and components. Russians are prepared to pay for quality vehicles, while at the same time the Russian automotive manufacturers and the Russian government are seeking technology and business partnerships to meet this demand.

Industry experts have indicated that there are especially good prospects for manufacturers of engines, electric and electronic components, trim, exhaust systems, plastic parts and instrumentation. In addition, there are increasing opportunities for export of air conditioners, ABSs, airbags, power steering and automatic transmissions, that are currently not manufactured in Russia.

Mission Goals

The U.S. Automotive Parts and Components Business Development Mission to Russia will provide U.S. original equipment parts manufacturers a timely, efficient and cost effective opportunity to explore current business prospects in Russia.

Mission Scenario

The Mission program will begin in Moscow and include site visits and consultations in St. Petersburg and in Samara and Togliatti. In addition to market briefings by industry experts, mission members will have the opportunity to meet key Russian Government officials responsible for formulating and implementing the government's automotive industry policies and plans and for one-on-one meetings with potential business partners that match their market interests.

Timetable

Sunday, April 22 (Moscow, Russia)—Arrive Moscow. Evening: welcome event.

Monday, April 23 (Moscow, Russia)—Briefings/Presentations/Meetings with key Russian and American automotive industry executives,

consultants and officials followed by an evening VIP Reception.

Tuesday, April 24 (Moscow, Russia)—Presentations by major automotive companies, followed by one-on-one meetings. Depart for St. Petersburg.

Wednesday, April 25 (St. Petersburg, Russia)—Meetings with auto industry representatives and regional government officials and plant visits in St. Petersburg and Leningrad Oblast. Evening networking event and/or cultural program.

Thursday, April 26 (Samara, Russia)—Depart for Samara/Togliatti. Meetings with auto industry representatives and regional government officials and plant visits in Samara followed by evening networking event.

Friday, April 27 (Moscow, Russia)—Meetings with auto industry representatives and regional government officials and plant visits in Togliatti, followed by return to Moscow.

Saturday, April 28—Depart Moscow for U.S.

Participation Requirements

All parties interested in participating in this mission to Russia must complete and timely submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 companies and a maximum of 20 companies will be selected to participate in the mission from the applicant pool.

Fees and Expenses: After a company has been selected to participate in the mission, a participation fee paid to the U.S. Department of Commerce is required. The participation fee for one company representative will be $4,952 for small or medium-sized enterprises (SME) [1] and $5,701 for large companies, which will cover one representative.[2] The fee for each additional firm representative (large firm or SME) is $1,220. The participation fee covers all in-country travel—airport transfers and bus transportation to/from group meetings and site visits, train fare from Moscow to St. Petersburg, airfare from St. Petersburg to Samara and from Samara back to Moscow, as well as one-on-one meetings with potential Russian business partners. The Commercial Service will assist in booking hotels at favorable rates, but lodging costs, meals and incidental expenses will be the responsibility of each mission participant.

Conditions for Participation

An applicant must submit a completed and signed mission Application and a completed Market Interest Questionnaire, which must include adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must also certify that the products and services to be promoted through the mission are either produced in the United States or marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation: Selection will be based on the following criteria:

- Suitability of the company's products or services to the market;
- Applicant's potential for business in Russia and in the region, including likelihood of exports resulting from the mission; or investments that will lead to exports.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and will not be considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.trade.gov/trade-missions*) and other internet web sites, press releases to general and trade media, email, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS St. Petersburg will conduct a webinar on automotive opportunities in the Russian market in November 2011; the mission will be promoted during the webinar as well.

Recruitment for the mission will begin immediately and will close on January 6, 2012. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible. Applications received after the deadline will be considered only if space and scheduling constraints permit.

CS is amending this notice to allow for vetting and selection decisions on a rolling basis beginning November 15, 2011, until the maximum of 20 participants is selected. Although applications will be accepted through January 6, 2012 (and after that date if space remains and scheduling constraints permit), interested U.S. firms and trade organizations which have not already submitted an application are encouraged to do so as soon as possible. We will inform applicants of selection decisions as soon as possible after they are internally reviewed. Applications received after January 6, 2012 will be considered only if space and scheduling contracts permit.

Contacts

Eduard Roytberg, Senior International Trade Specialist, CS Ontario, CA. *Tel:* 1 (909) 466–4138. *Fax:* 1 (909) 466–4140. *Eduard.Roytberg@trade.gov.*

Alexander Kansky, Commercial Specialist, CS St. Petersburg. *Tel:* 7 (812) 331–2881. *Fax:* 7 (812) 331–2861. *Alexander.Kansky@trade.gov.*

Vladislav Borodulin, Commercial Specialist. *Tel:* 7 (495) 728–5235. *Fax:* 7 (495) 728–5585. *Vladislav.Borodulin@trade.gov.*

Kenneth C. Duckworth, Principal Commercial Officer, CS St. Petersburg. *Tel:* 7 (812) 326–2560. *Tel:* 7 (812) 326–2561. *Kenneth.Duckworth@trade.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2011–29649 Filed 11–16–11; 8:45 am]

BILLING CODE 3510–FP–P

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations.

[2] Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA824

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for 13 new scientific research permits, 12 research permit renewals, and one permit modification.

SUMMARY: Notice is hereby given that NMFS has received 26 scientific research permit application requests relating to Pacific salmon, the southern distinct population segment of Pacific eulachon, the southern distinct population segment of Pacific green sturgeon, and three species of rockfish from the Puget Sound/Georgia Basin. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on December 19, 2011.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to (503) 230–5441 or by email to *nmfs.nwr.apps@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (ph.: (503) 231–2314), Fax: (503) 230–5441, email: *Robert.Clapp@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Puget Sound (PS); threatened upper Willamette River (UWR); threatened lower Columbia River (LCR); endangered upper Columbia River (UCR); threatened Snake River (SR) spring/summer (spr/sum); threatened SR fall;

Steelhead (*O. mykiss*): threatened PS; threatened UWR, threatened LCR; threatened UCR; threatened SR; threatened middle Columbia River (MCR).

Chum salmon (*O. nerka*): threatened Hood Canal (HC) summer-run, threatened CR.

Coho salmon (*O. kisutch*): threatened LCR, threatened Oregon Coast (OC).

Rockfish: Puget Sound/Georgia Basin (PS/GB) bocaccio (*Sebastes paucispinis*); PS/GB canary rockfish (*Sebastes pinniger*), and PS/GB yelloweye rockfish (*Sebastes ruberrimus*).

Eulachon: the southern Distinct Populations Segment (SDPS) of Pacific eulachon (*Thaleichthys pacificus*).

Pacific green sturgeon (*Acipenser medirostris*): Threatened SDPS.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1290–7R

The Northwest Fisheries Science Center (NWFSC) is seeking to renew a permit that currently allows it to take listed salmonids while conducting research in the lower Columbia River from Bonneville Dam to the mouth of the river. The fish would be drawn from the following species: UCR Chinook and steelhead, SR spr/sum and fall Chinook, SR steelhead, SR sockeye, MCR steelhead, LCR Chinook, LCR coho, LCR steelhead, CR chum, UWR Chinook and steelhead. The purposes of the research are to (1) characterize salmonid species and population level abundance and timing, (2) determine growth rate, size, food habits, and pathogen prevalence and intensity, and (3) investigate the relationship between forage fish and salmonid populations. The research would benefit salmonids and their recovery planning by gathering information on species- and population-level abundance in the Lower Columbia River and helping determine the extent to which diseases and forage fish affect the fishes' growth and survival during the transition from the estuarine to marine environments. The NWFSC would use purse seines to capture the fish; they would then anesthetize them, measure them, scan them for tags, and fin-clip them. Some of the juvenile fish would be intentionally killed for laboratory analyses. The NWFSC would also collect and intentionally kill juvenile salmonids at the Bonneville Dam juvenile bypass facility. Any fish killed unintentionally would be retained in place of those that otherwise would be sacrificed. A small number of adult salmonids, SDPS green sturgeon, and SDPS eulachon may be captured and immediately released during the course of the research. The NWFSC does not intend to kill SDPS eulachon, but a few may die as a result of the research. No sturgeon are expected to be killed.

Permit 1318–9R

The Oregon Department of Fish and Wildlife (ODFW) is seeking to renew its permit to take juvenile UCR Chinook and steelhead, SR spr/sum and fall Chinook, SR steelhead, SR sockeye, MCR steelhead, LCR Chinook, LCR coho, LCR steelhead, CR chum, UWR Chinook and steelhead, and OC coho in streams in the Willamette and Columbia basins, and on the Oregon coast. The permit would cover the following projects: (1) Warm water fish management surveys; (2) investigations of natural production of spring Chinook salmon in the Mohawk system; (3) genetic characterization of rainbow trout in the Upper Willamette System; (4) fish abundance, population status, genetics and disease surveys in the Upper Willamette Basin; (5) native rainbow and cutthroat trout surveys for abundance, size composition, and migration patterns in the mainstem McKenzie River; (6) resident redband population estimates in the Deschutes River; (7) resident redband population estimates in the Crooked River; and (8) fish population sampling in the North Willamette Watershed District. The research would benefit the fish by providing information on population structure, abundance, genetics, disease occurrence, and species interactions. That information would be used to direct management actions to benefit listed species. Juvenile salmonids would be collected via boat electrofishing, and then some of them would be anesthetized, sampled for length and weight, allowed to recover from the anesthesia, and released. Most salmonids would only be shocked and allowed to swim away, or be netted and released immediately. The ODFW does not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1330–5R

Weyerhaeuser Company (WeyCo) is seeking to renew its permit to annually take juvenile LCR Chinook salmon, LCR coho salmon, and LCR steelhead while conducting research designed to determine salmonid abundance, distribution, and productivity in the Toutle River subbasin and on lands owned by WeyCo around Mt. St. Helens in Washington. The information would be used to help develop and implement effective fish-conscious forest management practices and regulations. The research would benefit listed species by contributing information to help WeyCo maintain high quality habitat and development recovery plans for listed species. Juvenile salmonids would be collected using backpack electrofishing equipment, anesthetized, sampled for biological data (identified, measured, weighed), allowed to recover from the anesthesia, and released. WeyCo does not intend to kill any of the fish being captured, but a small number may die as an unintentional result of the activities.

Permit 1339–3R

The Nez Perce Tribe (NPT) under the authorization of the Columbia River Intertribal Fish Commission (CRITFC) is seeking to renew its permit to annually take adult and juvenile SR spr/sum Chinook salmon and SR steelhead while conducting research in a number of the tributaries to the Imnaha River (Cow, Lightning, Horse, Big Sheep, Camp, Little Sheep, Freezeout, Grouse, Crazyman, Mahogany, and Gumboot Creeks), the Grande Ronde River (Joseph Creek, Wenaha and Minam rivers) the Clearwater River (South Fork Clearwater River and Lolo Creek), and the Snake River (Lower Granite Dam adult trap). The Imnaha and Grande Ronde Rivers are in Northeast Oregon, the Clearwater is in Idaho, and the work in the Snake River would take place in Washington. The permit would be a renewal and expansion of work the NPT has been conducting for over a decade in the Northwest.

The purpose of the research is to acquire information on the status (escapement abundance, genetic structure, life history traits) of juvenile and adult steelhead in the Imnaha, Grande Ronde, and Clearwater River basins. The research would benefit the listed species by providing information on current status that fishery managers can use to determine if recovery actions are helping increase wild Snake River salmonid populations. Baseline information on steelhead populations in the Imnaha, Grande Ronde, and Clearwater River basins would also be used to help guide future management actions. Adult and juvenile salmon and steelhead would be observed, harassed, handled, and marked. The researchers would use temporary/portable picket and resistance board weirs and rotary screw traps to capture the fish and would then sample them for biological information (fin tissue and scale samples). They may also mark some of the fish with opercule punches, fin clips, dyes, and PIT, floy, and/or Tyvek disk tags. Adult steelhead carcasses would also be collected and sampled. The researchers do not intend to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1341–4R

The Shoshone-Bannock Tribes (Tribes) are seeking to renew and modify their permit to take SR sockeye salmon and SR spr/sum Chinook salmon while conducting research designed to estimate their overwinter survival and downstream migration survival and timing. The researchers would also conduct limnological studies on the lakes and monitor sockeye rearing. This research—which has been conducted every year since 1996—would continue to provide information on the relative success of the Pettit and Alturas Lakes sockeye salmon reintroduction programs and thereby benefit the listed fish by improving those programs. Juvenile SR sockeye salmon, spr/sum Chinook salmon, and steelhead would be collected at Pettit and Alturas Lakes, ID, using rotary screw traps and weirs. The fish would be sampled for biological information and released or tagged with passive integrated transponders and released. In addition, to determine trap efficiencies, a portion of the captured juvenile SR sockeye salmon would be marked with a small cut on their caudal fins, released upstream of the traps, captured at the traps a second time, and released. The Tribes do not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1345–7R

The Washington Department of Fish and Wildlife (WDFW) is seeking to renew for five years a research permit that currently allows them to take juvenile and adult PS Chinook salmon, LCR Chinook salmon, LCR coho salmon, LCR steelhead, and PS steelhead. The WDFW administers a multitude of water bodies through the state of Washington, and this permit would provide them with coverage throughout Puget Sound and the Lower Columbia River basin. The purpose of the warmwater fish surveys is to provide stock assessment of inland game fish communities and thereby improve fishery management. The research would benefit salmonids by helping managers write warmwater fish species harvest regulations that reduce potential impacts on listed salmonids. The WDFW proposes capturing fish using boat electrofishing, fyke nets, and gillnets. After being captured, the listed salmon and steelhead would be placed in aerated live wells, identified, and released. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 1379–6R

The Columbia River Inter-Tribal Fish Commission (CRITFC) is seeking to renew a permit that currently allows them to take listed salmonids (UCR steelhead and Chinook; LCR steelhead and Chinook; MCR steelhead; and SR steelhead, spr/sum Chinook, fall Chinook, and sockeye) while conducting research designed to increase what we know about the status and productivity of various fish populations, collect data on migratory and exploitation (harvest) patterns, and develop baseline information on various population and habitat parameters in order to guide salmonid restoration strategies. Much of the work in the permit has been conducted for at least 14 years—first under permit 1134, and then under five previous versions of 1379. The permit would comprise four studies: Project 1—Juvenile Upriver Bright Fall Chinook Sampling at the Hanford Reach; Project 2—Adult Chinook, Sockeye, and Coho Sampling at Bonneville Dam; Project 3—Adult Sockeye Sampling at Tumwater and Wells Dams; and Project 4—Acoustic trawl survey for Lake Wenatchee juvenile sockeye salmon. This renewal would increase slightly the number of fish CRITFC is allowed to handle. The research, as a whole, would benefit listed fish by helping managers set in-river and ocean harvest regimes so that they have minimal impacts on listed populations. It would also help managers prioritize projects in a way that gives maximum benefit to listed species–including projects designed to help the listed fish recover.

The CRITFC would obtain fish from the adult collection facilities at Bonneville, Wells, and Tumwater dams. The fish would be anesthetized, measured, examined for marks, scale-sampled, and allowed to return to the river. The researchers would also use

beach- and stick seines to capture and tag juvenile fish in the Hanford reach of the Columbia River and capture fish during mid-water trawls in Lake Wenatchee. Those fish that are not immediately released upon capture would be transported to a holding facility where they would be anesthetized, examined for marks, adipose-clipped, coded wire tagged, allowed to recover, and released. The CRITFC does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 1525–5M

The NWFSC is seeking to modify its permit that currently allows it to annually take listed salmonids while studying habitat occurrence, diet, contaminant concentrations, and health indicators in juvenile salmonids from the Lower Willamette and Columbia Rivers. The NWFSC is requesting to increase the number of juvenile fish they may take from the following species: SR spring/summer Chinook salmon, SR fall Chinook salmon, SR steelhead, UCR Chinook salmon, UCR steelhead, MCR steelhead, LCR Chinook salmon, LCR steelhead, UWR Chinook salmon, UWR steelhead, and CR chum salmon. The purposes of the study are to (1) determine contaminant concentrations in fish, (2) understand bioaccumulation in juvenile salmon and determine site specific factors, (3) analyze for the presence of physiological biomarkers, and (4) investigate the presence of indicators of exposure to environmental estrogens. The research would benefit the fish by providing information to resource managers on contaminant presence and concentrations, fish presence, and habitat parameters. The NWFSC would collect samples with seines or high speed rope trawls in the lower Willamette River, Oregon, and in the Columbia River from Bonneville Dam to the mouth. Researchers would handle juvenile fish and intentionally kill some of them to determine pathogen prevalence and intensity, biochemical composition, histopathological attributes, and for stomach content analyses.

Permit 1566–3R

The NWFSC is seeking to renew for 5 years a research permit that currently allows them to take juvenile PS Chinook salmon, HC summer-run chum salmon, and PS steelhead. The researchers would sample fish throughout the Puget Sound—emphasizing urban bays such as Elliott Bay, Port Gardner Bay, and Commencement Bay. The objective of this study is to sample outmigrant juvenile salmon from various embayments in the Puget Sound area and screen them for exposure to estrogenic compounds, PBDEs, pharmaceuticals, and personal care products. Juvenile Chinook salmon are anticipated to be the most affected by these contaminants because of their extended estuarine residence, so the NWFSC has chosen them as the target species for this study. The research would benefit Chinook by identifying areas in Puget Sound where they may be at risk due to contaminant exposure, so appropriate toxics reduction activities can be undertaken. The NWFSC proposes to use beach seines to capture fish every 6 to 8 weeks between May and September at approximately seven locations. Up to 60 juvenile Chinook salmon per site per sampling event would be weighed, measured, and euthanized with MS–222. The NWFSC would take bile, plasma, and stomach contents from the fish and then conduct whole-body analyses on them. Juvenile Chinook and other fish species not needed for sample collection would be counted, identified, and released. Any PS Chinook unintentionally killed during the research would be used in lieu of a fish that would otherwise be sacrificed.

Permit 1568–4R

The NWFSC is seeking to renew for 5 years a research permit that currently allows them to take juvenile PS Chinook salmon and PS steelhead in the marshes, channels, and near-shore areas of the lower 10 miles of mainstem channel of the Snohomish River and in Ebey, Union, and Steamboat sloughs. The purposes of the research are to understand (1) how habitat use within the estuary varies with life history type, (2) how habitat use varies within and between years, and (3) how selected biotic and physical factors affect patterns of habitat use. This research would benefit listed salmon by providing information to help recovery planning and monitoring in the Snohomish River estuary and other estuaries of the Puget Sound. The NWFSC proposes to use beach seines to capture fish. The fish would be anesthetized, measured, weighed, tissue-sampled, and checked for external marks and coded-wire tags depending on the species. A small portion of the captured juvenile PS Chinook would be killed for whole-body analysis, but most are not intended to be sacrificed. At the lab, specimens would be thawed, weighed, and measured. Then the researchers would remove and preserve fish body tissues, otoliths, and coded wire tags (from any hatchery fish). Any PS Chinook unintentionally killed during the research would be used in lieu of a fish that would otherwise be sacrificed.

Permit 1590–4R

The NWFSC is seeking to renew for 5 years a research permit that currently allows them to take juvenile and sub-adult PS Chinook salmon, HC summer-run chum salmon, PS steelhead, and PS/GB bocaccio. The NWFSC research may also cause them to take the following species for which there are currently no ESA take prohibitions: the SDPS eulachon, PS/GB canary rockfish, and PS/GB yelloweye rockfish. Sampling sites would be located throughout the Puget Sound and San Juan Islands, Washington. The purposes of NWFSC's research are (1) To describe the behavior and life history of resident Chinook salmon and (2) determine whether the proportion of PS Chinook salmon adopting a resident life strategy varies among populations and hatchery stocks. This information would be used to develop a conceptual model of the life history of resident PS Chinook. The research would benefit listed salmonids by helping managers develop a better understanding of the abundance, distribution, and habitat requirements of this life history strategy. The NWFSC proposes to use shoreline and boat angling, beach seining, and purse seining to capture the fish. All non-target species would be released directly from the net or line. Captured PS Chinook would be anesthetized, measured, checked for fin clips or coded wire tags, and fin clipped for tissue samples. Some first- and second-year PS Chinook would be outfitted with acoustic transmitters and tracked using an array of fixed acoustic receivers throughout Puget Sound. The researchers do not propose to kill any of the listed fish being captured, but a small number may die as an unintended result of the activities.

Permit 1598–3R

The Washington State Department of Transportation (WSDOT) is seeking to renew for 5 years a research permit that currently allows them to take juvenile PS Chinook salmon, UCR spring-run Chinook salmon, SR spring/summer-run Chinook salmon, SR fall-run Chinook salmon, LCR Chinook salmon, HC summer-run chum salmon, CR chum salmon, LCR coho salmon, OL sockeye salmon, SR sockeye salmon, LCR steelhead, PS steelhead, MCR steelhead, SR steelhead, and UCR steelhead. The WSDOT research may also cause them to take SDPS eulachon—for which there

are currently no ESA take prohibitions. Sample sites would be located throughout the state of Washington. The purposes of WSDOT's research are to determine the distribution and diversity of anadromous fish species in waterbodies crossed by or adjacent to the state transportation systems (highways, railroads, and/or airports). This information would be used to assess the impacts projects proposed at those facilities may have on listed species. The research would benefit the listed species by helping WSDOT minimize project impacts on listed fish to the greatest extent possible. Depending on the size of the stream system, the WSDOT proposes to use dip nets, stick seines, baited gee minnow traps, or electrofishing to capture the fish. The captured fish would be identified and immediately released. The researchers do not propose to kill any of the listed fish being captured, but a small number may die as an unintended result of the activities.

Permit 1601–3R

The United States Fish and Wildlife Service (FWS) is seeking to renew for 5 years a research permit that currently allows them to take juvenile and adult PS Chinook salmon and PS steelhead. Sampling sites would be located in Thornton, Piper's, and Venema Creeks in Seattle, Washington (Lake Washington subbasin). The purpose of FWS's research is to gather information that would help resource managers plan restoration projects by helping determine which project types are most effective at mitigating the effects of urbanization. The research would benefit the listed species by determining which restoration strategies are effective in restoring fish habitat and populations and improve overall salmon habitat restoration. The FWS proposes capturing fish using the three-pass electrofishing method. Block nets would be placed at the upper and lower end of a habitat site; and with a backpack electrofishing unit, three sequential passes would be conducted. Fish stunned during electrofishing would be captured with a dip net, identified to species, placed in an aerated holding bin, and released. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 16069

The City of Portland is seeking a five-year permit to take listed salmonids and SPDS green sturgeon while developing the Portland Watershed Management Plan (Plan). The purpose of the Plan is to improve watershed health in the Portland area. Researchers for the City of Portland would sample 32 sites a year for (1) water chemistry (e.g., temperature, dissolved oxygen, nutrients, pathogens); (2) water level and velocity; (3) physical habitat characteristics (e.g., plant composition, substrate composition, and bank condition); and (4) fish, amphibian, and reptile abundance and diversity. The research would benefit listed salmonids by producing data to be used in conserving and restoring critical habitat. The researchers would use boat and backpack electrofishing equipment to capture, handle, and release juvenile UCR Chinook and steelhead, SR spr/sum and fall Chinook, SR steelhead, SR sockeye, MCR steelhead, LCR Chinook, LCR coho, LCR steelhead, CR chum, UWR Chinook and steelhead, and OC coho in the Columbia and Willamette rivers and tributaries in Portland, Oregon. The researchers would avoid contact with adult fish but may shock a few adult salmonids as well as adult SDPS eulachon and SDPS green sturgeon. The researchers do not expect to kill any listed fish, but a small number may die as an unintended result of the research activities.

Permit 16446

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) are seeking a 5-year permit to take MCR steelhead and, possibly, SR spring/summer Chinook salmon during the course of research designed to monitor listed fish population status in the Walla Walla River watershed, Washington. The data gathered (on fish abundance, trends, genetics, diversity, productivity, and population structure) would be used to inform management decisions regarding land use activities and listed salmonid recovery planning in the Walla Walla subbasin. The researchers would use rotary screw traps and backpack electrofishing units to capture the fish. At the screw traps, the fish would then be identified, measured, weighed, tissue sampled, implanted with PIT-Tags (if they do not already have tags), and released. Fish captured via electrofishing would be handled, measured, allowed to recover, and released in a safe area. Some adult carcasses would also be sampled. The researchers do not expect to kill any of the fish being captured, but a small number may die as an unintended result of the research activities.

Permit 16470

Cramer Fish Sciences (CFS) is seeking a 1-year permit to annually capture, handle, and release MCR steelhead in the 1-mile reach just downstream from Bowman Dam on the Crooked River, Oregon. The purpose of the research is to establish baseline conditions (population numbers, presence, etc.) among the indigenous fish species in the action area so that it can be determined what effect the construction (and operation) of a small hydroelectric facility at Bowman Dam may have on those species. The research will benefit listed species by helping managers at the power facility tailor their operations to cause the least possible harm to the species that may be affected. The researchers will use backpack electrofishing equipment to capture the MCR steelhead. They will then measure the fish, allow them to recover, and release them back to the capture site. The researchers do not expect to kill any listed fish, but a small number may die as an unintended result of the research activities.

Permit 16484

Symbiotics Energy is seeking a 1-year permit to annually capture, handle, and release MCR steelhead at a trapping facility just downstream from Bowman Dam on the Crooked River, Oregon. The study has two goals: (1) To describe the existing aquatic resources in the Crooked River downstream of a proposed hydroelectric project at Bowman Dam, and (2) to determine the survival and injury rates of various species and sizes of fish as they attempt to migrate through the existing flow release facilities at Bowman Dam. The research would benefit the fish by helping managers at the power facility determine the best way to conduct their operations while mitigating adverse effects on local fauna. The researchers would capture the MCR steelhead fish at a screw trap, measure them, and release them back to the river. The researchers do not expect to kill any listed fish, but a small number may die as an unintended result of the research activities.

Permit 16521

The WDFW is seeking a 5-year permit to annually capture, handle, and release juvenile UCR steelhead and Chinook salmon in the Hanford reach of the Columbia River and near the Tri-Cities, Washington. The purpose of the research is to gather data on fall Chinook abundance, length frequency distribution, and losses in the area. The information collected from these surveys has been used and continues to be used to evaluate protections for juvenile fall Chinook under the Hanford Reach Fall Chinook Protection Program Agreement and gauge the efficacy of the

Coded Wire Tagging Program for marking of wild Up-River Bright fall Chinook in the Hanford Reach. These surveys can provide biologists and managers with definitive data on the presence of or impacts on both non-listed and ESA Listed Chinook and steelhead residing in near shore habitats in this area of the Columbia River. These data, in turn, would be used to help guide management actions for the benefit of the listed species in the future. The researchers would use beach seines and backpack electrofishing equipment to capture the fish. The captured fish would be anesthetized, measured, allowed to recover, and released back to the river. The researchers do not expect to kill any listed fish, but a small number may die as an unintended result of the research activities.

Permit 16550

The Wild Fish Conservancy (WFC) is seeking a 5-year research permit to annually take juvenile and adult PS Chinook salmon, HC summer-run chum salmon, PS steelhead, PS/GB bocaccio, and SDPS green sturgeon. The WFC research may also cause them to take SDPS eulachon and PS/GB canary rockfish—for which there are currently no ESA take prohibitions. Sampling would take place in the nearshore habitats of Hood Canal and in the Nisqually River estuary. The purpose of the research is to study temporal and spatial usage patterns of juvenile salmon in critical rearing habitats of nearshore habitats. The research would benefit the listed species by helping inform conservation and habitat restoration actions. The WFC would use beach seines and fyke nets to capture the fish. Once captured, all fish would be held in aerated five-gallon buckets of seawater, enumerated by species, measured for length, scanned for coded wire tags (CWT), inspected for adipose fin clips, fin clipped for genetic samples (only from wild juvenile Chinook), and released. To determine their hatchery of origin, hatchery Chinook and coho salmon with coded wire tags would be euthanized using an overdose of MS–222. The researchers do not propose to kill any other listed species being captured, but a small number may die as an unintended result of the activities.

Permit 16612

Terrafilia is seeking a 5-year research permit to annually take juvenile PS Chinook salmon and PS steelhead. Sampling sites would be located in Cornet Bay on the northern shoreline of Whidbey Island in Deception Pass State Park. The purpose of Terrafilia's research is to monitor juvenile PS Chinook salmon response to restoration activities in Cornet Bay. The research would benefit the listed species by determining if the region's restoration strategies effectively restore fish habitat and populations. Terrafilia would use a small beach seine to capture the fish. The surveys would be conducted twice a month at 10 sites from early March through the end of June to August. One beach seine set would be made at each site per each sampling day. All fish would be enumerated by species, and fork lengths would be measured for the first 20 individuals of each species. The researchers do not propose to kill any other listed species being captured, but a small number may die as an unintended result of the activities.

Permit 16666

The FWS is seeking a 5-year permit to take listed salmonids while conducting research on hatchery-origin steelhead in Abernathy Creek, Washington. The goal is to determine the natural reproductive success and relative fitness of hatchery-origin and natural-origin steelhead and to assess the overall demographic effects of hatchery fish supplementation in Abernathy Creek relative to two adjacent control streams. The research would benefit listed salmonids by producing data to be used in hatchery and genetic management plans. The research was previously permitted under a separate research authorization and has been ongoing for several years. The FWS would use backpack electrofishing equipment to capture, handle, and release juvenile salmonids. Steelhead are not listed in these streams, but the FWS have captured juvenile LCR coho salmon and observed adult LCR Chinook salmon in previous years of research. The FWS would avoid electrofishing near adult coho and Chinook. The researchers do not expect to kill any listed fish, but a small number may die as an unintended result of the research activities.

Permit 16702

The NWFSC is seeking a 5-year research permit to annually take juvenile PS Chinook salmon and PS steelhead in the Snohomish River estuary. The purposes of the research is to monitor juvenile PS Chinook salmon habitat use in response to multiple restoration activities at the Qwuloolt restoration site adjacent to Ebey Slough. Specifically, the goals are to identify the life history types present, their spatial and temporal distribution, their feeding ecology, and interactions with other biota. The research would benefit the listed species by determining if the restoration strategies are effectively restoring fish habitat and increasing fish populations. Sampling would take place year round: Biweekly from February to September, and then once a month from October to January. Both beach seines (mainstem habitat) and fyke traps (tidal channels) would be used to quantify fish distribution throughout the project area and in adjacent restoration sites. Up to 15 marked and unmarked, juvenile Chinook salmon (10 from each beach seine sampling day, five from each fyke trap site) would be sacrificed using a lethal dose of MS–222 and taken to the lab for further processing. All other juvenile PS Chinook and all PS steelhead captured would be measured (fork length), counted, and released. Any PS Chinook unintentionally killed during the research would be used in lieu of a fish that would otherwise be sacrificed.

Permit 16741

The FWS is seeking a 5-year permit to annually capture, handle, and release adult and juvenile MCR steelhead during the course of research designed to describe life history patterns of fluvial bull trout in the lower Walla Walla basin and investigate their use of the mainstem Columbia and lower Walla Walla Rivers. The research would benefit listed species by generating data to be used in local recovery planning efforts and in evaluating the effects of flow management actions in the mainstem Columbia and Walla Walla Rivers. The researchers would use sing nets, hook-and-line fishing, and screw traps to capture the fish. The captured fish would be identified, measured, and quickly released back to the river. The researchers do not expect to kill any listed fish, but a small number may die as an unintended result of the research activities.

Permit 16751

The United States Geological Survey (USGS) is seeking a 5-year permit to annually take juvenile and adult PS Chinook salmon, HC summer-run chum salmon, and PS steelhead. The USGS's research may also cause them to take SDPS eulachon—for which there are currently no ESA take prohibitions. Sampling sites would be in the Cedar, Dungeness, Nooksack, Skagit, Skykomish, Snohomish, Snoqualmie, and Stillaguamish river systems of the Puget Sound. The purpose of USGS's research is to identify and assess Pacific lamprey distribution in Puget Sound watersheds. The research would benefit the listed species by providing information about salmonid distribution and about Pacific lamprey, an important

component to the Puget Sound ecosystem. The lamprey would be captured via backpack electrofishing and the use of seines. Sampling would target silt-mud substrates that are preferred habitats for juvenile lamprey but are unlikely to harbor salmonids. Samples would be taken in the late summer and fall before peak lamprey emigration. Electrofishing methods would be modified to target juvenile lamprey and would be unlikely to harm them or other fish species. A subsample of the captured lamprey would be measured and weighed (up to 30 per site) and up to five fish per site may be tissue sampled or sacrificed. All other fish (including all listed fish) would be released at the capture site. The researchers do not propose to kill any other listed species being captured, but a small number may die as an unintended result of the activities.

Permit 16798

The FWS is seeking a 5-year research permit to annually take juvenile and adult PS Chinook salmon and PS steelhead. Sampling sites would be located in the south fork of the Skokomish River. The purpose of FWS's research is to complete an extensive assessment of engineered logjams (ELJs) placed in the Skokomish River by comparing a reach where ELJs were placed with an adjacent reach lacking ELJs. The research would benefit the listed species by assessing if the ELJs increase habitat diversity for both juvenile (rearing) and adult (holding, spawning) salmon and stabilize substrate in the active channel. The FWS proposes to capture fish using a combination of beach and purse seining, electrofishing, and snorkeling. Captured fish would be PIT-tagged and injected with elastomer dyes, or soaked in a Bismarck brown dye. Approximately 25 fish per site would be subjected to gastric lavage. All fish would be released at their capture sites. The researchers do not propose to kill any fish, but a small number may die as an unintended result of the activities.

Permit 16918

The Wild Fish Conservancy (WFC) is seeking a 5-year research permit to annually take adult SDPS green sturgeon. The WFC research may also cause them to take SDPS eulachon—for which there are currently no ESA take prohibitions. Sampling would take place in the Grays Harbor estuary and the lower, tidally-influenced portions of its major tributaries. The purpose of WFC's research is to document the distribution, abundance, habitat use, and timing of juvenile salmonids and other fishes in the Grays Harbor estuary. The research would benefit listed species by helping managers plan salmonid habitat restoration and protection projects. Sampling would consist of beach seining and fyke netting. For green sturgeon, the researchers would measure fork length, photograph scutes, and release the fish. Eulachon would be transferred to buckets, measured for fork length (to determine potential reproductive status), enumerated, and released. The researchers do not propose to kill any fish, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: November 10, 2011.

Marta Nammack,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–29762 Filed 11–16–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA828

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, December 5–13, 2011 at the Anchorage Hilton Hotel.

DATES: The Council will begin its plenary session at 8 a.m. on Wednesday, December 7 continuing through Tuesday, December 13, 2011. Council's Advisory Panel (AP) will begin at 8 a.m., Monday, December 5 and continue through Friday, December 9, 2011. The Scientific Statistical Committee (SSC) will begin at 8 a.m. on Monday, December 5 and continue through Wednesday, December 7, 2011. The Halibut Charter Implementation Committee will meet Tuesday, December 6 at 4 p.m. in Lupine/Willow room. All meetings are open to the public, except executive sessions.

ADDRESSES: The meetings will be held at the Hilton Hotel, 500 West Third Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Council Plenary Session

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

Reports

1. Executive Director's Report (including Standard Operations and Procedures (SOPPs) review/approval and update on workshop with International Pacific Halibut Commission (IPHC)).

NMFS Management Report

Alaska Department of Fish & Game Report (including halibut subsistence update);

NOAA Enforcement Report;

United States Coast Guard Report;

United States Fish & Wildlife Service Report;

Protected Species Report (including Steller Sea Lion (SSL) Center of Independent Experts (CIE) Terms of Reference).

2. Pacific Cod Jig Fishery Management: Report on Board of Fisheries action and discuss next steps.

3. Salmon Fishery Management Plan (FMP): Final action to approve Salmon FMP.

4. Groundfish Harvest Specifications: Approve final BSAI groundfish specifications and Stock Assessment Fishery Evaluation (SAFE) reports. Approve final GOA groundfish specifications and SAFE reports.

5. Bering Sea Aleutian Island (BSAI) Crab Stakeholders reports(5-year review issues): Crew compensation/active participation/excessive lease rates; binding arbitration; community issues/ Right of first refusal (ROFR).

6. Freezer Longline Vessel Replacement: Initial review of analysis to allow replacement of freezer longline vessels.

7. Halibut Catch Sharing plan: IPHC report on 2012 staff recommendations;

ADF&G report on 2010/2011 sport catch estimates, and logbook versus statewide harvest survey comparisons; Council guidance to IPHC for 2012 management measures; Review Charter Halibut Committee report on revising Catch Share Plan (CSP) Tier one management measures; Review NMFS report on CSP deficiencies and provide Council direction.

8. Groundfish Issues: Review Bering Sea Habitat Conservation Area Boundary; Discussion paper on Gulf of Alaska (GOA) Chinook salmon bycatch in all fisheries; Discussion paper on GOA Pacific Cod A-season opening dates; Review/approve Halibut mortality on trawlers Exempted Fishing Permit (EFP); Establishing a Community Quota Entity (CQE)Program in Area 4b; final action.

9. Staff Tasking: Review Committees and tasking.

10. Other Business

The SSC agenda will include the following issues:

1. Groundfish Specifications.

2. FFL vessel replacement.

3. Review/approve halibut mortality on trawler EFP.

The Advisory Panel will address most of the same agenda issues as the Council, except C–6 Halibut CSP and #1 B reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 14, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–29732 Filed 11–16–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Interagency Ocean Observation Committee, Meeting of the Data Management and Communications Steering Team

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: NOAA's Integrated Ocean Observing System (IOOS®) Program publishes this notice on behalf of the Interagency Ocean Observation Committee (IOOC) to announce a formal meeting of the IOOC's Data Management and Communications Steering Team (DMAC–ST). The DMAC–ST membership is comprised of IOOC-approved federal agency representatives and non-federal participants representing academic, non-profit, private, regional and state sectors who will discuss issues outlined in the agenda.

DATES: The meeting is scheduled for January 18, 2012, between 9 a.m. and 5 p.m. and January 19, 2012 between 9 a.m. and 5 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be broadcast via a conference telephone call. Public access is available at the Consortium for Ocean Leadership, 1201 New York Avenue NW., 4th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact the U.S. IOOS Program (Charles Alexander, (301) 427–2429, *Charles.Alexander@noaa.gov*) or the IOOC Support Office (Joshua Young, (202) 787–1622, *jyoung@oceanleadership.org*).

SUPPLEMENTARY INFORMATION: The IOOC was established by Congress under the Integrated Coastal and Ocean Observation System Act of 2009 and created under the National Ocean Research Leadership Council (NORLC). The DMAC–ST was subsequently chartered by the IOOC in December 2010 to assist with technical guidance with respect to the management of ocean data collected under the U.S. IOOS®. The IOOC's Web site (*http://www.iooc.us/*) contains more information about their charter and responsibilities. A summary of the DMAC–ST meetings, documentations, activities and terms of reference can also be found on-line, at the following address: *http://www.iooc.us/committee-news/dmac.*

Authority: 33 U.S.C. 3601–3610.

Dated: November 2, 2011.

Zdenka S. Willis,

Director, Integrated Ocean Observing System Program.

[FR Doc. 2011–29699 Filed 11–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA769

Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex

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

ACTION: Notice; proposed modification to Letters of Authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy (Navy) for a 2-year Letter of Authorization (LOA) to take marine mammals, by harassment, incidental to training and research within the Hawaii Range Complex (HRC). The Navy is proposing additional mitigation measures tailored to the use of timed-delay firing devices (TDFDs) during mine neutralization training. The current regulations and previous LOAs analyzed the training event rather than the detonation method. NMFS is requesting comments on the proposed change because it constitutes a substantial modification to the described work, in accordance with the Marine Mammal Protection Act (MMPA).

DATES: Comments and information on the application must be received no later than December 19, 2011.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here. The mailbox address for providing email comments is *ITP.Magliocca@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application used in this document may be obtained by writing to

the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals by the Navy incidental to training and research activities conducted within the Hawaii Range Complex (HRC) became effective on January 5, 2009 (74 FR 1456, January 12, 2009). An interim final rule (amending regulations to allow for greater flexibility in the types and amount of sound sources used by the Navy) became effective on February 7, 2011 (76 FR 6699, February 8, 2011), and remains in effect until January 5, 2014. For detailed information on this action, please refer to those documents. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs. Furthermore, a proposed rule to further amend the HRC rule (and 11 other Navy locations), allowing for multi-year LOAs, recently published in the **Federal Register**.

Summary of Request

On August 15, 2011, NMFS received a request from the Navy for a 2-year renewal of an LOA issued on February 7, 2011, for the taking of marine mammals incidental to training and research activities conducted within the HRC under regulations issued on January 5, 2009 (74 FR 1456, January 12, 2009). The request also proposes additional mitigation measures tailored to the use of timed-delay firing devices (TDFDs) during mine neutralization training to ensure that effects to marine mammals resulting from these activities would not exceed what was originally analyzed in the final rule (74 FR 1456, January 12, 2009). The potential effects of mine neutralization training on marine mammals were comprehensively analyzed in the Navy's 2009 final rule and mine neutralization training has been included in the specified activity in the associated 2009, 2010, and 2011 LOAs. However, the use of TDFDs and the associated mitigation measures have not been previously contemplated which is why NMFS is providing the proposed modifications to the public for review.

On March 4, 2011, a mine neutralization training event using TDFDs is believed to have likely resulted in the death of three long-beaked common dolphins in the Navy's Silver Strand Training Complex off the Southern California coast. In short, a TDFD begins a countdown to a detonation event that cannot be stopped. For example, once a detonation is initiated, a 10-minute (min) TDFD allows 10 min to pass before the detonation occurs and the event cannot be cancelled during this time. Following the March 4th event, the Navy initiated an evaluation of mine neutralization events occurring within other training complexes (including HRC) and realized that TDFDs were being used. The Navy has been working with NMFS to develop a more robust monitoring and mitigation plan to ensure that marine mammal mortality and injury would not occur during mine neutralization training activities that involve TDFDs (an estimated 97% of all mine neutralization training events). The following sections provide a detailed description regarding the mine neutralization training activities and the Navy's proposed revisions to mitigation that will prevent mortality and injury to marine mammals.

The Navy is requesting a 2-year LOA in correspondence with a proposed rule to modify the HRC rule (and other Navy rules), which would allow for multi-year LOAs. As explained in the recently published proposed rule, a 2-year LOA would not eliminate NMFS' requirement for annual monitoring and exercise reports. The purpose of the extended LOA is simply to eliminate the need for an annual LOA application. In the past, NMFS has struggled to issue annual LOA renewals on time due to workload constraints, causing the Navy to expend vast amounts of resources in implementing a contingency plan. A 2-year LOA would provide more flexibility for the NMFS and the Navy, while still maintaining the annual reporting requirements to ensure that the Navy does not exceed their authorized takes.

Summary of Activity

The Navy's current regulations for the HRC (74 FR 1456, January 12, 2009) allow for the taking of marine mammals incidental to a maximum of 340 mine neutralization exercises over the course of 5 years (an average of 68 per year). To date, the Navy has not exceeded their authorized amount. The Navy is not proposing to increase any amount of exercises or authorized take within the HRC. Rather, the Navy is proposing to revise their current mitigation measures to reduce the risk to marine mammals when TDFDs are being used.

Operational Mission and Types of Detonation Initiating Devices

TDFDs—devices used to begin a demolition charge after a certain amount of time—are necessary for the realistic training of Explosive Ordnance Disposal (EOD) and Mobile Dive and Salvage Unit personnel in the Navy. The EOD mission is typically to locate, neutralize, recover, and exploit mines after they are initially located by another source. Once the mine is located, EOD divers are deployed to further evaluate and ''neutralize'' the mine, or render it safe. The Navy uses both time-delayed and ''positive control'' methods to initiate a particular underwater detonation depending on the training event objectives in question and applicable to that particular underwater detonation. Positive control firing typically uses a Remote Firing Device (RFD) to instantly initiate a detonation (as opposed to a TDFD).

TDFDs are the simplest, safest, most operationally sound method of initiating a demolition charge on a floating mine or mine at depth. Substitutes for this type of device are contradictory to realistic training and considered inadequate at satisfying military readiness requirements. TDFDs are used because of their light weight, ease of

employment, and low magnetic signature (in cases of mines sensitive to magnetic fields). Furthermore, TDFDs have a lower risk of accidental detonations from nearby radios or other electromagnetic radiation-producing devices, compared to some positive control devices. The use of TDFDs eliminates the need to redeploy swimmers from a helicopter or boat to recover equipment used with positive control firing devices. TDFDs also allow sufficient time for EOD personnel to swim outside of the detonation plume radius and human safety buffer zone after the timer is set. RFDs can be used as an alternative to TDFDs, but are not typically preferred due to risk of accidental detonation, safety considerations, and established Navy tactical procedures. In an open ocean environment, universal use of RFDs would greatly increase the risk of misfire due to component failure and put unnecessary stress on all needed connections and devices. More specifically, universal use of RFDs would: Add 600–1,000 feet (ft) of firing wire; require building/deploying an improvised, bulky, floating system for the receiver; and add another 180 ft of detonating cord and 10 ft of additional material. Therefore, RFDs are not considered a practicable alternative for all underwater detonations.

Description of Training

Basic underwater detonation training involves neutralizing a simulated mine either at the water's surface or at depth. The ratio of surface to bottom detonations is dependent mainly on range availability and weather conditions, but is typically 50/50. During surface mine neutralization, EOD divers are deployed and retrieved via helicopter. A small boat is used for bottom detonations or if a helicopter is unavailable. During training exercises, a minimum of two boats also participate, regardless of detonation type. Underwater detonations only occur during daylight hours and in sea states equal to or less than Beaufort 3.

Once on site, the applicable mitigation zone is established and 30 min of visual monitoring begins. Divers then enter the water to conduct the training objective, which could include searching for a training object, such as a simulated mine or mine-like shape. For the detonation part of the training, the explosive charge and associated charge initiating device are taken to the detonation point. Military forms of C–4 are used as the explosives. For a surface mine neutralization training event involving a helicopter or a boat, the minimum time-delay for EOD divers to make their way safely outside of the typical 1,000-ft (334-yard [yd]) detonation plume radius/human safety buffer zone is 10 min. For mine neutralization training events at depth, the time-delay can be minimized to 5 min. However, this would require the instructors to handle initiation of the detonation, thereby decreasing the training value for students. Following underwater detonation, additional personnel in support boats (and helicopter, if applicable) monitor the mitigation zone for 30 min. Concurrent with the post-detonation monitoring, divers return to the detonation site to confirm the explosives detonated correctly and to retrieve any residual material.

Derivation of Timed-Delay Monitoring Zones

The rationale used to develop new monitoring zones to reduce potential impacts to marine mammals when using TDFDs is as follows: First, the Navy identified the distances at which the sound and pressure of an explosion attenuate below NMFS' injury criteria (that is, the distance outside of which marine mammals are not expected to be injured). Then, the Navy identified the distance that a marine mammal would be likely to travel during the time associated with the TDFD and added that distance to the injury distance. If this enlarged area is effectively monitored, animals would be detected at a sufficient distance to ensure that they could not swim into the injurious zone before detonation. The Navy used an average swim speed of 3 knots (102 yd/min) for a dolphin to calculate the approximate distance that an animal would typically travel within a given time-delay period. However, NMFS suggested that an additional buffer zone be included to account for the possibility of a marine mammal exceeding the 3-knot swim speed. Therefore, an additional 200-yd buffer was used to calculate a marine mammal's potential distance traveled for each timed-delay length (Table 1).

TABLE 1—POTENTIAL DISTANCE TRAVELED BASED ON SWIM SPEED, LENGTH OF TIME-DELAY, AND AN ADDITIONAL BUFFER ZONE

Type	Swim speed	Time-delay (min)	Potential distance traveled (yd)	Potential distance traveled with additional 200-yd buffer (yd)
Dolphin/Pinniped*	102 yd/min	5	510	710
		6	612	812
		7	714	914
		8	816	1,016
		9	918	1,118
		10	1,020	1,220

*Hawaiian monk seal (the only pinniped in the area) swim speeds are unknown; however, they are assumed to swim slower than dolphins. Therefore, the dolphin swimming speed estimate is conservatively used for pinnipeds as well.

Based on acoustic propagation modeling conducted as part of the Silver Strand Training Complex (and applied here), the potential for injury to a marine mammal exists within 80 yd of a 5-pound (lb) detonation, 160 yd of a 10-lb detonation, and 360 yd of a 15- to 29-lb detonation. The Navy then used the distances in Table 1 to calculate revised buffer zones for 5-, 10-, and 15- to 29-lb charges by adding the distance traveled for a specific time-delay to the distance of the injury zone for each size charge (Table 2). As long as animals are not observed within the buffer zones before the time-delay detonation is set, then the animals would be unlikely to reach the injury zone within the time-delay window. The current buffer zone for use of positive control devices is 700 yd and will continue to be used for non-TDFD events.

TABLE 2—REVISED RADII FOR TDFDS BASED ON CHARGE WEIGHT, NAVY-MODELED ZOI, LENGTH OF TIMED-DELAY, AND DISTANCES FROM TABLE 1

[Shown to illustrate calculations for Table 3]

Charge weight (lb)*	ZOI	ZOI by time and buffer distance					
		5 min	6 min	7 min	8 min	9 min	10 min
5	80 yd	80 + 710 = 790 yd	80 + 812 = 892 yd	80 + 914 = 994 yd	80 + 1,016 = 1,096 yd.	80 + 1,118 = 1,198 yd.	80 + 1,220 = 1,300 yd.
10	160 yd	160 + 710 = 870 yd.	160 + 812 = 972 yd.	160 + 914 = 1,074 yd.	160 + 1,016 = 1,176 yd.	160 + 1,118 = 1,278 yd.	160 + 1,220 = 1,380 yd.
15–29	360 yd	360 + 710 = 1,070 yd.	360 + 812 = 1,172 yd.	360 + 914 = 1,274 yd.	360 + 1,016 = 1,376 yd.	360 + 1,118 = 1,478 yd.	360 + 1,220 = 1,580 yd.

*For charge weights lower than those shown here, the next highest charge weight would be used.

All buffer zones used for mitigation are based on Navy-modeled ''underwater zones of influence'' (ZOIs), which refer to the sound/pressure propagation based on NMFS' threshold criteria for acoustic harassment. Buffer zones would be established around each detonation point based on a net explosive weight to reduce the risk of injury/mortality to marine mammals. For TDFD events, based on acoustic propagation modeling and anticipated ZOI by training event type and charge weight, potential dolphin travel distances by time can be added to event-specific ZOIs to produce a matrix of charge weight, selected delay time, and applicable mitigation zone as shown in Table 2. While the ZOIs vary between the different types of underwater detonation training, the Navy is proposing to establish an expanded 700-yd mitigation zone for all positive control (RFD) underwater detonations conducted within the HRC.

Finally, the Navy's mitigation zones would be divided into three distances to further minimize risk of marine mammal injury or mortality and to achieve a more practical execution of mitigation measures. The Navy proposes to divide the span of training events into those requiring a 1,000-yd buffer zone (2 boats) and those requiring a 1,400-yd or greater buffer zone (2 boats and 1 helicopter). This was determined by rounding the calculated ranges from Table 2 to the appropriate range category (1,000, 1,400, and 1,500) (Table 3). Although the 5 lb/6 min and 10 lb/7 min distances in Table 2 are slightly greater than 1,000 yd, these charge weight/timed-delay configurations represent less than one percent of all TDFD events. Training events requiring a 1,000-yd buffer zone would utilize a minimum of two boats for monitoring purposes. Training events requiring a 1,400 or 1,500-yd buffer zone would use a minimum of three boats or two boats and one helicopter for monitoring purposes.

Charge Weight (lb)	Timed-Delay					
	5 min	6 min	7 min	8 min	9 min	10 min
5	1,000 yd	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd
10	1,000 yd	1,000 yd	1,000 yd	1,400 yd	1,400 yd	1,400 yd
15-29	1,000 yd	1,000 yd	1,400 yd	1,400 yd	1,500 yd	1,500 yd

Table 3. Mitigation zone radii for TDFDs based on size of charge and length of timed-delay.
1,000 yd = minimum of two observation boats
1,400 and 1,500 yd = minimum of three observation boats or two boats and one helicopter

Proposed Mitigation Measures

The Navy's current mitigation measures in the HRC regulations and subsequent LOAs do not authorize the use of TDFDs when conducting mine neutralization training events and are, therefore, not practicable from a military readiness perspective. The estimated potential for marine mammals to be exposed during mine neutralization training events does not change with the use of TDFDs. This is due to the fact that estimated exposures are based on the probability of an animal's occurrence during a training event, and this probability does not change because of a time-delay. However, what does change is the potential effectiveness of the current mitigation measures. NMFS worked with the Navy to develop the following proposed revisions to the Navy's mitigation measures to minimize the risk of injury and mortality to marine mammals during the use of TDFDs. The following modifications are specific to mine neutralization training events conducted within HRC:

Mitigation Measures for Underwater Detonations Using Positive Control (RFDs)

1. Underwater detonations using positive control devices would only be conducted during daylight hours.

2. A mitigation zone of 700 yd would be established around each underwater detonation point.

3. A minimum of two boats would be deployed. One boat would act as an observer platform, while the other boat would typically provide diver support.

4. Two observers with binoculars on one small vessel would survey the detonation area and the mitigation zone for marine mammals beginning at least 30 min prior to the scheduled explosive event and lasting until at least 30 min following detonation.

5. In addition to the dedicated observers, all divers and boat operators engaged in detonation events can potentially monitor the area immediately surrounding the point of detonation for marine mammals.

6. If a marine mammal is sighted within the 700-yd mitigation zone or moving towards it, underwater detonation events would be suspended until the marine mammal has voluntarily left the area and the area is

clear of marine mammals for at least 30 min.

7. Immediately following the detonation, visual monitoring for marine mammals within the mitigation zone would continue for 30 min. Any marine mammal observed after the underwater detonation either injured or exhibiting signs of distress would be reported via Navy operational chain of command to Navy environmental representatives from U.S. Pacific Fleet, Environmental Office. Using Marine Mammal Stranding communication trees and contact procedures established for the HRC, the Navy would report these events to the Stranding Coordinator of NMFS' Pacific Islands Regional Office. These reports would contain the date and time of the sighting, location, species description, and indication of the animal's status.

Mitigation Measures for Underwater Detonations Using TDFDs

1. Underwater detonations using TDFDs would only be conducted during daylight hours.

2. Time-delays longer than 10 min would not be used. The initiation of the device would not start until the appropriate mitigation area is clear for a full 30 min prior to initiation of the timer.

3. A monitoring/mitigation zone would be established around each underwater detonation location, as indicated in Table 3, based on charge weight and length of time-delay used. When conducting surveys, boats would position themselves near the mid-point of the mitigation zone radius (but always outside the detonation plume/human safety zone) and travel in a circular pattern around the detonation location, surveying both the inner and outer areas. To the best extent practical, boats would try to maintain a 10-knot search speed to ensure adequate coverage of the mitigation zone. However, weather conditions and sea states may require slower speeds in some instances.

4. TDFD detonations with a mitigation zone of 1,000 yd:

- A minimum of two boats would be used to survey for marine mammals at a distance of 1,000 yd.
- Each boat would be positioned on opposite sides of the detonation location, separated by 180 degrees.

5. TDFD detonations with a mitigation zone of ≥1,400 yd:

- A minimum of three boats or two boats and one helicopter would be used to survey at distances ≥1,400 yd.
- When using at least three boats, each boat would be positioned equidistant from one another (120 degrees separation for three boats, 90 degrees separation for four boats, etc.)
- A helicopter, if available, can be used in lieu of one of the required boats. A helicopter search pattern is dictated by standard Navy protocols and accounts for multiple variables, such as the size and shape of the search area, size of the object being searched for, and local environmental conditions.

6. Two dedicated observers in each boat would conduct continuous visual surveys of the monitoring zone for the duration of the training event.

7. Monitoring zones would be surveyed beginning 30 min prior to detonation and for 30 min after detonation.

8. Other personnel besides boat observers may also maintain situational awareness of marine mammal presence within the monitoring zones to the best extent practical, given dive safety considerations. Divers placing the charges on mines would observe the immediate underwater area around a detonation site for marine mammals and report sightings to surface observers.

9. If a marine mammal is sighted within an established mitigation zone or moving towards it, underwater detonation events would be suspended until the marine mammal voluntarily leaves the area and the area is clear of marine mammals for at least 30 min.

10. Immediately following the detonation, visual monitoring for affected marine mammals within the monitoring zone would continue for 30 min.

11. Any marine mammal observed after an underwater detonation either injured or exhibiting signs of distress would be reported via Navy operational chain of command to Navy environmental representatives from U.S. Pacific Fleet, Environmental Readiness Office. Using Marine Mammal Stranding communication trees and contact procedures established for the HRC, the Navy would report these events to the Stranding Coordinator of NMFS' Pacific Islands Regional Office. These reports would contain the date and time of the sighting, location, species description, and indication of the animal's status.

The locations within the HRC in which training with TDFDs would most often take place are close to shore (about 3–6 nm) and in shallow water (about 10–20 m depth). As part of the annual LOA requirements, the Navy has conducted monitoring in these areas during training events from 2009 to 2011 and spinner dolphins are the only marine mammal that has been sighted. Based on the training location, description of the area, and data from recent monitoring surveys, large whales and other species that prefer deep or offshore waters are not expected to occur in these areas with any regularity. Although not observed by EOD or monitoring surveys, it is possible that Hawaiian monk seals and other dolphin species may be found in the area. However, mitigation measures apply to all species and would be implemented if any marine mammal is sighted.

Take Estimates

The additional mitigation and monitoring measures mentioned above will increase the buffer zone to account for marine mammal movement and increase marine mammal visual monitoring efforts to ensure that no marine mammal would be in a zone where injury and/or mortality could occur as a result of time-delayed detonation. Furthermore, the estimated exposures are based on the probability of the animals occurring in the area when a training event is occurring, and this probability does not change based on the use of TDFDs or implementation of mitigation measures (*i.e.,* the exposure model does not account for how the charge is initiated and assumes no mitigation is being implemented). The potential effects to marine mammal species and stocks as a result of the proposed mine neutralization training activities are the same as those analyzed in the final rule governing the incidental takes for these activities. Consequently, NMFS believes that the take estimates analyzed in the existing final rule do not change as a result of the proposed LOA to include mine neutralization training activities using TDFDs.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that would be ''taken'' by the specified activities (for example, takes by harassment or injury). This estimate informs the analysis that NMFS must perform to determine whether the activity would have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In

addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any other variables (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

Based on the analyses of the potential impacts from the proposed mine neutralization training exercises conducted within the HRC, especially on the proposed improvement to marine mammal monitoring and mitigation measures, NMFS has preliminarily determined that the modification of the Navy's LOA to include taking of marine mammals incidental to mine neutralization training using TDFDs would have a negligible impact on the marine mammal species and stocks present in the action area, provided that the additional mitigation and monitoring measures described above are implemented.

Endangered Species Act (ESA)

There are five marine mammal species listed as threatened or endangered under the ESA with confirmed or possible occurrence in the HRC: humpback whale (*Megaptera novaeangliae*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), sperm whale (*Physeter macrocephalus*), and Hawaiian monk seal (*Monachus schauinslandi*). Pursuant to section 7 of the ESA, NMFS has begun consultation internally on the issuance of the modified LOAs under section 101(a)(5)(A) of the MMPA for these activities. Consultation will be concluded prior to a final determination on the issuance of the modified LOA.

National Environmental Policy Act (NEPA)

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for the HRC. NMFS subsequently adopted the Navy's FEIS for the purpose of complying with the MMPA. For the proposed modification, which includes TDFDs, but also adds monitoring and mitigation measures to minimize the likelihood of any additional impacts from TDFDs, NMFS has determined that there are no changes in the potential effects to marine mammal species and stocks as a result of the proposed mine neutralization training events using TDFDs. Therefore, no additional NEPA analysis is required and the information in the existing FEIS remains sufficient.

Preliminary Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the proposed mitigation measures, NMFS preliminarily finds that the total taking from Navy mine neutralization training events using TDFDs in the HRC would have a negligible impact on the affected marine mammal species or stocks. NMFS has proposed issuance of an LOA to allow takes of marine mammals incidental to the Navy's mine neutralization training events using TDFDs, provided that the proposed mitigation measures are implemented.

Dated: November 9, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–29764 Filed 11–16–11; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0036]

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'') or the ''Bureau'' gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than December 19, 2011. The new system of records will be effective December 27, 2011 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0036, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.
- *Hand Delivery/Courier in Lieu of Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G St. NW., Washington, DC 20006, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law No. 111–203, Title X, established the CFPB to administer and enforce the federal consumer financial protection laws. The CFPB will maintain the records covered by this notice.

The new system of records described in this notice, CFPB.009—Employee Administrative Records System will be used to administer the benefits, retirement, human resources, and payroll programs for current and former CFPB employees and their named dependents and/or beneficiaries, as well as to assist in personnel management. A description of the new system of records follows this Notice.

The report of a new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled, ''CFPB.009—CFPB Employee Administrative Records System'' is published in its entirety below.

November 10, 2011.

Claire Stapleton,

Chief Privacy Officer.

CFPB.009

SYSTEM NAME:

Employee Administrative Records System

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G St. NW., Washington, DC 20006

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CFPB employees and their named dependents and/or beneficiaries, and individuals who have been extended offers of employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain data relating to individuals who have been extended offers of employment, current and former CFPB employees and their named dependents and/or beneficiaries, including but not limited to the following: (1) Identification and contact information; (2) demographic data; (3) payroll data; (4) employment related programs such as performance reports, training, and other information relative to employment by the CFPB; (5) benefits data, such as health, life, travel and disability insurance information; and (6) retirement benefits information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. No. 111–203, Title X, Sections 1012, 1021, codified at 12 U.S.C. §§ 5492, 5511.[1]

PURPOSE(S):

The information in the system is being collected to enable the CFPB to administer payroll, benefits, and other employment-related programs including retirement calculations and pay for current and former CFPB employees and their named dependents and/or beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB's rules relating to Disclosure of Records and Information. Rules are promulgated at 12 CFR 1070 *et seq* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to, or amendment or correction of record;

(3) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(5) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(6) A grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(7) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(8) Appropriate agencies, entities, and persons to the extent necessary to obtain information relevant to current and former CFPB employees' benefits, compensation, and employment;

(9) Appropriate federal, state, local, foreign, tribal, or self-regulatory organization or agency responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license;

(10) National, state or local income security and retirement agencies or entities involved in administration of employee retirement and benefits programs (*e.g.,* state unemployment compensation agencies and state pension plans) and any of such agencies' contractors or plan administrators, when necessary to determine employee eligibility to participate in retirement or employee benefits programs, process employee participation in those programs, process claims with respect to individual employee participation in those programs, audit benefits paid under those programs, or perform any other administrative function in connection with those programs;

(11) An executor of the estate of a current or former employee, a government entity probating the will of a current or former employee, a designated beneficiary of a current or former employee, or any person who is responsible for the care of a current or former employee, where the employee has died, has been declared mentally incompetent, or is under other legal disability, to the extent necessary to assist in obtaining any employment benefit or working condition for the current or former employee;

(12) The Internal Revenue Service and other governmental entities that are authorized to tax employees' compensation with wage and tax information in accordance with a withholding agreement with the CFPB

[1] Section 1066 of the Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury published rules on the Disclosure of Records and Information within 12 CFR Chapter X. This SORN is published pursuant to those rules and the Privacy Act.

pursuant to 5 U.S.C. 5516, 5517, and 5520, for the purpose of furnishing employees with IRS Forms W–2 that report such tax distributions;

(13) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111, 7114; and

(14) Carriers, providers and other federal agencies involved in administration of employee retirement and benefits programs and such agencies' contractors or plan administrators, when necessary to determine employee eligibility to participate in retirement and benefits programs, process employee participation in those programs, process claims with respect to individual employee participation in those programs, audit benefits paid under those programs, or perform any other administrative function in connection with those programs and federal agencies that perform payroll and personnel processing and employee retirement and benefits plan services under interagency agreements or contracts, including the issuance of paychecks to employees, the distribution of wages, the administration of deductions from paychecks for retirement and benefits programs, and the distribution and receipt of those deductions. These agencies include, without limitation, the Department of Labor, the Department of Veterans Affairs, the Social Security Administration, the Federal Retirement Thrift Investment Board, the Department of Defense, the Office of Personnel Management, the Board of Governors of the Federal Reserve System, the Department of the Treasury, and the National Finance Center at the U.S. Department of Agriculture.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including, without limitation, the individual's name, social security number, address, account number, transaction number, phone number, date of birth, or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Chief Technology Officer, 1700 G St. NW., Washington, DC 20006.

RETENTION AND DISPOSAL:

The CFPB will maintain electronic and paper records under the National Archives and Records Administration (NARA) schedules General Records Schedule (GRS) GRS 01 and GRS 02.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in 12 CFR 1070.50 *et seq.* Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G St., NW., Washington, DC 20006.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals and entities associated with benefits, retirement, human resource, and payroll systems administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–29689 Filed 11–16–11; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2011–0037]

Request for Information Regarding Private Education Loans and Private Educational Lenders

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: Section 1077 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank'') requires the Bureau of Consumer Financial Protection (''Bureau'' or ''CFPB'') and the Department of Education, in consultation with the Department of Justice and the Federal Trade Commission, to prepare a Report on Private Education Loans and Private Education Lenders. The Bureau seeks information on private education loans and related consumer financial products and services that are currently being offered to or used by students and their families for the financing of postsecondary education.

DATES: *Comment Due Date:* January 17, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0037, by any of the following methods:

- *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CFPB_StudentsFedReg@cfpb.gov.*
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1500 Pennsylvania Ave. NW., (*Attn:* 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the question to which you are responding at the top of each response (respondents need not answer each question). In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information such as account numbers or Social Security numbers should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please call Monica Jackson at (202) 435–7275.

SUPPLEMENTARY INFORMATION: In support of the study required under section 1077 of Dodd-Frank, the Bureau seeks information on private education loans and related consumer financial products and services that are currently being offered to or used by students and their families for the financing of postsecondary education. As used in Section 1077 of Dodd-Frank, ''private education loans'' refers to loans made

by a school or by a financial institution to finance the cost of post-secondary education, but excluding loans guaranteed under Title IV of the Higher Education Act, commonly referred to as ''federal'' loans.[1]

Section 1077 of Dodd-Frank requires the Bureau and the Department of Education, in consultation with the Department of Justice and the Federal Trade Commission, to prepare a Report on Private Education Loans and Private Education Lenders (''Report'').[2] Section 1077 mandates that the Report address a list of questions, some of which may best be answered with quantitative data. For those questions, the Bureau will initially utilize records already held by the Department of Education, information obtained directly from lenders (both for-profit and non-profit) and industry associations, and information already collected or otherwise available from other public and private sources. To supplement these data and to capture qualitative information that may help to answer the questions posed by Congress, this notice and request for information seeks input from all sources, both inside and outside of the financial services industry, including consumers, financial services providers, schools, organizations, and other members of the public regarding (a) Issues concerning private education loans and lending, where existing quantitative data may be incomplete, and (b) qualitative issues where public input will add perspective that may improve the Report.

We refer the public to the questions posed by Congress in Section 1077 of Dodd-Frank at *http://go.usa.gov/XDr.* To assist the Bureau in responding to those questions, we seek public comment on the questions below. The Bureau is particularly interested in learning what information would help students make informed decisions about which financial services and products are right for them and what approaches would best assist recent graduates facing (or about to face) difficulty making private education loan payments. The questions are grouped into four broad categories, (a) Scope and use of private education loans, (b) information and shopping for private education loans, (c) institutional loans, and (d) repayment. Please feel free to respond to all of the questions or only those that interest you, but please be sure to indicate in your comments which questions you are answering.

Scope and Use of Private Education Loans

1. In addition to private education loans, to what extent do students and their families rely on other forms of non-federal debt financing to pay for postsecondary education (*e.g.* tuition payment plans, student credit cards, parent or family credit cards, home equity lines of credit, *etc.*)?

2. For students who do not exhaust their federal loan options, including those that require the completion of a Free Application for Federal Student Aid (FAFSA), before turning to private education loans, what explains their choice of private loans?

Information and Shopping for Private Loans

3. From what sources do students and their families obtain information about private education loans and private lenders? What sources are most helpful and accurate?

a. How effective are the existing disclosures provided by private education lenders regarding the terms and conditions of the loans? Among other things, comments could address issues such as whether students and their families feel they adequately understand the terms and conditions of various financial products offered to finance their education goals.

4. What sources of information do students rely upon to gauge the appropriate amount of student debt when selecting a school or program? Do students rely on financial aid budgets provided by the school or on other sources to determine amounts needed to cover tuition and other expenses? Do they consider ability to repay in choosing amounts of debt to incur? If so, what resources are available to help them determine their ability to repay?

Institutional Loans

5. To what extent are students offered or solicited to take out private education loans made directly by the school they are attending? How do such programs compare to those offered by non-school private educational lenders (*e.g.,* interest rates, ease of approval, underwriting criteria, repayment terms *etc.*)?

6. What types of schools most commonly offer their own private student loan programs? How do schools select the students they deem eligible for their loan programs (*e.g.,* academic merit, financial need, recruitment, retention)? How are school loan programs funded?

Repayment

7. How well are the amount and timing of private education loan repayment terms understood (a) When borrowers take out the loan, (b) during school, (c) at graduation, and (d) when repayment begins? Among other things, comments could address individual experiences at each stage of a student's education, or reference existing studies or survey work concerning the percentage of students with different levels of understanding regarding their debt load at each stage of their education.

8. What are the best practices at school financial aid offices in providing students with information about students' future loan payments and ability to afford those payments? The Bureau is particularly interested in steps or programs schools voluntarily use to create or enhance students' awareness of their debt loads and ability to afford their loan payments, as well as any evidence concerning the impact of such initiatives.

9. How much does a student's debt load affect undergraduate field of study or career choices after graduation? To what extent do undergraduates' or recent graduates' debt loads affect their decision to attend graduate school or seek advanced professional degrees?

10. Are students adequately informed of their rights as borrowers on private education loans? What resources are students offered to protect their rights? Who directs them to resources that may help them protect their rights (*e.g.,* friends, schools, lenders, particular Web sites, *etc.*)?

11. What financial education techniques and resources have empirically-demonstrated effectiveness in helping borrowers avoid default on private education loans? How prevalent are these techniques and resources? Among other things, the CFPB is particularly interested to learn:

a. Which alternative repayment plans have proven most effective in keeping borrowers out of default and why?

b. Whether private lenders adopted repayment program modifications to respond to the high unemployment rate among recent graduates in the wake of the financial crisis?

c. Are there techniques that private education lenders should try to help reduce default?

d. Have private lenders developed rehabilitation programs for defaulted loans?

[1] Title IV loans are commonly referred to as ''federal loans'' and are often known as ''Stafford Loans,'' Perkins Loans,'' and ''PLUS and GradPLUS'' loans in the current federal Direct Loan program guaranteed under Title IV of the Higher Education Act.

[2] For the purposes of this request for information, the terms ''private education loans'' and ''private student loans'' may be used interchangeably, as may the terms ''private educational lenders'' and ''private student lenders.'' Dodd-Frank defines ''private education loans'' by reference to section 140 of the Truth-in-Lending Act, 15 U.S.C. 1650.

Dated: November 9, 2011.

Meredith Fuchs,

Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2011–29737 Filed 11–16–11; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces; Notice of Meeting

AGENCY: Office of the Assistant Secretary of Defense, Department of Defense.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal Advisory Committee meeting will take place: Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (subsequently referred to as the Task Force).

DATES: Thursday, December 8, 2011–Friday, December 9, 2011, from 8:30 a.m. to 5 p.m. CST, each day.

ADDRESSES: St. Anthony Riverwalk Wyndham Hotel-Peraux Room, 300 East Travis Street, San Antonio, TX 78205.

FOR FURTHER INFORMATION CONTACT: Mail Delivery service through Recovering Warrior Task Force, Hoffman Building II, 200 Stovall St., Alexandria, VA 22332–0021 ''Mark as Time Sensitive for December Meeting.'' Emails to *rwtf@wso.whs.mil*. Denise F. Dailey, Designated Federal Officer; Telephone (703) 325–6640. Fax (703) 325–6710.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is for the Task Force Members to convene and gather data from panels and briefers on the Task Force's topics of inquiry.

Agenda: (Please refer to *http://dtf.defense.gov/rwtf/meetings.html* for the most up-to-date meeting information).

Thursday, December 8, 2011

8:30 a.m.–10 a.m. Task Force Members After Action Review
10:15 a.m.–10:45 a.m. Servicemembers Panel Views of VA Case Management prior to DD214
10:45 a.m.–12 p.m. Panel on Pre-Separation VA Case Management
12 p.m.–1 p.m. Break for lunch
1 p.m.–1:30 p.m. Veteran Views of Pre-DD214 Programs and Policies
1:30 p.m.–2:30 p.m. Post DD 214 Challenges Panel
2:30 p.m.–2:45 p.m. Break
2:45 p.m.–3:45 p.m. Panel on VA IDES Support
3:45 p.m.–4 p.m. Break
4 p.m.–5 p.m. Public Forum
5 p.m. Closing

Friday, December 9, 2011

8:30 a.m.–8:45 a.m. Opening
8:45 a.m.–10 a.m. Army WTU Cadre Training Briefing–AMEDD
10 a.m.–10:15 a.m. Break
10:15 a.m.–11:15 a.m. FLO Briefing
11:15 a.m.–12:15 p.m. VA Vet Center Counselors Panel
12:15 p.m.–1:15 p.m. Break for lunch
1:15 p.m.–2:15 p.m. Hearing CoE Briefing
2:15 p.m.–3:45 p.m. Panel of Private Organizations: VSOs, MSOs
3:45 p.m.–4 p.m. Break
4 p.m.–5 p.m. Panel of DVOPs and LVERs
5 p.m. Closing

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces about its mission and functions. If individuals are interested in making an oral statement during the Public Forum time period, a written statement for a presentation of two minutes must be submitted as below and must identify it is being submitted for an oral presentation by the person making the submission.

Identification information must be provided and at a minimum must include a name and a phone number. Individuals may visit the Task Force Web site at *http://dtf.defense.gov/rwtf/* to view the Charter. Individuals making presentations will be notified by Friday, December 2, 2011. Oral presentations will be permitted only on Friday December 9, 2011 from 4 p.m. to 5 p.m. CST before the Task Force. The number of oral presentations will not exceed ten, with one minute of questions available to the Task Force members per presenter. Presenters should not exceed their two minutes.

Written statements in which the author does not wish to present orally may be submitted at any time or in response to the stated agenda of a planned meeting of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Task Force through the above contact information, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements, either oral or written, being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed no later than 5 p.m. EST (4 p.m. CST), Wednesday, November 30, 2011 which is the subject of this notice. Statements received after this date may not be provided to or considered by the Task Force until its next meeting. Please mark mail correspondence as ''Time Sensitive for December Meeting.''

The Designated Federal Officer will review all timely submissions with the Task Force Co-Chairs and ensure they are provided to all members of the Task Force before the meeting that is the subject of this notice.

Reasonable accommodations will be made for those individuals with disabilities who request them. Requests for additional services should be directed to Heather Jane Moore, (703) 325–6640, by 5 p.m. EST (4 p.m. CST), Wednesday, November 30, 2011.

Dated: November 14, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–29729 Filed 11–16–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, December 13, 2011, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: November 14, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–29772 Filed 11–16–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0121]

Privacy Act of 1974; System of Records; Withdrawal

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Notice to delete a System of Records; withdrawal.

SUMMARY: On November 14, 2011 (76 FR 70427), Department of Defense published a Privacy Act of 1974; System of Records notice (FR Doc. 2011–29200). This notice had already been published in the **Federal Register** on August 22, 2011 (76 FR 52322, FR Doc. 2011–21286). The notice of November 14, 2011 published in error. This document withdraws that notice.

DATES: The notice published on November 14, 2011 (76 FR 70427) is withdrawn, effective November 17, 2011.

FOR FURTHER INFORMATION CONTACT: Aaron Siegel, (571) 372–0488.

Dated: November 14, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–29710 Filed 11–16–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent (Noi) To Prepare an Environmental Assessment for Minuteman III and Peacekeeper Silo Elimination/Dismantlement Malmstrom Missile Field, Montana, F.E. Warren Missile Field, Wyoming, Vandenberg Air Force Base, CA

AGENCY: U.S. Air Force.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and Air Force policy and procedures (32 CFR part 989), the Air Force is issuing this notice to advise the public of its intent to prepare an EA to evaluate the potential environmental impacts of dismantling Minuteman III and Peacekeeper Missile Systems.

The dismantlement of Minuteman III and Peacekeeper silos is required by the new Strategic Arms Reduction Treaty (START) (February 5, 2011) and requires the Air Force to dismantle 103 non-operational Launch Facilities (LFs). The LFs and associated Missile Alert Facilities (MAFs) are located at the Malmstrom Missile Field (MF) (50 Minuteman LFs of the deactivated 564th Missile Squadron and 5 MAFs), F.E Warren MF (50 Peacekeeper LFs of the deactivated 400th Missile Squadron and 5 MAFs), and Vandenberg AFB (3 Test LFs). The treaty identified three possible methods for dismantlement including implosion, excavation, and backfill. The Treaty requires complete dismantlement of LFs by February 4, 2018. In order to meet the Treaty deadline, dismantlement activities could start as early as the summer of 2013.

Public scoping meetings are planned in the towns of Great Falls, Shelby, Choteau, and Conrad, Montana; and Cheyenne, Torrington, and Chugwater, Wyoming. The purpose of these meetings is to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Notice of the times and locations of the meetings will be made available to the community using the local news media. The schedule for the scoping meetings is as follows:

Date	Location	Time
December 5, 2011	Choteau, MT	6:30–8:30 p.m.
December 6, 2011	Conrad, MT	6:30–8:30 p.m.
December 7, 2011	Great Falls, MT	6:30–8:30 p.m.
December 8, 2011	Shelby, MT	6:30–8:30 p.m.
January 10, 2012	Cheyenne, WY	6:30–8:30 p.m.
January 11, 2012	Torrington, WY	6:30–8:30 p.m.
January 12, 2012	Chugwater, WY	6:30–8:30 p.m.

To ensure the Air Force will have sufficient time to fully consider public inputs on issues, written comments should be mailed for receipt no later than January 31, 2012.

Please direct written comments or requests for further information concerning the Minuteman III and Peacekeeper missile systems dismantlement EA to:

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Ms Dana McIntyre, Compliance and Conservation Program Manager AFGSC/A7AN, 41 Orville Wright Avenue, Barksdale AFB, LA, 71110, *ph:* (318) 456–2407, *email: Dana.McIntyre@barksdale.af.mil*

Shannon N. Sanchez,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2011–29691 Filed 11–16–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors.

ACTION: Meeting notice.

SUMMARY: In accordance with 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting in the Capitol Building Main Visitor Center Conference Rooms 208/209 in Washington, DC on December 2, 2011. The meeting will begin at 10:30 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include updates on ''Don't Ask Don't Tell;'' a National and Air Force perspective on Diversity; the Air Force Academy Athletic Corporation; Air Force Academy fiscal issues; and the Superintendent's update. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that a portion of this meeting, the Character Update/Status of Discipline, shall be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at any open portion of the USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force address detailed below at any time. However, if a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. If after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific personals to make oral presentations before the BoV. In accordance with 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

FOR FURTHER INFORMATION CONTACT: For additional information or to attend this BoV meeting, contact Mr. David Boyle, USAFA Programs Manager, Directorate of Force Development, Manpower, Personnel and Services, AF/A1DO, 1500 Perimeter Road, Suite 4750, Joint Base Andrews, MD 20762–6604, (240) 612–4019.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–29705 Filed 11–16–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The 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 December 19, 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 emailed 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: November 10, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Planning, Evaluation, and Policy Development

Type of Review: New.

Title of Collection: Program Performance Data Audits Project.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Not-for-Profit Institutions; State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 611.

Total Estimated Annual Burden Hours: 610.

Abstract: This clearance request is submitted to the Office of Management and Budget (OMB) for the Office of Planning, Evaluation, and Policy Development's (OPEPD's) audit of grant program procedures for collecting, analyzing, and reporting performance and evaluation data. This request is necessary because OPEPD within the U.S. Department of Education (ED) has contracted with Decision Information

Resources, Inc. and Mathematica Policy Research, Inc. to assess the procedures for collecting and reporting program performance and evaluation data for eleven ED grant programs. These audits and assessments will provide ED with insight into (1) whether the programs' performance data are of high quality and the methods used to aggregate and report those data are sound; and (2) whether the local evaluations conducted by grantees (or their local evaluators) are of high quality and yield information that can be used to improve education programs. This OMB submission requests approval for the use of interview protocols for collecting information from program grantees and their local evaluators and program office contractors. All interview guides are designed to address the major research questions associated with this project. All other data used to address the audit's research questions will come from sources that will not require OMB approval.

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 4647. 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. 2011–29694 Filed 11–16–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Blue Ribbon Commission on America's Nuclear Future

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Blue Ribbon Commission on America's Nuclear Future (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), and requires that public notice of this meeting be announced in the **Federal Register**. This notice is provided in accordance with the Act.

DATES: Friday, December 2, 2011, 9 a.m.–4 p.m.

ADDRESSES: JW Marriott Washington, DC, 1331 Pennsylvania Avenue NW., Washington, DC 20004. Telephone: (202) 393–2000.

FOR FURTHER INFORMATION CONTACT: Timothy A. Frazier, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586–4243; facsimile (202) 586–0544; or email: *CommissionDFO@nuclear.energy.gov*. Additional information will be available at: *http://www.brc.gov*.

SUPPLEMENTARY INFORMATION:

Background: The President directed that the Commission be established to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste. The Commission submitted its draft report and draft recommendations to the Secretary of Energy on July 29, 2011. The report is due in January 2012.

This is the eighth open full Commission meeting. Previous meetings were held in March, May, July, September, and November 2010, and February and May 2011. Webcasts of the previous meetings along with meeting transcripts and presentation are available at: *http://www.brc.gov*.

Purpose of the Meeting: There are two purposes for this meeting. The first is to allow the Co-chairs of the three Subcommittees—Reactor and Fuel Cycle Technology, Transportation and Disposal, and Disposal—to review with the Commission proposed revisions to draft subcommittee recommendations formulated as a result of public comment. The full Commission will discuss the proposed revisions. The second purpose is for the Commissioners to be briefed by the newly-formed ad hoc subcommittee that has been investigating the issue of co-mingling of defense and commercial wastes.

Tentative Agenda: The meeting is expected to begin at 9 a.m. on Friday, December 2, 2011. The agenda will include presentations by the three subcommittees of the Commission. The subcommittee presentations are expected to begin at 9 a.m. and end at noon. After a break for lunch, the meeting will resume at 1 p.m. with the presentation from the Commission staff and discussion among the Commissioners. Public statements will begin at approximately 3 p.m. and conclude at approximately 4 p.m.

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the public session on Friday, December 2, 2011. Approximately one hour will be reserved for public comments from 3 p.m. to 4 p.m. Time allotted per speaker will depend on the number who wish to speak, but will not exceed five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8:30 a.m. on December 2, 2011, at the JW Marriott Washington DC. Registration to speak will close at 1 p.m., December 2, 2011.

Those not able to attend the meeting or have insufficient time to address the subcommittee are invited to send a written statement to Timothy A. Frazier, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, or email: *CommissionDFO@nuclear.energy.gov,* or post comments on the Commission Web site at: *http://www.brc.gov.*

Additionally, the meeting will be available via live video webcast. The link will be available at: *http://www.brc.gov.*

Minutes: The minutes of the meeting will be available at: *http://www.brc.gov* or by contacting Mr. Frazier. He may be reached at the postal address or email address above.

Issued in Washington, DC on November 10, 2011.

Latanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–29712 Filed 11–16–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. RF–020]

Publication of the Petition for Waiver and Notice of Granting the Application for Interim Waiver of Sub-Zero From the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

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

ACTION: Notice of petition for waiver, notice of granting application for interim waiver, and request for public comments.

SUMMARY: This notice announces receipt of and publishes the Sub-Zero, Inc. (Sub-Zero) petition for waiver (hereafter, ''petition'') from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to the basic models set forth in Sub-Zero's petition that incorporate dual compressors. In its petition, Sub-Zero provides an alternate test procedure that resolves difficulties in testing dual compressor systems according to the DOE test procedure. DOE solicits comments, data, and information concerning Sub-Zero's petition and the suggested alternate test procedure. DOE also publishes notice of the grant of an interim waiver to Sub-Zero.

DATES: DOE will accept comments, data, and information with respect to the Sub-Zero Petition until, but no later than December 19, 2011.

ADDRESSES: You may submit comments, identified by case number ''RF–020,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. RF–020] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *Email: Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for electric refrigerators and electric refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) The petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

II. Petition for Waiver of Test Procedure

On September 6, 2011, Sub-Zero filed a petition for waiver from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, Subpart B, Appendix A1. Sub-Zero is designing new refrigerator-freezers that incorporate dual compressors. In its petition, Sub-Zero seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 for Sub-Zero's dual compressor products. Sub-Zero states that the test procedure was designed to test independent, sealed systems while Sub-Zero's dual compressor products have shared systems. Sub-Zero further states that it may not be possible to use the DOE test procedure for these products, or that use of the DOE test procedure would provide inaccurate results. In its petition, Sub-Zero set forth an alternate test procedure developed in conjunction with an independent test laboratory.

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

III. Application for Interim Waiver

Sub-Zero also requested an interim waiver from the existing DOE test procedure. Under 10 CFR 430.27(b)(2), each application for interim waiver must demonstrate likely success of the Petition for Waiver and address the economic hardship and/or competitive disadvantage that is likely to result absent a favorable determination on the application for interim waiver.'' An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied; if it appears likely that the petition for waiver will be granted; and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that Sub-Zero's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Sub-Zero might experience absent a favorable determination on its application for interim waiver. DOE recognizes, however, that the DOE test procedure for dual compressor systems assumes independent, sealed system and that Sub-Zero dual compressor refrigerators have shared systems. As a result, it is not possible to test these products using the DOE test procedure, and use of the test procedure would provide test results so unrepresentative as to provide materially inaccurate comparative data. Sub-Zero worked with an independent testing laboratory to develop a test procedure that would accurately measure the energy consumption of its dual compressor products while alleviating the testing difficulties, and submitted the results as an alternate test procedure. DOE reviewed the alternate procedure and determined that it will alleviate the testing problems associated with Sub-Zero's implementation of a dual compressor system. Therefore, it appears likely that Sub-Zero's petition for waiver will be granted.

For the reasons stated above, DOE grants Sub-Zero's application for interim waiver from testing of its refrigerator-freezer product line containing dual compressors. Therefore, *it is ordered that:*

The application for interim waiver filed by Sub-Zero is hereby granted for Sub-Zero's refrigerator-freezer product lines that incorporate dual compressors subject to the following specifications and conditions:

(1) Sub-Zero shall be required to test and rate its refrigerator-freezer product line containing dual compressors according to the alternate test procedure as set forth in section IV, ''Alternate test procedure.''

(2) The interim waiver applies to the following basic model groups:

700TCI
700TR
736TCI
736TCIE
736TR
736TRE
30U/O
BI–30U/S/PH
BI–30U/S/TH
BI–30UA/O
BI–30UA/S/PH
BI–30UA/S/TH
BI–30UG/O
BI–30UG/S/PH
BI–30UG/S/TH
BI–36S/O
BI–36S/S/PH
BI–36S/S/TH
BI–36U/O
BI–36U/S/PH
BI–36U/S/TH
BI–36UA/O
BI–36UA/S/PH
BI–36UA/S/TH
BI–36UFD/O
BI–36UFD/S/PH
BI–36UFD/S/TH
BI–36UG/O
BI–36UG/S/PH
BI–36UG/S/TH
BI–42S/O
BI–42S/S/PH
BI–42S/S/TH
BI–42SD/O
BI–42SD/S/PH
BI–42SD/S/TH
BI–42SID/O
BI–42SID/S/PH
BI–42SID/S/TH
BI–48S/O
BI–48S/S/PH
BI–48S/S/TH
BI–48SD/O
BI–48SD/S/PH
BI–48SD/S/TH
BI–48SID/O
BI–48SID/S/PH
BI–48SID/S/TH
ID–36CI
IT–27CI
IT–30CI
IT–30CIID
IT–36CI
IT–36CIID
PRO48
PRO48G
PRO48HAG

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Sub-Zero may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

For the duration of the interim waiver, Sub-Zero shall be required to test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, Appendix A1, except that, for the Sub-Zero products listed above only, replace the multiple defrost system section 5.2.1.4 of Appendix A1 with the following:

5.2.1.4 Dual Compressor Systems with Dual Automatic Defrost. The two-part test method in section 4.2.1 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = \left(1440 \times EP1 / T1\right) + \sum_{i=1}^{D}\left[\left(EP2_i - \left(EP1 \times T2_i / T1\right)\right) \times \left(12 / CT_i\right)\right]$$

Where:

- 1440 = number of minutes in a day
- ET is the test cycle energy (kWh/day);
- i is the variable that can equal to 1,2 or more that identifies the compartment with distinct defrost system;
- D is the total number of compartments with distinct defrost systems;
- EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);
- T1 is the length of time for EP1 (minutes);
- EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);
- T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.
- CTi is the compressor on time between defrosts for only compartment i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.2. CTi for compartment i with variable defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.3. (hours rounded to the nearest tenth of an hour).

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

Steady State for EP1:

The temperature average for the first and last compressor cycle of the test period must be within 1.0°F (0.6°C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments are used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by regular compressor cycles. The temperature average for the first and last compressor cycle of the test period must be within 1.0°F (0.6°C) of the EP1 test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady state run cycles to allow T2i to be at least 24 hours. The test period shall start at the end of a regular freezer compressor on-cycle after the previous defrost occurrence (refrigerator or freezer). The test period also includes the target defrost and following regular freezer compressor cycles, ending at the end of a regular freezer compressor on-cycle before the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency:

Measurements shall be taken at regular interval not exceeding 1 minute.

V. Summary and Request for Comments

Through today's notice, DOE grants Sub-Zero an interim waiver from the specified portions of the test procedure applicable to Sub-Zero's line of refrigerator-freezers with dual compressors and announces receipt of Sub-Zero's petition for waiver from those same portions of the test procedure. DOE publishes Sub-Zero's petition for waiver pursuant to 10 CFR 430.27(b)(1)(iv). The petition includes a suggested alternate test procedure to determine the energy consumption of Sub-Zero's specified refrigerator-freezers with dual compressors. Sub-Zero is required to follow this alternate procedure as a condition of its interim waiver, and DOE is considering including this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Paul V. Sikir, Vice President of Design Engineering, Sub-Zero, Inc., 4717 Hammersley Road, Madison, Wisconsin 53711. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on November 8, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

September 6, 2011

Henry Kelly
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Dear Assistant Secretary Kelly:

Pursuant to 10 CFR 430.27, Sub-Zero respectfully requests expedited attention to this revised request for both an interim and final waiver to modify the DOE test procedure (Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers (Final Rule and Interim Final Rule), 75 Fed. Reg. 78,810 (Dec. 16, 2010)) for Sub-Zero refrigerators using two compressors. Without this waiver, we are unable to certify new dual compressor models as compliant with Energy Star and/or DOE minimum efficiency standards.

Sub-Zero is a family-owned company that has been headquartered in Madison, Wisconsin for over 60 years. Sub-Zero developed the niche market for customized built-in residential refrigeration using dual compressors and manufactures all our products in the United States, with factories in Wisconsin and Arizona. While technically not a ''small business'' using DOE's definition, Sub-Zero is a small producer of refrigerators striving to compete in an age of large, multi-national manufacturers and is one of the few remaining U.S. companies that produce all of its refrigerator products here in the U.S.

In previous comments to the Department, The Association of Home Appliance Manufacturers and individual manufacturers including Sub-Zero urged DOE to consider the technical difficulties imposed by the DOE dual compressor test method. DOE's approach in the final test procedure is difficult, if not impossible, to apply. In fact, it will require waivers, such as this one, because many products simply do not work the way DOE's equation assumes. DOE's approach assumes independent, sealed systems. Sub-Zero dual compressor refrigerators do not have independent, sealed systems—they have shared systems. Thus, DOE's approach for these products, at best, requires several added measurements to comply (adding burden), and may even provide

insurmountable obstacles, leading to test results so misrepresentative as to provide inaccurate energy consumption data.

CSA International, which is conducting testing for the AHAM Refrigerator-Freezer Verification Program, has informed us that they also believe that the DOE test procedure is unworkable for our dual compressor refrigerators. The modified test procedure that we propose for DOE's consideration in this waiver request is the product of analysis by CSA International, Sub-Zero and General Electric Appliances resulting in a practical, accurate and repeatable method. CSA International also intends to submit this modified procedure for adoption by Natural Resources Canada.

Since the vast majority of Sub-Zero's models utilize dual compressors, the company's future viability is clearly threatened by this situation and we sincerely ask DOE to grant immediate relief.

Issues with the DOE Test Procedure

AHAM provided an alternative test procedure in its August 10, 2010 comments on the proposed test procedure rule. DOE responded in 75 Fed. Reg. 78,810 (Dec. 16, 2010): ''After analyzing this alternative proposal for multiple compressors, DOE does not believe that it simplifies testing of systems with two or more compressors. In particular, it does not alleviate the test procedure burden associated with having to separately measure the energy use for the different systems, which is part of the procedure of the current dual-compressor product test procedure. *DOE understands that this is a key difficulty in testing such systems since it introduces burden and that, in some cases, it may be impossible to accomplish, depending on the details of the internal wiring of such products * * * DOE acknowledges that this final rule does not eliminate the difficulty of obtaining separate energy use measurements required in the test procedure for dual compressor products.* However, as discussed above, neither does the AHAM-proposed approach.'' Thus, DOE acknowledged problems with the current test procedure but did not believe the AHAM proposal provided an adequate solution. We believe the proposed approach in this waiver petition, developed by CSA International, GE and Sub-Zero, addresses DOE's concerns.

Proposed Modified Dual Compressor Test Procedure

The DOE test procedure dual compressor calculation requires the system to be divided into two separate systems—refrigerator and freezer. This is extremely difficult due to the fact that all dual compressor systems use a single power inlet and almost all, including Sub-Zero units, use a single electronic control to control both compressors. Energy testing protocols and laboratory equipment and measurement methods are not capable of evaluating each compressor system separately and individually. Also, the current steady state definition may not be achievable in the dual compressor system due the time required to calculate steady state.

We propose a modified procedure to measure dual compressor energy. This method will use a single electrical data collection system which is same as used in any variable defrost unit energy test procedure. Sub-Zero proposes simplifying EP1 to provide an accurate method for measuring energy that is simpler and less burdensome. It will also decrease the testing burden on manufacturers. To ensure accuracy, dual compressor energy times must be of sufficient length to reduce synchronization errors. With dual compressors, a short T1 or T2 may result in a significant error for the system that does not have full compressor cycles represented. Lengthening out these times reduces this effect. To further reduce error, Sub-Zero recommends that the frequency of measurements taken during the testing should be increased. This will reduce synchronization error and is more consistent with test methods being used in manufacturer's and in third party verification company's labs.

Thus, Sub-Zero requests that DOE modify the multiple defrost system equation in 5.2.1.4 of Appendix A1 as follows:

- 1440 = number of minutes in a day
- ET is the test cycle energy (kWh/day);
- i is the variable that can equal to 1,2 or more that identifies the compartment with distinct defrost system;
- D is the total number of compartments with distinct defrost systems;
- EP1 is the dual compressor energy expended during the first part of the test (it is calculated for a whole number of freezer compressor cycles at least 24 hours in duration and may be the summation of several running periods that do not include any precool, defrost, or recovery periods);
- T1 is the length of time for EP1 (minutes);
- EP2i is the total energy consumed during the second (defrost) part of the test being conducted for compartment i. (kWh);
- T2i is the length of time (minutes) for the second (defrost) part of the test being conducted for compartment i.
- CTi is the compressor on time between defrosts for only compartment i. CTi for compartment i with long time automatic defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.2. CTi for compartment i with variable defrost system is calculated as per 10 CFR part 430 subpart B appendix A1 clause 5.2.1.3. (rounded to the nearest tenth of an hour) (hours).

$$ET = \left(1440 \times EP1 / T1\right) + \sum_{i=1}^{D}\left[\left(EP2_i - \left(EP1 \times T2_i / T1\right)\right) \times \left(12 / CT_i\right)\right]$$

Stabilization:

The test shall start after a minimum 24 hours stabilization run for each temperature control setting.

Steady State for EP1:

The temperature average for the first and last compressor cycle of the test period must be within 1.0 °F (0.6 °C) of the test period temperature average for each compartment. Make this determination for the fresh food compartment for the fresh food compressor cycles closest to the start and end of the test period. If multiple segments used for test period 1, each segment must comply with above requirement.

Steady State for EP2i:

The second (defrost) part of the test must be preceded and followed by normal compressor cycle. The temperature average for the first and last compressor cycle of the test period must be within 1.0 °F (0.6 °C) of the EP1 test period temperature average for each compartment.

Test Period for EP2i, T2i:

EP2i includes precool, defrost, and recovery time for compartment i, as well as sufficient dual compressor steady

state run cycles to allow T2i to be at least 24 hours. The test period shall start at the beginning of normal compressor cycle after the previous defrost occurrence (refrigerator or freezer). The test period includes the target defrost and following normal compressor cycles until the next defrost occurrence (refrigerator or freezer). If the previous condition does not meet 24 hours time, additional EP1 steady state segment data could be included. Steady state run cycle data can be utilized in EP1 and EP2i.

Test Measurement Frequency:

Measurements shall be taken at regular interval not exceeding 1 minute.

Affected Models:

The basic models of Sub-Zero dual compressor refrigerators affected are:

700TCI
700TR
736TCI
736TCIE
736TR
736TRE
BI–30U/O
BI–30U/S/PH
BI–30U/S/TH
BI–30UA/O
BI–30UA/S/PH
BI–30UA/S/TH
BI–30UG/O
BI–30UG/S/PH
BI–30UG/S/TH
BI–36S/O
BI–36S/S/PH
BI–36S/S/TH
BI–36U/O
BI–36U/S/PH
BI–36U/S/TH
BI–36UA/O
BI–36UA/S/PH
BI–36UA/S/TH
BI–36UFD/O
BI–36UFD/S/PH
BI–36UFD/S/TH
BI–36UG/O
BI–36UG/S/PH
BI–36UG/S/TH
BI–42S/O
BI–42S/S/PH
BI–42S/S/TH
BI–42SD/O
BI–42SD/S/PH
BI–42SD/S/TH
BI–42SID/O
BI–42SID/S/PH
BI–42SID/S/TH
BI–48S/O
BI–48S/S/PH
BI–48S/S/TH
BI–48SD/O
BI–48SD/S/PH
BI–48SD/S/TH
BI–48SID/O
BI–48SID/S/PH
BI–48SID/S/TH
ID–36CI
IT–27CI
IT–30CI
IT–30CIID
IT–36CI
IT–36CIID
PRO48
PRO48G
PRO48HAG

In summary, this is a critical issue for our company and we request that DOE expedite the handling of this petition for an interim and final waiver. Sub-Zero would be pleased to discuss this waiver petition with DOE and provide any additional information that the Department might require. We will also notify all manufacturers of domestically marketed refrigerators known to us of this waiver petition by letter.

Sincerely,

Paul V. Sikir

Vice President of Design Engineering

Cc: Kathleen Hogan, Deputy Assistant Secretary for Energy Efficiency in the Office of Energy Efficiency and Renewable Energy (EERE)

[FR Doc. 2011–29715 Filed 11–16–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2007–0706; FRL–9493–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form (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 EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on April 30, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 17, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2007–0706 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: oei.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Environmental Protection Agency (EPA) Docket Center, Office of Environmental Information Docket, Mailcode: (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460].
- *Hand Delivery:* EPA Docket Center, Office of Environmental Information Docket, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OA–2007–0706. 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 email. 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 email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. {For additional information about EPA's public docket visit *http://www.regulations.gov.*}

FOR FURTHER INFORMATION CONTACT: Angela Suber, Office of Small Business Programs, Mail Code: 1230T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington,

DC 20460; *telephone number:* (202) 566–2827; *fax number:* (202) 566–1505; *email address: suber.angela@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2007–0706 which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of Environmental Information 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 OEI Docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are the State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP).

Title: State Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (SBTCP) Annual Reporting Form.

ICR numbers: EPA ICR No. 1748.09, OMB Control No. 2060–0337.

ICR status: This ICR is currently scheduled to expire on April 30, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 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: As part of the Clean Air Act Amendments of 1990, the U.S. Congress included, as part of Section 507, the requirement that each state establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program to assist small businesses in complying with the Act. These programs are generally known as Small Business Environmental Assistance Programs (SBEAPs). EPA must provide the Congress with period reports from the EPA Small Business Ombudsman (SBO) on these programs, including their effectiveness, difficulties encountered, and other relevant information. Each state assistance program will submit requested information to EPA for compilation and summarization. This collection of information is mandatory under Section 507(a), (d), and (e) of the Clean Air Act as amended in 1990, Public Law 101–549, November 15, 1990. This Act directs EPA to monitor the SBTCPs and to provide a report to Congress. This responsibility has been delegated to the EPA SBO. Response to the collection is not required to obtain or retain a benefit. Information in the annual report to Congress is aggregated and is not of a confidential nature. None of the information collected by this action results in/or requests sensitive information of any nature from the states.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 80 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 53.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: One per year.

Estimated total annual burden hours: 2,120.

Estimated total annual costs: $96,312. This includes an estimated burden cost of $96.312 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is no in increase of the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This reflects EPA's and the SBEAP's desire to make useful data available to the public. The trend among government agencies is toward outcome measures; in the past the data collected through this ICR was of limited use in providing measures of this type. Therefore, the EPA, in consultation with representatives from the state programs, has decided that an increase in the hours would not provide improved data quality and usefulness.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: November 10, 2011.

Kimberly Patrick,

Acting Director, Office of Small Business Programs.

[FR Doc. 2011–29758 Filed 11–16–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9494–4; Docket ID No. EPA–HQ–ORD–2011–0914]

BASINS and WEPP Climate Assessment Tools: Case Study Guide to Potential Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and letter peer-review.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document titled, *BASINS and WEPP Climate Assessment Tools (CAT): Case Study Guide to Potential Applications* (EPA/600/R–11/123A). EPA also is announcing that an EPA contractor for external scientific peer review will select an independent group of experts to conduct a letter peer-review of the draft document. The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development, and is intended to support application of two recently developed water modeling tools, the BASINS and WEPP climate assessment tools. The report presents a series of short case studies designed to illustrate the capabilities of these tools for conducting scenario based assessments of the potential future effects of climate, land use, and management change on water resources.

EPA intends to forward the public comments that are submitted in accordance with this notice to the external peer-reviewers for their consideration during the letter review. When finalizing the draft document, EPA intends to consider any public comments received in accordance with this notice. EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

The draft document is available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.*

DATES: The 30-day public comment period begins November 17, 2011, and ends December 19, 2011. Technical comments should be in writing and must be received by EPA by December 19, 2011.

ADDRESSES: The draft document, *BASINS and WEPP Climate Assessment Tools: Case Study Guide to Potential Applications,* is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; *telephone:* (703) 347–8561; *facsimile:* (703) 347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; *telephone:* (202) 566–1752; *facsimile:* (202) 566–1753; or *email: ORD.Docket@epa.gov.*

For technical information, contact Thomas Johnson, NCEA; *telephone:* (703) 347–8618; *facsimile:* (703) 347–8694; or *email: johnson.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/ Document

There is growing concern about the potential effects of climate change on water resources. U.S. EPA and partners have developed two assessment tools, the BASINS Climate Assessment Tool (BASINS CAT) and the Water Erosion Prediction Project Climate Assessment Tool (WEPPCAT), that facilitate application of existing simulation models for conducting scenario-based assessments of potential climate change impacts on water.

This report presents a series of short case studies using the BASINS and WEPP climate assessment tools. The case studies are designed to illustrate the capabilities of these tools for conducting assessments of the potential future effects of climate, land use, and management change on water resources. Climate change scenarios are created based on model projections as well as historical data and past events. Land use change and management scenarios are also included to address questions related to the relative effects of land use versus climate change, and the effectiveness of management practices for reducing impacts.

This report is technical in nature. It is of interest to modeling professionals including water and watershed managers, urban or regional planners, government officials, and scientists and engineers interested in using the BASINS or WEPP water models to assess the potential implications of climate change on water resources.

II. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2011–0914, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments;
- *Email: ORD.Docket@epa.gov;*
- *Fax:* (202)–566–9744;
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The phone number is (202) 566–1752. If you provide comments by mail, please submit one unbound original with pages

numbered consecutively and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies; or

• *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0914. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a 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 email. 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 email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

Dated: November 10, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–29749 Filed 11–16–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9493–4]

Proposed CERCLA Administrative Cost Recovery Settlement; River Forest Dry Cleaners Site, River Forest, Cook County, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the River Forest Dry Cleaners site in River Forest, Cook County, Illinois with the following settling party: Edward Ditchfield. The settlement requires the Settling Party to pay $39,926, plus any interest accrued between the date of receipt of notice by the Settling Party that EPA has signed the CERCLA 122(h), 42 U.S.C. 9622(h) Settlement Agreement (Agreement) and the Effective Date of the Agreement, to the Hazardous Substance Superfund through an escrow account to be established by the Settling Party. The settlement includes a covenant not to sue the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and contribution protection for the Settling Party pursuant to Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(h)(4). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., and Chicago, Illinois 60604.

DATES: Comments must be submitted on or before December 19, 2011.

ADDRESSES: The proposed settlement is available for public inspection at the EPA, Region 5, Records Center, 77 W. Jackson Blvd., 7th Fl., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., mail code: C–14J, Chicago, Illinois 60604. Comments should reference the River Forest Dry Cleaners Site, River Forest, Cook County, Illinois and EPA Docket No. and should be addressed to Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., *mail code:* C–14J, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Peter Felitti, Assoc. Regional Counsel, EPA, Office of Regional Counsel, Region 5, 77 W. Jackson Blvd., *mail code:* C–14J, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The River Forest Dry Cleaners Superfund Site is located in River Forest, Cook County, Illinois. After EPA received an email from a concerned teacher, U.S. EPA conducted indoor air and sub-slab samples in facilities around the Site in November 2009, February 2010 and March 2010. The results did not indicate any level of contamination that warranted a removal action. The removal assessment was completed in March 2010.

U.S. EPA issued a Demand Letter to the Settling Party in September 2010. Between September 2010 and July 2011, EPA and the Settling Party negotiated the present proposed Administrative Settlement.

Dated: September 28, 2011.

Richard C. Karl,

Director, Superfund Division.

[FR Doc. 2011–29757 Filed 11–16–11; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

[FCA–PS–81; NV 11–25]

Ethics, Independence, Arm's-Length Role, Ex Parte Communications and Open Government

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: The Farm Credit Administration (FCA or Agency) Board was created by Congress to serve the public interest in ensuring a source of affordable and dependable credit to agriculture and rural America. In fulfilling this obligation, the FCA Board should ensure that the Agency has conducted a thorough, independent and objective analysis of every matter brought before it for action, and that varying viewpoints and interests are considered by the FCA Board prior to making any substantive decision. As reflected by its current policies, the FCA Board believes that it must place emphasis on the independence and objectivity of itself and all FCA employees in dealing with representatives of the Farm Credit System (System) and the public. The FCA Board also is committed to the ethics principles and laws governing all Executive Branch employees and to the Agency's strong ethics program.

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

FOR FURTHER INFORMATION CONTACT: Wendy R. Laguarda, Assistant General Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: The following policy reaffirms the Board's commitment to the ethics laws and regulations, its avoidance of ex parte communications in its judicial and rulemaking roles, its commitment to open Government and its role as an independent, arm's length safety and soundness regulator:

THE FCA BOARD HEREBY ADOPTS THE FOLLOWING POLICY STATEMENT

Ethics, Independence, Arm's-Length Role, Ex Parte Communications and Open Government FCA–PS–81 [NV 11–25]

DATES: *Effective Date:* 7–NOV–11.

Effect on Previous Actions: None.

Source of Authority: Sections 5.8, 5.9, 5.10, and 5.11 of the Farm Credit Act of 1971, as amended.

Ethics. The body of ethics law, rules and policies are designed to ensure that every citizen can have complete confidence in the integrity of the Government. FCA, as an agency in the executive branch, is subject to the Federal criminal conflict of interest laws and Office of Government Ethics (OGE) regulations and oversight, including the 14 General Principles of Ethical Conduct and the Uniform Standards of Ethical Conduct (Code) (5 CFR part 2635), the restrictions on certain noncareer employees (5 CFR part 2636), the regulations on ethics program responsibilities (5 CFR part 2638), the financial disclosure regulations (5 CFR part 2634), the regulations on acts affecting a personal financial interest (5 CFR part 2640), and the post-employment restrictions (5 CFR part 2641). FCA also has issued supplemental ethics rules with the concurrence of OGE (5 CFR part 4101). In addition, the FCA Board Members, as Presidential Appointees with Senate confirmation (PAS), are subject to any further applicable ethics restrictions that may be imposed by the President of the United States.

Pursuant to the body of ethics laws cited above, the FCA Board will continue to hold itself to the highest standards of ethical conduct in recognition that its commitment and adherence to the Agency ethics program sets the standard for the commitment and conduct of Agency staff. Board Members should avoid actions that could create the impression that they can be improperly influenced. They should also avoid actions that could create the appearance of violating the law, the ethical standards set forth in the Federal and FCA ethical standards of conduct, or other applicable guidance. In decision making, a Board Member should be guided by the integrity of the Farm Credit Act, as amended, and also by the knowledge that he/she is acting on behalf of the public.

Independence. The FCA has been established as an independent Agency to administer laws enacted by the Congress. Its PAS Board Members serve fixed terms as provided by law. Because of its independent status, Board Members should not let their official decisions be swayed by partisan demands. Although the Agency works cooperatively with Congress and the White House, Board Members and employees must remain mindful of their duty to make independent determinations on matters being considered by the Agency. The decisions made by a Board Member will reflect objective understanding and knowledge of the complexity of the matter under consideration.

Arm's-Length Role. The FCA Board Members and Agency staff are committed to maintaining an arm's-length relationship with the System. This means Agency decisions must be independent of any undue influence, favoritism, or special access so that all parties coming before the Agency stand on an equal footing. The Board Members, as final arbiters of Agency actions affecting the System, as well as all Agency employees who have decision-making authority affecting System institutions and related entities, must be especially mindful to conduct themselves in a fair and impartial manner, avoiding any actions that create an appearance of a loss of impartiality. This is especially important in light of FCA's examination, rulemaking and adjudicatory functions. While open and informative communications with regulated parties is essential for an effective regulator, the FCA Board and staff will strive to maintain an appropriate balance in its communications with the System, keeping in mind the totality of the circumstances—including the content, timing and setting of such communications—before engaging with the System. FCA Board and staff will consult with the ethics staff whenever in doubt about the propriety of such communications.

Determination of Appearance of Loss of Impartiality. Under the Code's impartiality rule, an appearance concern is judged on the basis of the individual Board Member or employee determining that the circumstances would cause a *reasonable person with knowledge of the relevant facts* to question his or her impartiality in the matter. The rule also permits the DAEO or ethics designee to make an independent determination of whether or not a potential appearance problem would cause a reasonable person with knowledge of the relevant facts to question a Board Member's or employee's impartiality in a matter.

Ex Parte Communications. In its judicial functions, the Board Members and staff avoid all discussions with persons outside the Agency and its staff as set forth in Agency regulations at 12 CFR part 622.7(j). Specifically, this regulatory provision, in part, prohibits any FCA Board Member or employee who is or may reasonably be expected to be involved in the decisional process from making or knowingly cause to be made an ex parte communication

relevant to the merits of the proceeding to any person. In its rulemaking functions, the Board Members and staff also adhere to the ex parte restrictions set forth in Board Policy 37, which governs substantive oral communications with the public during the rulemaking process.

Open Government. The Agency is committed to conducting its business in the sunshine and on the public record as required by law. We also adopt the following core values of an open and accountable FCA as outlined in the President's Open Government memorandum issued in January 2009:

- *Transparency:* FCA should provide citizens with information about what it is doing to promote knowledge, accessibility and accountability.
- *Participation:* FCA should actively solicit expertise from the public and from outside Washington so that it makes policies with the benefit of the best information.
- *Collaboration:* FCA officials should work together with other Government officials and with citizens as part of doing its job of solving national problems.

Dated This 7th Day Of November, 2011.

By Order of the Board.
Dated: November 10, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–29687 Filed 11–16–11; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 2011.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street Philadelphia, Pennsylvania 19105–1521:

1. *Arthur J. Kania,* St. Davids, Pennsylvania; to acquire voting shares of Franklin Security Bancorp, Inc., Wilkes Barre, Pennsylvania, and thereby indirectly acquire voting shares of Franklin Security Bank, Plains Township, Pennsylvania.

2. *W. Kirk Wycoff, Ira M. Lubert, and James J. Lynch,* all of Philadelphia, Pennsylvania; collectively to acquire voting shares of Continental Bank Holdings, Inc., and thereby indirectly acquire voting shares of Continental Bank, both in Plymouth Meeting, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Richard D. Ross,* Leesville, Louisiana; to retain control of Merchants & Farmers Bancshares, Inc., and thereby indirectly retain control of Merchants & Farmers Bank & Trust Company, both in Leesville, Louisiana.

Board of Governors of the Federal Reserve System, November 14, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–29695 Filed 11–16–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President), 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Lindoe, Inc.,* Ordway, Colorado; to engage *de novo* in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 14, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–29696 Filed 11–16–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 1 p.m. (Eastern Time) November 30, 2011.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts will be closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the October 17, 2011 Board Member Meeting.

2. Recognition of Outstanding Service by Board Member Sanchez.

3. Thrift Savings Plan Activity Report by the Executive Director:

a. Monthly Participant Activity Report.

b. Monthly Investment Performance Review.

c. Legislative Report.

4. 2012 Board Meeting Calendar.

Parts Closed to the Public

5. Procurement.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 15, 2011.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. 2011–29831 Filed 11–15–11; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Child Health Patient Safety Organization, Inc.

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of delisting.

SUMMARY: AHRQ has accepted a notification of voluntary relinquishment from Child Health Patient Safety Organization, Inc. of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21–b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight E.T. (2400) on October 11, 2011.

ADDRESSES: Both directories can be accessed electronically at the following HHS *Web site: http://www.pso.AHRQ.qov/index.html*

FOR FURTHER INFORMATION CONTACT: Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; *Telephone (toll free):* (866) 403–3697; *Telephone (local):* (301) 427–1111; *TTY (toll free):* (866) 438–7231; *TTY (local):* (301) 427–1130; *Email: pso@AHRQ.hhs.qov*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from Child Health Patient Safety Organization, Inc., PSO number P0065, to voluntarily relinquish its status as a component PSO of the Child Health Corporation of America (CHCA), after the CHCA hospitals voted to align its governance structure with that of the National Association of Children's Hospitals (N.A.C.H.). Accordingly, the Child Health Patient Safety Organization, Inc. was delisted effective at 12:00 Midnight E.T. (2400) on October 11, 2011. The Child Health Patient Safety Organization, Inc. (Child Health PSO) sought and received a new listing, P0119, as a component PSO of N.A.C.H., which became effective at 12:01 a.m. E.T. on October 12, 2011.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html*.

Dated: October 28, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–29523 Filed 11–16–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Emergency Medicine Patient Safety Foundation

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: AHRQ has accepted a notification of voluntary relinquishment from Emergency Medicine Patient Safety Foundation of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b21–b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight E.T. (2400) on October 11, 2011.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; *Telephone (toll free):* (866) 403–3697; *Telephone (local):* (301) 427–1111; *TTY (toll free):* (866) 438–7231; *TTY (local):* (301) 427–1130; *Email: pso@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from Emergency Medicine Patient Safety Foundation, PSO number P0062, which is a component entity of Emergency Physicians Insurance Co. RRG (EPIC) to voluntarily relinquish its status as a PSO. Accordingly, the Emergency Medicine Patient Safety Foundation was delisted effective at 12:00 Midnight E.T. (2400) on October 11, 2011.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html*.

Dated: October 28, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–29666 Filed 11–16–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Peminic Inc. dba The Peminic-Greeley PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: AHRQ has accepted a notification of voluntary relinquishment from Peminic Inc. dba The Peminic-Greeley PSO of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight E.T. (2400) on September 13, 2011.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html*.

FOR FURTHER INFORMATION CONTACT: Susan Grinder, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; *Telephone (toll free):* (866) 403–3697; *Telephone (local):* (301) 427–1111; *TTY (toll free):* (866) 438–7231; *TTY (local):* (301) 427–1130; *Email: pso@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. AHRQ has accepted a notification from Peminic, Inc. dba The Peminic Greeley PSO, PSO number P0006, to voluntarily relinquish its status as a PSO as a result of its merger with Verge Solutions, LLC. Accordingly, the Peminic, Inc. dba The Peminic Greeley PSO was delisted effective at 12:00 Midnight ET (2400) on September 13, 2011. A component of Verge Solutions, LLC sought and received a new listing as Verge Patient Safety Organization, P0118, which became effective on September 14, 2011.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html*.

Dated: October 28, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–29667 Filed 11–16–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–240]

Public Meeting and Request for Information: Carcinogen and Recommended Exposure Limit (REL) Policy Assessment

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 and request for public comments.

SUMMARY: 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) announces a public meeting to review its approach to classifying carcinogens and establishing recommended exposure limits (RELs) for occupational exposures to hazards associated with cancer. NIOSH requested initial input on these issues (including answers to five questions listed below under **SUPPLEMENTARY INFORMATION**), to be submitted to NIOSH Docket number 240. Written comments to this Docket will be accepted until December 30, 2011. Written comments submitted to the docket will be used to inform NIOSH with the review and revision of the carcinogen policy and the REL policy. NIOSH has also created a new NIOSH Cancer and REL Policy Web Topic Page [see *http://www.cdc.gov/niosh/topics/cancer/policy.html*] to provide additional details about this effort and progress updates.

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DATES: *Date and Time:* December 12, 2011, 9 a.m.–4 p.m., Eastern Time. Please note that public comments may end before the time indicated, following the last call for comments. Members of the public who wish to provide public comments should plan to attend the meeting at the start time listed.

Place: Hubert H. Humphrey Building, Room 800, U.S. Department of Health and Human Services (HHS), 200 Independence Avenue SW., Washington, DC 20201.

Status: The meeting is open to the public, limited only by the space available. The meeting space accommodates approximately 135 people. In addition, there will be an audio conference for those who cannot attend in person. There is no registration fee to attend this public meeting. However, those wishing to attend are encouraged to sign up by November 28, 2011 with the contact person in this notice.

Security Considerations: Due to mandatory security clearance procedures at the Hubert H. Humphrey Federal Building, in-person attendees must present valid government-issued picture identification to security personnel upon entering the building and go through an airport-type security check.

Non-U.S. citizens are encouraged to participate in the audio conferencing due to the extra clearance involved with in-person attendance. To attend in person, a non-U.S. citizen will have to call or send an email before November 28, 2011, to the contact person in this

notice, and provide passport information. If clearance is received, you will be notified; otherwise, you will not be able to attend the meeting in person.

Attendee and Speaker Registration: Attendees are encouraged to sign up by November 28, 2011 with the contact person in this notice. Individuals wishing to speak during the meeting may sign up when registering with the contact person. Those who have not signed up to present in advance may be allowed to present at the meeting if time allows.

Agenda: The meeting will begin with a brief introduction by Federal officials, followed by discussions focused on each of five questions related to the NIOSH Cancer and RELs policies (See **SUPPLEMENTARY INFORMATION**, II. Matters to Be Discussed). The intent of the meeting is to engage stakeholders and members of the public in discussions of the relevant issues pertaining to review and assessment of NIOSH Cancer (Carcinogens) and RELs policies. Following these discussions, time has been set aside for presentations from attendees who register to speak. Each speaker will be limited to five minutes in order to maximize the number of presentations during the meeting. If all registered presentations are made before the end time, there will be an open session to receive comments from anyone who has not signed up on the speaker registration list who may wish to speak. Open session comments will also be limited to five minutes per person. After the last speaker or at 3:50 p.m., whichever occurs first, there will be brief closing comments by Federal officials and the meeting will be adjourned.

For Registration Information Contact: Karen Dragon or Sherri Diana (513) 533–8611, NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, facsimile (513) 533–8285, E-mail *nioshdocket@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NIOSH and stakeholders have expressed concerns recently about limitations in the NIOSH Carcinogen Policy, prompting NIOSH to initiate a review of the carcinogen policy in 2010. A major limitation in the policy is the use of the term ''Potential Occupational Carcinogen'' which dates to the 1980 OSHA hazard classification for carcinogens outlined in *29 CFR 1990.103* and is defined as ''* * * any substance, or combination or mixture of substances, which causes an increased incidence of benign and/or malignant neoplasms, or a substantial decrease in the latency period between exposure and onset of neoplasms in humans or in one or more experimental mammalian species as the result of any oral, respiratory or dermal exposure, or any other exposure which results in the induction of tumors at a site other than the site of administration. This definition also includes any substance which is metabolized into one or more potential occupational carcinogens by mammals.'' A major limitation of this definition is that the policy allows for only one cancer category, which is ''potential occupational carcinogen.'' The adjective ''potential'' conveys uncertainty that is not warranted with many carcinogens such as asbestos, benzene, and others. This policy does not allow for classification on the basis of the magnitude and sufficiency of the scientific evidence. In contrast, other organizations, such as the International Agency for Research on Cancer (IARC) and the National Toxicology Program (NTP) allow for a more differential classification. The revision of the NIOSH Carcinogen Policy also coincides with the international realization that there is a need for more efficient and quicker means of classifying chemicals. Qualitative and semi-quantitative approaches such as hazard banding are increasingly being investigated as a means of addressing the vast numbers of unregulated chemicals. NIOSH has been in collaboration with various organizations to consider utilizing hazard banding approaches to control chemicals. This will also be reflected in the review of the carcinogen and RELs policies.

It is anticipated that NIOSH will develop a report on the revised NIOSH Carcinogen and REL Policies to be made available in 2012. Additional information regarding NIOSH plans to assess and revise the Carcinogen and REL Policy can be found in the April 2011 NIOSH e-news at *http://www.cdc.gov/niosh/enews/enewsV8N12.html* and on the NIOSH Cancer and REL Policy Web Topic Page [see *http://www.cdc.gov/niosh/topics/cancer/policy.html*].

II. Matters To Be Discussed

Input from the public is sought on each of the five questions listed below pertaining to the NIOSH Cancer (Carcinogens) and RELs policies.

(1) Should there explicitly be a carcinogen policy as opposed to a broader policy on toxicant identification and classification (*e.g.,* carcinogens, reproductive hazards, neurotoxic agents)?

(2) What evidence should form the basis for determining that substances are carcinogens? How should these criteria correspond to nomenclature and categorizations (*e.g.,* known, reasonably anticipated, *etc.*)?

(3) Should 1 in 1,000 working lifetime risk (for persons occupationally exposed) be the target level for a recommended exposure limit (REL) for carcinogens or should lower targets be considered?

(4) In establishing NIOSH RELs, how should the phrase ''to the extent feasible'' (defined in the 1995 NIOSH Recommended Exposure Limit Policy) be interpreted and applied?

(5) In the absence of data, what uncertainties or assumptions are appropriate for use in the development of RELs? What is the utility of a standard ''action level'' (*i.e.,* an exposure limit set below the REL typically used to trigger risk management actions) and how should it be set? How should NIOSH address worker exposure to complex mixtures?

III. Transcript

A transcript will be prepared and posted to NIOSH Docket number 240 within 30 days after the meeting. Each person making a comment will be asked to give his or her name and affiliation, and all comments (including their name and affiliation) are considered to be in the public domain, and the transcript will be archived in the NIOSH Docket and posted on a public Web site.

You may submit comments, identified by docket number NIOSH–240 by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.
- *Facsimile:* (513) 533–8285.
- *Email: nioshdocket@cdc.gov.*

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available within 30 days of the closing date on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: T.J. Lentz, telephone (513) 533–8260, or Faye Rice, telephone (513) 533–8335, NIOSH, MS–C32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Dated: November 9, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–29700 Filed 11–16–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0802]

Role of Naloxone in Opioid Overdose Fatality Prevention; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), in collaboration with the Office of the Assistant Secretary for Health, National Institutes of Drug Abuse, and the Centers for Disease Control and Prevention, is announcing a scientific workshop to initiate a public discussion about the potential value of making naloxone more widely available outside of conventional medical settings to reduce the incidence of opioid overdose fatalities. Academia, government, industry experts, and patient advocates will be assembled to discuss which populations are at risk for opioid overdose and how public health groups are working together to curb the abuse of opioids. We will also seek to identify potential health concerns, social concerns, legal concerns, regulatory issues, and future research needs related to making naloxone more widely available.

Date and Time: The public workshop will be held on April 12, 2012, from 8:30 a.m. to 5:30 p.m.

Location: The public workshop will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm 1503), Silver Spring, MD 20993–0002.

Contact Person: Mary Gross, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, (301) 796–3519, *Mary.Gross@fda.hhs.gov;* or Matthew Petcovic, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, (301) 796–5242, *Matthew.Petcovik@fda.hhs.gov.*

Registration: If you wish to attend the public workshop or provide testimony during the open public hearing, please email your registration to *CDER_Naloxone_Workshop@fda.hhs.gov* by March 28, 2012. Those without email access may register by contacting one of the persons listed in the *Contact Person* section of this document. Please provide complete contact information for each attendee; including name, title, affiliation, address, email address, and telephone number. Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Registrants will receive confirmation once they have been accepted for the workshop. Onsite registration on the day of the public workshop will be based on space availability. If registration reaches maximum capacity, FDA will post a notice closing meeting registration for the workshop at: *http://www.fda.gov/Drugs/NewsEvents/ucm277119.htm.*

An open public hearing will be held between 2:45 p.m. and 3:45 p.m. on April 12, 2012, during which speaker testimony will be accepted. We will try to accommodate all persons who wish to testify; however, the duration of each speaker's testimony during this open public hearing may be limited by time constraints. Those wishing to participate in the open public hearing should limit their remarks to a discussion of the advantages and/or disadvantages to making naloxone more easily accessible to patients outside of conventional medical settings.

Comments: Submit either electronic or written comments by June 12, 2012. Submit electronic comments 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. It is necessary to send only one set of 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.

If you need special accommodations due to a disability, contact Mary Gross or Matt Petcovic (see *Contact Person*) at least 7 days in advance of the meeting.

SUPPLEMENTARY INFORMATION:

I. Introduction

The number of prescriptions filled for opioid pain relievers has increased dramatically in recent years. Nearly 257 million prescriptions for opioid drugs were written in the United States in 2009 alone and the increased availability to prescription opioid drugs appear to be contributing significantly to abuse and the potential for overdose in the United States. In the United States, mortality rates closely correlate with opioid sales. In 2007, approximately 36,034 people died from unintentional overdoses. At least 14,459 of these deaths involved prescription opioid analgesics. Moreover, according to the Substance Abuse and Mental Health Services Administration, the number of Americans in 2009 aged 12 and older currently abusing pain relievers has increased by 20 percent since 2002. Naloxone, a mu-opioid antagonist, is an injectable medicine that can rapidly reverse the overdose of either prescription (*e.g.,* OxyContin) or illicit (*e.g.,* heroin) opioids. It is currently the standard treatment for those who overdose on opioid drugs, but is most commonly used only by trained medical personnel in emergency departments and on ambulances. The purpose of this public workshop is to discuss the issues around making naloxone more widely available. This includes work to expand its use through the development of novel formulations as well as work to potentially support its use by individuals other than the trained medical personnel currently authorized to use it.

FDA will post the agenda and additional workshop background material approximately 5 days before the workshop at: *http://www.fda.gov/Drugs/NewsEvents/ucm277119.htm.*

II. Transcripts

Please be advised that approximately 30 days after the public workshop, a transcript will be made available. It will be accessible at *http://www.regulations.gov,* and may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville MD 20857.

Dated: November 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–29703 Filed 11–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0805]

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 27, 2012, from 9 a.m. to 5 p.m.

Addresses: FDA is opening a docket for public comment on this meeting. The docket number is FDA–2011–N–0805. The docket will open for public comment on November 17, 2011. The docket will close on March 5, 2012. Interested persons may submit electronic or written comments regarding this meeting. Submit electronic comments 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. All comments received will be posted without change, including any personal information provided. Submit a single copy of electronic comments or a paper copy of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this meeting notice. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Comments received on or before February 10, 2012, will be provided to the committee before the meeting.

Location: Hilton Washington DC/Silver Spring (scheduled to be renamed in January 2012 to DoubleTree by Hilton Hotel Washington DC/Silver Spring), 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is (301) 589–5200.

Contact Person: Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, (301) 796–9001, *Fax:* (301) 847–8533, *email: DODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–(800) 741–8138 (301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will be asked to comment on the following topics related to the use of ophthalmic drug products (products intended for use in the eye): (1) Appropriate types of clinical evidence for developing anti-inflammatory drugs for the treatment of postoperative inflammation and reduction of ocular (eye) pain in patients who have undergone ocular surgery. This will include a discussion of the definition and scope of this indication as well as the types of clinical trials needed to support approval; and (2) appropriateness of marketing a single bottle of ophthalmic product for use in both eyes for postsurgical indications as it relates to the potential risk for infection. FDA's Center for Drug Evaluation and Research would like the advisory committee to provide advice on the potential risk and approaches to mitigating that risk, including limits to fill size where appropriate.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see the **ADDRESSES** section of this document) on or before February 10, 2012, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 2, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 3, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Yvette Waples at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–29682 Filed 11–16–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Applications.

Date: December 1, 2011.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Vasundhara Varthakavi, Ph.D., DVM, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700–B Rockledge Drive, Bethesda, MD 20892–7616, (301) 496–2550, *varthakaviv@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Resource—Related Research Projects.

Date: December 12, 2011.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Vasundhara Varthakavi, Ph.D., DVM, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700–B Rockledge Drive, Bethesda, MD 20892–7616, (301) 496–2550, *varthakaviv@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Functional Genomics Research Program.

Date: December 20, 2011.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 10, 2011.

Anna Snouffer

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–29748 Filed 11–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MBRS Score Meeting.

Date: December 9, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palamor Dupont Circle, NW., 2121 P Street, Washington, DC 20037.

Contact Person: Lisa Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, (301) 594–2849, *dunbarl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 9, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–29747 Filed 11–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Pediatric Vision Science Grant Applications.

Date: November 28, 2011.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NEI, 5635 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, (301) 451–2020, *aes@nei.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.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Clinical Applications.

Date: December 2, 2011.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NEI, 5635 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, (301) 451–2020, *aes@nei.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 9, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–29745 Filed 11–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 12, 2011, 1 p.m. to December 12, 2011, 3 p.m., (Telephone Conference Call), National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 3, 2011, 76 FR 68200–68201.

The meeting has been changed to a Video Assisted Meeting and will be held on December 14, 2011. The meeting location and time remain the same. The meeting is closed to the public.

Dated: November 9, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–29728 Filed 11–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of MARC Grant Applications.

Date: December 5, 2011.

Time: 1 p.m. to3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, (301) 594–2773, *laffanjo@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 9, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–29727 Filed 11–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Cannabinoid(s) and Cannabidiol(s) Based Therapeutics To Treat Hepatic Encephalopathy in Humans.

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the invention embodied in U.S. Patent 6,630,507, entitled ''Cannabinoids as antioxidants and neuroprotectants'' and PCT Application Serial No. PCT/US99/08769 and foreign equivalents thereof, entitled ''Cannabinoids as antioxidants and neuroprotectants'' [HHS Ref. No. E–287–1997/2] to KannaLife Sciences Inc., which has offices in New York, U.S. This patent and its foreign counterparts have been assigned to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to:

The development and sale of cannabinoid(s) and cannabidiol(s) based therapeutics as antioxidants and neuroprotectants for use and delivery in humans, for the treatment of hepatic encephalopathy, as claimed in the Licensed Patent Rights.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before December 19, 2011 will be considered.

ADDRESSES: Requests for copy of the patent, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Betty B. Tong, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *Telephone:* (301) 594–6565; *Facsimile:* (301) 402–0220; *Email: tongb@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology describes pharmaceutical compositions of cannabinoids that are useful as tissue protectants, such as neuroprotectants and cardioprotectants. The cannabinoids compounds may be used, for example, in the treatment of acute ischemic neurological insults or chronic neurodegenerative diseases. Nonpsychoactive cannabinoids, such as Cannabidiol (CBD), are particularly advantageous since they avoid toxicity that is encountered with psychoactive cannabinoids at high doses.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 10, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–29726 Filed 11–16–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: Toolkit Protocol for the Crisis Counseling Assistance and Training Program (CCP)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will create a toolkit to be used for the purposes of collecting data on the Crisis Counseling Assistance and Training Program (CCP). The CCP provides supplemental funding to states and territories for individual and community crisis intervention services during a federal disaster.

The CCP has provided disaster mental health services to millions of disaster survivors since its inception and, as a result of 30 years of accumulated expertise, it has become an important model for Federal response to a variety of catastrophic events. State CCPs, such as the recent 2009 Project A'apa Atu (for the Tsunami in American Samoa), 2010 Tennessee Recovery Project (following devastating flooding), Healing Joplin and Project Rebound (following the 2011 tornadoes in Joplin, Missouri and Alabama), and most recently the multiple CCPs that resulted from 2011 Hurricane Irene, and flooding throughout the summer of 2011 have primarily addressed the short-term mental health needs of communities through (a) Outreach and public education, (b) individual and group counseling, and (c) referral. Outreach and public education serve primarily to normalize reactions and to engage people who might need further care. Crisis counseling assists survivors to cope with current stress and symptoms in order to return to predisaster functioning. Crisis counseling relies largely on ''active listening,'' and crisis counselors also provide psycho-education (especially about the nature of responses to trauma) and help clients build coping skills. Crisis counseling typically continues no more than a few times. Because crisis counseling is time-limited, referral is the third important function of CCPs. Counselors are expected to refer clients to formal treatment if the person has developed more serious psychiatric problems.

Data about services delivered and users of services will be collected throughout the program period. The data will be collected via the use of a toolkit that relies on standardized forms. At the program level, the data will be entered quickly and easily into a cumulative database to yield summary tables for quarterly and final reports for the program. We have confirmed the feasibility of using scanable forms for most purposes. Because the data will be collected in a consistent way from all programs, they can be uploaded into an ongoing national database that likewise provides CMHS with a way of producing summary reports of services provided across all programs funded.

The components of the tool kit are listed and described below:

- *Encounter logs.* These forms document all services provided. Completion of these logs is required by the crisis counselors. There are three types of encounter logs: (1) Individual Crisis Counseling Services Encounter Log; (2) Group Encounter Log; and (3) *Weekly Tally Sheet.*

○ *Individual Crisis Counseling Services Encounter Log.* Crisis counseling is defined as an interaction that lasts at least 15 minutes and involves participant disclosure. This form is completed by the Crisis Counselor for each service recipient, defined as the person or persons who actively participated in the session (*e.g.,* by verbally participating), not someone who is merely present. For families, complete separate forms for all family members who are actively engaged in the visit. Information collected includes demographics, service characteristics, risk factors, and referral data.

○ *Group Encounter Log.* This form is used to identify either a group crisis counseling encounter or a group public education encounter. A check at the top identifies the class of activities (*i.e.,* counseling or education). Information collected includes services characteristics, group identity and characteristics, and group activities.

○ *Weekly Tally Sheet.* This form documents brief educational and supportive encounters not captured on any other form. Information collected includes service characteristics, daily tallies and weekly totals for brief educational or supportive contacts, and material distribution with no or minimal interaction.

- *Assessment and Referral Tool.* This tool provides descriptive information about intense users of services, defined as all individuals receiving a third individual crisis counseling visit. This tool will be used beginning three months postdisaster and will be completed by the crisis counselor.
- *Participant Feedback.* These surveys are completed by and collected from a sample of service recipients, not every recipient. A time sampling approach (*e.g.,* soliciting participation from all counseling encounters one week per quarter) will be used. Information collected includes satisfaction with services, perceived improvements in self-functioning, types of exposure, and event reactions.
- *CCP Service Provider Feedback.* These surveys are completed by and collected from the CCP service providers anonymously at six months and one year postevent. The survey will be coded on several program-level as well as worker-level variables.

However, the program itself will be identified and shared with program management only if the number of individual workers was greater than 20.

There are no changes to the Individual Encounter Log, Group Encounter Log, the Adult Assessment and Referral Tool, the Participant Feedback Survey, the Service Provider Feedback Survey, and the Child/Youth Assessment and Referral Tool. The Weekly Tally Sheet is the only one that has been revised with two additional fields to obtain information on social media activities.

The table below is the estimates of annualized hour burden.

Form	Number of respondents	Responses per respondents	Hours per responses	Total hour burden
Individual Crisis Counseling Services Encounter Log	200	280	.08	4,480
Group Encounter Log	100	33	.07	231
Weekly Tally Sheet	200	33	.2	1,320
Assessment and Referral Tools	200	14	.25	700
Participant Feedback Survey	1,000	1	.25	250
Service Provider Feedback Survey	100	1	.25	25
Total	1,800			7,006

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Summer King,

Statistician.

[FR Doc. 2011–29617 Filed 11–16–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Notice of Filing of Decision Document

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of decision document.

SUMMARY: The Bureau of Land Management (BLM) has signed a report titled ''Grays Lake Administrative Navigability Determination and Omitted Lands and Avulsions Decisions'' dated August 15, 2011, in the BLM Idaho State Office. This report contains two survey decisions related to Grays Lake. This decision document will be considered filed for the purposes of survey decisions contained therein on December 19, 2011.

DATES: Protests of the survey decisions must be filed before December 19, 2011 to be considered.

ADDRESSES: Protests of the survey decisions should be sent to Branch of Cadastral Survey, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

FOR FURTHER INFORMATION CONTACT: Stanley G. French, Chief Cadastral Surveyor for Idaho, Branch of Cadastral Survey, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, telephone (208) 373–3980. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (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 above-referenced report contains two summary decisions, a finding of no omitted lands in the bed of Grays Lake and no in-lake avulsion. In addition to those decisions, the report also presents an administrative opinion that the feature known as Grays Lake is a non-navigable body of water. The report was prepared at the request of the U.S. Fish and Wildlife Service, Pacific Region, 911 NE 11th Avenue, Portland, Oregon 97232, and the Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232. Grays Lake is found in:

Boise Meridian, Idaho

T. 3 S., R. 43 E.
T. 4 S., R. 42 E.
T. 4 S., R. 43 E.
T. 5 S., R. 42 E.
T. 5 S., R. 43 E.

The report has three signed originals. One each was sent to the U.S. Fish and Wildlife Pacific Regional Office and the Bureau of Indian Affairs Regional Office, both in Portland, Oregon. The final report is retained by the BLM Idaho State Office in Boise, Idaho. All copies of the report were signed on August 15, 2011, the same date as the document. The BLM copy will be retained in the file for Group File No. 1355 and is available to the public. It is also available online at the following link:*http://www.blm.gov/id/st/en/prog/cadastral_survey/field_section/Grays-Lk-determination.html.*

If the BLM receives a protest of the avulsion and/or the omitted lands decisions prior to the official filing, the agency will stay filing pending consideration of the protest. The BLM copy will not be officially filed until the day after the protest acceptance period expires, or until all protests have been dismissed or resolved and they have become final, including decisions or appeals.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2011–29739 Filed 11–16–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–48497, NVN–82673, LLCAD00000 L51010000 ER0000 LVRWB09B2310]

Notice of Availability of the Record of Decision for the DesertXpress Enterprises, LLC High-Speed Passenger Train Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the DesertXpress Enterprises, LLC High-Speed Passenger Train Project (DesertXpress Project) located in San Bernadino County, California, and Clark County, Nevada. The BLM California State Director signed the ROD on October 31, 2011, which constitutes the final decision of the BLM. The ROD sets forth BLM's decision to issue a right-of-way (ROW) grant to DesertXpress Enterprises, LLC to construct, operate, maintain, and terminate a railroad on approximately 1,022 acres of public land in San Bernardino County, California, and Clark County, Nevada.

ADDRESSES: Copies of the ROD have been sent to affected Federal, state and local government agencies and to other stakeholders and are available at the following locations:

- Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311.
- Needles Field Office, 1303 S. Highway 95, Needles, CA 92363.
- Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130.

The ROD is also available at the following Web site: *http://www.ca.blm.gov/barstow*.

FOR FURTHER INFORMATION CONTACT: Rich Rotte, Project Lead, *telephone* (760) 252–6026; *address* BLM–Barstow Field Office, 2601 Barstow Road, Barstow, California 92311; *email rrotte@blm.gov*. Persons who use a telecommunications device for the deaf 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: DesertXpress Enterprises, LLC filed an application under Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761) (FLPMA) for a ROW authorization on BLM-managed lands to build an Electrical Multiple Unit (EMU) high-speed passenger rail line in compliance with the FLPMA, BLM ROW regulations, and other applicable Federal laws. The railway would extend approximately 200 miles from Victorville, California, to Las Vegas, Nevada. When completed, this project will impact approximately 972 acres of public land. Additionally, 50 acres of public land will be temporarily impacted during construction. The project also includes stations in Victorville and Las Vegas, with associated operations, maintenance, and storage facilities.

The Federal Railway Administration (FRA) was the lead agency for the environmental review of this project. The BLM participated as a cooperating agency. A Notice of Availability of the Final Environmental Impact Statement (EIS) was published in the **Federal Register** by the FRA on April 1, 2011. The FRA signed a ROD on July 8, 2011, approving construction of the DesertXpress Project, which is available online at *http://www.fra.dot.gov/rpd/freight/1703.shtml*.

The preferred alternative was selected jointly by the BLM and the FRA in the Final EIS. The FRA and BLM both selected this alternative and approved it in their respective RODs. In the preferred alternative, the ROW will allow the tracks to be located within or immediately adjacent to the ROW for the Interstate-15 (I–15) freeway. Between Mountain Pass, California, and Primm, Nevada, the tracks will leave the I–15 ROW and travel through new tunnels in the mountains northwest of I–15, then overland until rejoining the I–15 ROW near Primm.

The BLM has adopted all reasonable mitigation measures recommended in the Final EIS regarding public lands. The project area is managed by the BLM in accordance with the California Desert Conservation Area Plan and the Las Vegas Field Office Resource Management Plan. The Preferred Alternative is consistent with both of these plans.

Any party adversely affected by BLM's decision may appeal within 30 days of the date of this notice pursuant to 43 CFR part 4, subpart E. The appeal should state the specific portions of the BLM's decision that is being appealed. The appeal must be filed with the California State Director at 2800 Cottage Way, Sacramento, CA 95825. According to regulation, BLM decisions issued under 43 CFR part 2800 are and remain in effect pending appeal. (43 CFR 2801.10(b)). Please consult the appropriate regulations (43 CFR part 4, subpart E) for further requirements.

Authority: 40 CFR 1506.6.

James W. Keeler,

Acting Deputy State Director.

[FR Doc. 2011–29787 Filed 11–16–11; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–777]

Certain Muzzle-Loading Firearms and Components Thereof Determination To Review in Part ALJ Initial Determination; Denial of Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on August 31, 2011, denying complainants' motion for temporary relief. The Commission has determined not to review the ID's denial of temporary relief and its analyses of irreparable harm. On review, the Commission has determined to take no position on the remainder of the ID.

FOR FURTHER INFORMATION CONTACT: Erin D.E. Joffre, *Esq.,* Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2550. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 17, 2011, based on a complaint filed by Thompson/Center Arms Company, Inc. (''T/C'') and Smith & Wesson Corp. (''Smith & Wesson'') of Springfield, Massachusetts (''Complainants''). 76 FR 35469 (Jun. 17, 2011). The complainants named seven respondents: (1) Dikar Sociedad Cooperativa Limitada of Bergara, Spain; (2) Blackpowder Products Inc. of Duluth, Georgia; (3) Connecticut Valley Arms of Duluth, Georgia; (4) Bergara Barrels North America of Duluth, Georgia; (5) Bergara Barrels Europe of Bergara, Spain; (6) Ardesa Firearms of Zamudio (Vizcaya), Spain; and (7) Traditional Sporting Goods, Inc., d/b/a Traditions Sporting Firearms of Saybrook, Connecticut. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain muzzle-loading firearms and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,908,781 (''the '781 patent''); U.S. Patent No. 7,814,694 (''the '694 patent''); U.S. Patent No. 7,140,138 (''the '138 patent''); U.S. Patent No. 6,604,311 (''the '311 patent''); U.S. Patent No. 5,782,030 (''the '030 patent''); and U.S. Patent No. 5,639,981 (''the '981 patent''). On July 8, 2011, the ALJ granted Complainants' motion to partially terminate the investigation as to the '781 and '138 patents. Order No. 7 (July 8, 2011), Notice of Commission Determination Not to Review (July 22, 2011).

The Complainants also filed with their complaint in this investigation a motion for temporary relief directed only to respondents Traditions and Ardesa (collectively, ''TEO Respondents'') that requested the Commission to issue a temporary limited exclusion order and temporary cease and desist orders. The

Complainants' motion for temporary relief initially addressed the '781, '694, '138, '030, and '981 patents. During the initial pre-hearing conference, however, the parties entered into a stipulation that limited the Complainants' motion to the '694 patent—specifically, claims 1, 10 and 11. The Initial Determination (''ID'') at issue is the ALJ's denial of the Complainants' motion. In the subject ID, the ALJ analyzed the four factors for determining whether to grant preliminary relief: The likelihood of success on the merits, irreparable harm, the balance of hardships, and the public interest.

The ID found that the Complainants had not demonstrated that they would suffer irreparable harm. Specifically, the ID found that the Complainants failed to demonstrate an irreparable harm from the following: (1) Price erosion; (2) exclusivity erosion; (3) loss of goodwill and reputation; (4) lost sales and market share; or (5) reduced investment. The ALJ found that the lack of irreparable harm precluded temporary relief in this investigation. The ALJ also found the following: a likelihood of success on the merits with respect to claim 10 of the '694 patent; that the balance of hardships did not favor either party; and that the public interest would not preclude preliminary relief.

On September 12, 2011, the TEO Respondents filed opening comments and on September 14, 2011, the Complainants submitted reply comments as authorized by 19 CFR 210.66(c), (e)(1). These comments do not take issue with the ALJ's findings regarding the lack of irreparable harm. Instead, the comments principally deal with Complainants' likelihood of success on the merits, challenging various aspects of the ALJ's analyses of infringement and the balance of hardships.

Having examined the record of this investigation, including the ALJ's ID and the subsequent comments and reply comments, the Commission finds that irreparable harm has not been demonstrated. It was Complainants' burden to demonstrate that such harm was likely absent temporary relief, and it failed to meet that burden. *Winter* v. *Natural Res. Defense Council, Inc.,* 129 S. Ct. 365, 375 (2008). The Commission has therefore determined not to review the ID's finding of lack of irreparable harm and the ID's denial of temporary relief.

Because irreparable harm is dispositive here, the Commission need not evaluate the remaining factors, *i.e.,* the likelihood of success on the merits, the balance of hardships, or the public interest. Therefore, the Commission has determined to review the ID's findings on the likelihood of success, the balance of hardships, and the public interest and to take no position on them. *See Beloit Corp.* v. *Valmet Oy,* 742 F.2d 1421 (Fed. Cir. 1984).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.66 of the Commission's Rules of Practice and Procedure (19 CFR 210.66).

By order of the Commission.

Issued: November 10, 2011.

James Holbein,

Secretary to the Commission.

[FR Doc. 2011–29665 Filed 11–16–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Blue Cross and Blue Shield of Montana, Inc. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Montana, Billings Division, in *United States et al.* v. *Blue Cross and Blue Shield of Montana, Inc. et al.,* Civil Action No. 1:11-cv-00123. On November 8, 2011, the United States and the State of Montana filed a Complaint challenging an agreement between Blue Cross and five of the six hospital owners of New West Health Services, Inc., a competing insurer, to purchase health insurance from Blue Cross exclusively for six years. The hospital defendants are Billings Clinic, Bozeman Deaconess Health Services, Inc., Community Medical Center, Inc., Northern Montana Health Care, Inc., and St. Peter's Hospital. The Complaint alleges that the agreement unreasonably restrains trade in the sale of commercial health insurance in Billings, Bozeman, Helena, and Missoula, Montana, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and that the agreement substantially lessens competition in the sale of commercial health insurance in those same areas, and will likely continue to do so, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18 and the Montana Unfair Trade Practices Act, Mont. Code Ann. § 30–14–205.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Montana, Billings Division. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (*telephone:* (202) 307–0827).

Patricia A. Brink,

Director of Civil Enforcement.

In the United States District Court for the District of Montana Billings Division

United States of America and State of Montana, Plaintiffs, v. *Blue Cross and Blue Shield of Montana, Inc., Billings Clinic, Bozeman Deaconess Health Services, Inc., Community Medical Center, Inc., New West Health Services, Inc., Northern Montana Health Care, Inc., and St. Peter's Hospital,* Defendants.

Case No. 1:11–cv–00123–RFC

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Montana, acting under the direction of the Montana Attorney General, bring this civil antitrust action to enjoin an anticompetitive agreement (the ''Agreement'') between defendant Blue Cross and Blue Shield of Montana, Inc. (''Blue Cross'') and defendants Billings Clinic; Bozeman Deaconess Health Services, Inc.; Community Medical Center, Inc.; Northern Montana Health Care, Inc.; and St. Peter's Hospital (collectively, the ''hospital defendants''), and to remedy the harm to competition that the announcement and

formation of the Agreement have caused and will likely continue to cause.

The hospital defendants are five of the six hospitals that own defendant New West Health Services, Inc. (''New West''), a health-insurance company that has vigorously and effectively competed against Blue Cross to provide commercial health insurance to Montana consumers. In the Agreement, Blue Cross agreed to pay $26.3 million to the hospital defendants in exchange for their agreeing to collectively stop purchasing health insurance for their own employees from New West and instead buy insurance for their employees from Blue Cross exclusively for six years. Blue Cross also agreed to provide the hospital defendants with two seats on Blue Cross's board of directors if the hospitals do not compete with Blue Cross in the sale of commercial health insurance.

The Agreement will likely cause New West to exit the markets for commercial health insurance, eliminating an important competitor to Blue Cross and ultimately leading to higher prices and lower-quality service for consumers. Consequently, the Agreement unreasonably restrains trade in the sale of commercial health insurance in Billings, Bozeman, Helena, and Missoula, Montana, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Agreement also substantially lessens competition in the sale of commercial health insurance in those same areas, and will likely continue to do so, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and the Montana Unfair Trade Practices Act, Mont. Code Ann. § 30–14–205.

Therefore, the United States seeks temporary, preliminary, and permanent injunctive and other equitable relief under Section 4 of the Sherman Act, 15 U.S.C. 4, and Section 15 of the Clayton Act, 15 U.S.C. 25, blocking the transaction; and the State of Montana seeks temporary, preliminary, and permanent injunctive and other equitable relief under Section 16 of the Clayton Act, 15 U.S.C. 26, blocking the transaction.

Plaintiffs allege as follows:

I. Defendants and the Transaction

1. Defendant Blue Cross is a nonprofit corporation based in Helena, Montana. Blue Cross sells a range of commercial health-insurance products, including preferred-provider organization (''PPO'') products, health-maintenance organization (''HMO'') products, indemnity products, and individual products, and its group products are offered on a fully-insured and self-insured basis. In 2010, Blue Cross's annual revenues were approximately $530 million.

2. For many years, Blue Cross has dominated the commercial health-insurance markets in Montana. In the four geographic areas harmed by the Agreement, Blue Cross is by far the largest commercial health insurer, with shares ranging approximately from 43% to 75%. Blue Cross has market power in each of these geographic areas.

3. The hospital defendants are each non-profit corporations organized under Montana law:

a. Billings Clinic is a 370-bed hospital in Billings, Montana;

b. Bozeman Deaconess Health Services, Inc. is an 86-bed hospital in Bozeman, Montana;

c. Community Medical Center, Inc. is a 143-bed hospital in Missoula, Montana;

d. Northern Montana Health Care, Inc. is a 49-bed hospital in Havre, Montana; and

e. St. Peter's Hospital is a 122-bed hospital in Helena, Montana.

4. Defendant New West is a nonprofit corporation based in Helena, Montana. It was formed in 1998 by four hospitals—Billings Clinic, Community Medical Center, Northern Montana Health Care, and St. Peter's Hospital—to compete directly against Blue Cross, and to challenge what the hospitals described as Blue Cross's ''dominating presence.'' In 2006, two additional hospitals acquired an ownership interest in New West: Bozeman Deaconess (in Bozeman) and Benefis Health System (in Great Falls). Like Blue Cross, New West offers PPO products, HMO products, indemnity products, and individual products, and its group products are offered on a fully-insured and self-insured basis.

5. By 2011, New West had become the third-largest commercial health insurer in the four geographic areas harmed by the Agreement, with shares ranging from approximately 7% to 12%. Over the last 13 years, New West has offered Montana residents a high-quality option for their health insurance, routinely pressuring Blue Cross to offer lower prices and better customer service. New West's annual revenues in 2010 were approximately $120 million.

6. On or around August 1, 2011, Blue Cross and the hospital defendants entered into the Agreement, a letter of intent in which Blue Cross agreed to pay $26.3 million to the hospital defendants in exchange for their agreeing to collectively stop purchasing health insurance for their own employees from New West and instead buy insurance for their employees from Blue Cross exclusively for six years, starting January 1, 2012. (The only New West owner that did not sign the Agreement was Benefis Health System, which already used Blue Cross for its employees and had never used New West.) The hospital defendants collectively account for approximately 11,000 enrolled lives, or roughly one-third of New West's commercial health-insurance business at the time of the Agreement. The Agreement further requires that *all* of the hospital defendants participate for the agreement to be effective: if any hospital defendant withdraws, the Agreement is terminated. Additionally, Blue Cross agreed to install two representatives of the hospital defendants on Blue Cross's board of directors if the hospitals do not own or belong to an entity that competes with Blue Cross in the sale of commercial health insurance.

7. The Agreement effectively eliminates New West as a viable competitor in the sale of commercial health insurance. News that none of New West's owners will buy health insurance for their own employees from New West creates a perception that New West is exiting the commercial health-insurance market, and will likely cause many existing and potential customers to stop purchasing (or decline to purchase) insurance from New West. The Agreement also will lead New West and its hospital owners to significantly reduce their support for and efforts to win commercial health-insurance customers, further hindering its ability to compete.

8. Furthermore, because the hospital defendants agreed to act collectively, the Agreement ensures that New West would lose the support of all its owners and likely exit the market.

9. In addition, by agreeing to install two representatives of the hospital defendants on Blue Cross's board of directors only if the hospitals did not own or belong to an entity that competes against Blue Cross, the Agreement further ensures that New West will lose the support of its owners and likely exit the market.

10. As alleged below, by damaging and virtually eliminating New West as an effective competitor, the Agreement will significantly increase concentration in the markets for commercial health insurance in Montana and end the substantial head-to-head competition between Blue Cross and New West, likely resulting in higher insurance premiums and lower-quality service for Montana consumers in the affected markets.

II. Jurisdiction, Venue, and Interstate Commerce

11. Plaintiff United States brings this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and Section 15 of the Clayton Act, 15 U.S.C. 25, and plaintiff State of Montana brings this action under Section 16 of the Clayton Act, 15 U.S.C. 26, seeking injunctive and other equitable relief from the defendants' violations of Section 1 of the Sherman Act and Section 7 of the Clayton Act, 15 U.S.C. 1 and 18; and Mont. Code Ann. § 30–14–205.

12. The defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. They sell insurance that covers residents when they travel across state lines; purchase health-care services from providers located outside of Montana; and receive payments from customers outside of Montana. The defendants also purchase health-care products and services, such as pharmaceuticals, in interstate commerce. Further, the availability of health insurance at affordable prices can attract businesses and jobs to a state or region, and higher health-insurance prices can affect interstate commerce by causing employers to exit the state. The Agreement, therefore, affects interstate commerce.

13. The State of Montana brings this action on its own behalf and in its sovereign capacity as *parens patriae* on behalf of the citizens, general welfare, and economy of the State. The State of Montana purchases group health insurance for approximately 16,000 employees in Montana, and it purchases from only two insurers: Blue Cross and New West. The State is likely to be injured in its business and property as a result of this agreement.

14. The Court has subject-matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and Section 15 of the Clayton Act, 15 U.S.C. 25 (as to claims by the United States); Section 16 of the Clayton Act, 15 U.S.C. 26, and 28 U.S.C. 1367 (as to claims by the State of Montana); and 28 U.S.C. 1331, 1337(a), and 1345.

15. The Court has personal jurisdiction over the defendants under Section 12 of the Clayton Act, 15 U.S.C. 22.

16. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391. Each defendant is a corporation that transacts business and is found in this District. The acquisition was negotiated in substantial part in this District. Therefore, a substantial part of the events giving rise to plaintiffs' claim occurred in this District.

III. The Relevant Markets

A. Background on Commercial Health Insurance

17. In Montana, as throughout the United States, individuals who are not eligible for government programs such as Medicare or Medicaid typically obtain health insurance from commercial health-insurance companies. Most employees obtain commercial health insurance through their employers. Commercial health insurance obtained through an employer or another group is known as ''group health insurance.'' Commercial health insurance that individuals purchase directly from an insurer is known as ''individual health insurance.'' In 2009, approximately 50% of Montana residents obtained group health insurance, and about 15% obtained individual health insurance from commercial health insurers, including Blue Cross and New West.

18. Commercial health insurers compete to be selected by employers, their employees, and individuals on a number of factors, including price; the breadth of their health-care provider networks; out-of-pocket costs, such as deductibles, co-payments, and coinsurance; customer service; and reputation. Insurers also compete by developing programs to improve the health of their members and reduce medical-care costs. For group health insurance, employers and other groups typically select the insurance plan or plans that they offer to their employees or group members, who then choose whether to enroll in the one or more plans offered.

19. Group health insurance can either be ''fully-insured'' or ''self-insured.'' Under fully-insured plans, the insurer bears the risk that health-care claims will exceed anticipated losses. Under self-insured plans, the employer itself pays a large portion of medical costs and bears a large portion of the risk of unanticipated losses. Self-insurance is a viable option primarily for large employers only.

B. Relevant Product Markets

20. The relevant product markets affected by the proposed transaction are (1) The sale of commercial group health insurance and (2) the sale of commercial individual health insurance, collectively referred to in this Complaint as ''commercial health insurance.'' Group health insurance and individual health insurance are each lines of commerce for purposes of analyzing the effects of the Agreement within the meaning of Section 7 of the Clayton Act.

(1) Group Health Insurance

21. The sale of commercial group health insurance, including access to a provider network, is a relevant product market. Group health insurance sold in Montana usually includes access to a provider network, and most employers and their employees consider an insurer's provider network to be an important element of a health-insurance product because the network specifies the physicians and hospitals to which patients can turn for service with substantially lower costs to themselves.

22. There are no reasonable alternatives to group health insurance, including access to a provider network, for employers or for most employees. Individual health insurance is typically much more expensive than group health insurance, in part because employer contributions to group health-insurance premiums are not taxable to the employee and are tax deductible by the employer. Virtually all individual health insurance is purchased by persons who do not have access to employer-sponsored group health insurance.

23. Furthermore, purchasing hospital services directly (*i.e.,* without insurance), rather than through a commercial insurer, is typically prohibitively expensive and is not a viable substitute for group health insurance. Employers without health insurance almost never purchase hospital services directly from hospitals at prices comparable to prices paid by Blue Cross or New West.

24. Thus, a small but significant increase in the price of group health insurance in the geographic markets alleged in paragraph 28 would not cause a sufficient number of groups to switch to other health-insurance products such that the price increase would be unprofitable.

(2) Individual Health Insurance

25. The sale of commercial individual health insurance, including access to a provider network, is also a relevant product market. Individual health insurance is the only product available to individuals without access to group coverage or government programs that allows them to (1) reduce the financial risk of adverse health conditions and (2) access health care at the discounted prices negotiated by commercial health insurers.

26. There are no reasonable alternatives to individual health insurance for individuals who lack access to group health insurance or

government programs such as Medicare and Medicaid. As with group insurance, purchasing hospital services directly, rather than through a commercial insurer, is typically prohibitively expensive and is not a viable substitute for individual health insurance. Thus, a small but significant increase in the price of individual health insurance in the geographic markets alleged in paragraph 28 would not cause a sufficient number of individuals to switch to other health-insurance products such that the price increase would be unprofitable.

C. Relevant Geographic Markets

27. The markets for commercial health insurance, including access to a provider network, are local. Patients typically seek medical care close to their homes or workplaces. As a result, consumers strongly prefer health-insurance plans with networks of hospitals and physicians that are close to their homes and workplaces.

28. The following areas are relevant geographic markets for the sale of group and individual commercial health insurance:

a. The Billings Metropolitan Statistical Area (''MSA'') (Yellowstone and Carbon Counties);

b. The Bozeman Micropolitan Statistical Area (''MiSA'') (Gallatin County);

c. The Helena MiSA (Lewis and Clark County and Jefferson County); and

d. The Missoula MSA (Missoula County).

29. Consumers in these areas cannot practicably turn to commercial health insurers that do not have a network of providers in these areas. Consequently, a small but significant increase in the price of commercial health insurance in these areas would not cause a sufficient number of consumers to switch to insurers outside of these areas to make such a price increase unprofitable. These areas are, therefore, the relevant geographic markets within which to assess the likely effects of the Agreement, and they qualify as a ''section of the country'' within the meaning of Section 7 of the Clayton Act.

IV. Likely Anticompetitive Effects

30. Blue Cross and New West are two of only three significant competitors for the sale of commercial health insurance in Billings, Bozeman, Helena, and Missoula. Besides Blue Cross and New West, the only other significant competitor in these areas is Allegiance, which is owned by CIGNA.

31. Blue Cross has market power in the sale of commercial health insurance in the relevant geographic areas. As the table below shows, Blue Cross's shares of commercial health insurance ranged from approximately 43% to 75% in the four relevant areas at the time the Agreement was signed, as measured by covered lives. New West's shares of commercial health insurance ranged from 7% to 12% in those four areas at the time the Agreement was signed.

COMMERCIAL HEALTH INSURANCE MARKET SHARE

	Blue Cross (percent)	New West (percent)
Billings	43	9
Missoula	49	7
Bozeman	65	12
Helena	75	9

32. The Agreement will cause Blue Cross's market share to increase in two ways. First, the transfer of the hospitals' accounts to Blue Cross will directly increase Blue Cross's market share. Second, because the Agreement effectively eliminates New West as a viable competitor, New West's remaining customers are likely to switch insurers, with most moving to Blue Cross because it is the market leader.

33. Thus, using the Herfindahl-Hirschman Index (''HHI''), a measure of concentration commonly relied on by the courts and antitrust agencies to measure market concentration (defined and explained in Appendix A), the transaction would significantly increase concentration. Assuming that all of the hospital defendants' business transfers to Blue Cross per the terms of the Agreement and that New West's other commercial business is lost to the remaining competitors in proportion to their current shares, the HHIs would increase by 640 in Billings to 2,290; by 1,277 in Bozeman to 5,870; by 1,100 in Helena to 6,900; and by 512 in Missoula to 3,690. These HHI levels far exceed concentration levels that many courts have found create a presumption that an acquisition likely would substantially lessen competition in violation of the Clayton Act.

34. In addition to harming competition by substantially increasing concentration in the relevant markets, the Agreement is likely to harm consumers by eliminating the vigorous head-to-head competition between Blue Cross and New West. For the past several years, New West has been one of only two significant alternatives to Blue Cross for commercial health insurance in the relevant areas. Many consumers view Blue Cross and New West as the two most significant insurers in the relevant markets and each other's main competitor.

35. Blue Cross and New West have a long history of competing against each other in the relevant areas to attract and retain customers by offering better products and services and lower prices. New West has competed effectively with Blue Cross because New West has low rates with hospitals and physicians throughout Montana, including, notably, its own hospitals and hospital-owned physician practices; a broad network of hospitals and physicians; and a strong reputation for high-quality customer service.

36. Since the Agreement was announced in August 2011, many employers in Montana have chosen not to purchase health insurance from New West, likely because they were unsure whether New West would continue to exist. Some of those employers have already switched their business to Blue Cross, and many more likely will.

37. The Agreement has eliminated and will continue to substantially eliminate competition between Blue Cross and New West. Without New West as an effective competitor, Blue Cross will likely increase prices and reduce the quality and service of commercial health-insurance plans to employers and individuals in the relevant areas.

V. Absence of Countervailing Factors

A. Entry

38. Entry of new health insurers or expansion of existing health insurers is unlikely to prevent the harm to competition that the Agreement has caused and likely will continue to cause. Most health insurers that have attempted to enter or expand into the four alleged geographic markets in recent years have been unsuccessful.

B. Efficiencies

39. The Agreement has not generated and likely will not generate verifiable, agreement-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects that it has already caused and is likely to cause.

VI. Violations Alleged

Count One: Unlawful Agreement in Violation of Sherman Act § 1

40. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 39.

41. The Agreement to enter into the transaction is a contract, combination, and conspiracy that unreasonably restrains interstate trade or commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

Count Two: Unlawful Acquisition in Violation of Clayton Act § 7

42. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 39.

43. The acquisition has substantially lessened competition in the sale of commercial health insurance in the relevant areas, and will likely continue to do so, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in that (1) Actual and potential competition between Blue Cross and New West in the alleged geographic markets has been and will be eliminated; and (2) competition in the alleged geographic markets for the sale of commercial health insurance has been and likely will continue to be substantially lessened.

Count Three: Unlawful Restraint of Trade in Violation of Montana Unfair Trade Practices Act

44. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 39.

45. The Agreement to enter into the transaction is an unlawful agreement for the purpose of regulating the production of an article of commerce, in violation of Mont. Code Ann. § 30–14–205(1).

VII. Requested Relief

46. Plaintiffs request that this Court:

a. Adjudge and decree that the Agreement violates Section 1 of the Sherman Act, 15 U.S.C. 1; Section 7 of the Clayton Act, 15 U.S.C. 18; and Mont. Code Ann. § 30–14–205(1);

b. Preliminarily and permanently enjoin the defendants from carrying out the Agreement;

c. Provide equitable relief sufficient to restore the competition lost due to the Agreement;

d. Award plaintiffs their costs in this action; and

e. Award plaintiffs such other relief as may be just and proper.

Dated: November 8, 2011.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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Certificate of Service

I hereby certify that, on November 8, 2011, a copy of the foregoing document was served on the following persons by the following means:

1 CM/ECF
____ Hand Delivery
____ U.S. Mail
____ Overnight Delivery Service
____ Fax
2.3 E-Mail

1. Clerk, U.S. District Court.

2. Counsel for Defendant Blue Cross and Blue Shield of Montana: David C. Lundsgaard, Graham & Dunn PC, Pier 70, 2801 Alaskan Way Suite 300, Seattle, WA 98121–1128. *dlundsgaard@grahamdunn.com.*

3. Counsel for Billings Clinic; Bozeman Deaconess Health Services, Inc.; Community Medical Center, Inc.; New West Health Services, Inc.; Northern Montana Health Care, Inc.; and St. Peter's Hospital: Kevin P. Heaney, Crowley Fleck PLLP, Transwestern Plaza II, 490 N. 31st St., Suite 500, Billings, MT 59101. *kheaney@crowleyfleck.com.*

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In the United States District Court for the District of Montana Billings Division

United States of America and State of Montana, Plaintiffs, v. *Blue Cross and Blue Shield of Montana, Inc., Billings Clinic, Bozeman Deaconess Health Services, Inc., Community Medical Center, Inc., New West Health Services, Inc., Northern Montana Health Care, Inc., and St. Peter's Hospital,* Defendants.

Case No.1:11–cv–00123–RFC

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On November 8, 2011, the United States and the State of Montana filed a civil antitrust lawsuit challenging an agreement (the ''Agreement'') between defendant Blue Cross and Blue Shield of Montana, Inc. (''Blue Cross'') and defendants Billings Clinic; Bozeman Deaconess Health Services, Inc.; Community Medical Center, Inc.; Northern Montana Health Care, Inc.; and St. Peter's Hospital (collectively, the ''hospital defendants'').

The hospital defendants are five of the six hospitals that own defendant New West Health Services, Inc. (''New West''), a health insurer that competes against Blue Cross to provide commercial health insurance to Montana consumers. In the Agreement, Blue Cross agreed to pay $26.3 million to the hospital defendants in exchange for their agreeing to collectively stop purchasing health insurance for their own employees from New West and instead buy insurance for their employees from Blue Cross exclusively for six years. Blue Cross also agreed to provide the hospital defendants with two seats on Blue Cross's board of directors if the hospitals do not compete with Blue Cross in the sale of commercial health insurance.

The Complaint alleges that the Agreement will likely cause New West to exit the markets for commercial health insurance, eliminating an important competitor to Blue Cross and ultimately leading to higher prices and lower-quality service for consumers. Consequently, the Complaint alleges that the Agreement unreasonably restrains trade in the sale of commercial health insurance within Montana in the Billings Metropolitan Statistical Area (''MSA''), Bozeman Micropolitan Statistical Area (''MiSA''), Helena MiSA, and Missoula MSA, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1; and that the Agreement has substantially lessened competition in the sale of commercial health insurance in those same areas, and will likely continue to do so, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and the Montana Unfair Trade Practices Act, Mont. Code Ann. § 30–14–205.

With the Complaint, the United States and the State of Montana filed an Asset Preservation Stipulation and Order and proposed Final Judgment which are designed to eliminate the anticompetitive effects of the Agreement. The proposed Final Judgment, which is explained more fully below, would permit Blue Cross and the hospital defendants to proceed

with the Agreement but would require the divestiture of New West's commercial health-insurance business (the ''Divestiture Assets'') and other injunctive relief sufficient to preserve competition in the sale of commercial health insurance in Billings, Bozeman, Helena, and Missoula.

Until the divestiture has been accomplished, the Asset Preservation Stipulation and Order requires New West and the hospital defendants to take all steps necessary to ensure that New West's commercial health-insurance business will be maintained and operated as an ongoing, economically viable, and active line of business; that competition between New West and Blue Cross in the sale of commercial health insurance is maintained during the pendency of the ordered divestiture; and that New West and the hospital defendants preserve and maintain the Divestiture Assets. The Asset Preservation Stipulation and Order thus ensures that that competition is protected pending completion of the required divestiture and that the assets are preserved so that relief will be effective.

The United States, the State of Montana, and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise to the Alleged Violation

A. The Defendants and the Agreement

Blue Cross is a nonprofit corporation based in Helena, Montana. It sells a range of commercial health-insurance products, including PPOs, HMOs, indemnity products, and individual products, and its group products are offered on a fully-insured and self-insured basis. (Under fully-insured plans, the insurer bears the risk that health-care claims will exceed anticipated losses; under self-insured plans, the employer itself pays a large portion of medical costs and bears a large portion of the risk of unanticipated losses.) In 2010, Blue Cross's annual revenues were approximately $530 million. For many years, Blue Cross has dominated the commercial health-insurance markets in Montana.

New West is a nonprofit corporation, also based in Helena. Four of the hospital defendants—Billings Clinic, Community Medical Center, Northern Montana Health Care, and St. Peter's Hospital—formed New West in 1998 to compete directly against Blue Cross. In 2006, two additional hospitals acquired an ownership interest in New West: defendant Bozeman Deaconess and Benefis Health System (in Great Falls). Like Blue Cross, New West offers PPO products, HMO products, indemnity products, and individual products, and its group products are offered on a fully-insured and self-insured basis. As the Complaint alleges, New West has offered Montana residents a high-quality option for their health insurance, routinely pressuring Blue Cross to offer lower prices and better customer service. New West's annual revenues in 2010 were approximately $120 million.

On or around August 1, 2011, Blue Cross and the hospital defendants entered into the Agreement, a letter of intent in which Blue Cross agreed to pay $26.3 million to the hospital defendants in exchange for their agreeing to collectively stop purchasing health insurance for their own employees from New West and instead buy insurance for their employees from Blue Cross exclusively for six years, starting January 1, 2012. (The only New West owner that did not sign the Agreement was Benefis Health System, which already used Blue Cross for its employees and had never used New West.) The hospital defendants collectively account for approximately 11,000 enrolled lives, or roughly one-third of New West's commercial health-insurance business at the time of the Agreement.

The Agreement further requires that *all* of the hospital defendants participate for the agreement to be effective: if any hospital defendant withdraws, the Agreement is terminated. Additionally, Blue Cross agreed to install two representatives of the hospital defendants on Blue Cross's board of directors if the hospitals do not own or belong to an entity that competes with Blue Cross in the sale of commercial health insurance.

B. The Relevant Markets

1. Product Markets

The Complaint alleges two relevant product markets: (1) The sale of commercial group health insurance, and (2) the sale of commercial individual health insurance. These products are collectively referred to as ''commercial health insurance.''

(a) Group Health Insurance

As the Complaint explains, most employees obtain commercial health insurance through their employers, which is called ''group health insurance.'' There are no reasonable alternatives to group health insurance for employers, or for most employees. The closest alternative—individual health insurance—is typically much more expensive than group health insurance, in part because while group health insurance is purchased using pre-tax dollars, individual health insurance is not. Furthermore, purchasing hospital services directly (*i.e.,* without insurance), rather than through a commercial insurer, is typically prohibitively expensive and is not a viable substitute for group health insurance.

Thus, a small but significant increase in the price of group health insurance in the relevant geographic markets would not cause a sufficient number of groups to switch to other health-insurance products, such that the price increase would be unprofitable.

(b) Individual Health Insurance

Individual health insurance is the only health-insurance product available to individuals without access to group coverage or government programs, such as Medicare or Medicaid. As with group insurance, purchasing hospital services directly, rather than through a commercial insurer, is typically prohibitively expensive and is not a viable substitute for individual health insurance. Thus, as the Complaint alleges, a small but significant increase in the price of individual health insurance in the relevant geographic markets would not cause a sufficient number of individuals to switch to other health-insurance products, such that the price increase would be unprofitable.

2. Geographic Markets

Because patients typically seek medical care close to their homes or workplaces, consumers strongly prefer health-insurance plans with local networks of hospital and physicians. Thus, employers that offer group health insurance to their employees demand insurance products that provide access to health-care provider networks, including primary- and tertiary-care hospitals, in the areas in which substantial numbers of their employees live and work. Likewise, individuals who purchase individual health insurance demand insurance products that provide access to health-care provider networks, including hospitals,

in the areas in which they live and work.

The following local areas are relevant geographic markets for the sale of group and individual commercial health insurance:

- The Billings MSA (Yellowstone and Carbon Counties);
- The Bozeman MiSA (Gallatin County);
- The Helena MiSA (Lewis and Clark County and Jefferson County); and
- The Missoula MSA (Missoula County).

As the Complaint alleges, a small but significant increase in the price of commercial health insurance in these areas would not cause a sufficient number of consumers to switch to insurers outside of these areas to make such a price increase unprofitable.

C. Anticompetitive Effects of the Agreement

According to the Complaint, the Agreement effectively eliminates New West as a viable competitor in the sale of commercial health insurance. First, news that none of New West's owners will buy health insurance for their own employees from New West creates a perception that New West is exiting the commercial health-insurance market, and will likely cause many existing and potential customers to stop purchasing (or decline to purchase) insurance from New West. Second, the Agreement will lead New West and its hospital owners to significantly reduce their support for and efforts to win commercial health-insurance customers, further hindering its ability to compete. Furthermore, because the hospital defendants agreed to act collectively, the Agreement with Blue Cross ensures that New West would lose the support of all its owners and likely exit the market. And the Agreement further deters the hospitals from supporting New West by granting them two positions on Blue Cross's board of directors, but only if the hospitals do not own or belong to a competing insurer.

The Complaint alleges that by eliminating New West as an effective competitor, the Agreement would significantly increase concentration in the markets for commercial health insurance in Montana. In the four relevant areas, Blue Cross's share of commercial health insurance ranged from approximately 43% to 75% at the time the Agreement was signed, and New West's share ranged from 7% to 12%. The Agreement increases Blue Cross's share directly through the transfer of the hospital defendants' accounts from New West, and indirectly because New West's remaining customers are likely to switch insurers, with most moving to Blue Cross because it is the market leader.

Using the Herfindahl-Hirschman Index (''HHI''), a standard measure of market concentration, and assuming that (1) All of the hospital defendants' business transfers to Blue Cross per the terms of the Agreement and (2) that New West's other commercial business is lost to the remaining competitors in proportion to their current shares, the HHIs would increase by 640 in Billings to 2,290; by 1,277 in Bozeman to 5,870; by 1,100 in Helena to 6,900; and by 512 in Missoula to 3,690. These HHI levels far exceed concentration levels that many courts have found create a presumption that an acquisition likely would substantially lessen competition in violation of the Clayton Act.

The Agreement also eliminates vigorous head-to-head competition between Blue Cross and New West. For the past several years, New West has been one of only two significant alternatives to Blue Cross for commercial health insurance in the relevant areas. Many consumers view Blue Cross and New West as the two most significant insurers in the relevant areas and each other's main competitor. Without New West as an effective competitor, Blue Cross will likely increase prices and reduce the quality and service of commercial health-insurance plans to employers and individuals in the relevant areas.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Assets

The proposed Final Judgment will eliminate the anticompetitive effects identified in the Complaint by requiring New West and the hospital defendants to divest New West's commercial health-insurance business, including its administrative-services-only contracts and its fully-insured business, but excluding the contracts that cover the hospital defendants' employees and their dependents. This divestiture will allow the acquirer to compete vigorously in the relevant geographic markets.

New West and the hospital defendants must divest New West's fully-insured commercial health-insurance business to the acquirer through a bulk-reinsurance agreement, as provided by Mont. Code Ann. § 33–2–1212. At the same time, they must also divest the remainder of New West's commercial health-insurance business, including its administrative-services-only contracts. This divestiture structure ensures that all of New West's rights and obligations relating to its commercial health-insurance business immediately transfer to the acquirer. The Final Judgment does not require New West to divest its Medicare Advantage business, and New West plans to continue selling this health-insurance product to the Medicare-eligible population.

New West and the hospital defendants have proposed to sell the Divestiture Assets to PacificSource Health Plans, and the United States, after consulting with the State of Montana, has tentatively approved PacificSource as the acquirer. Consequently, Section IV(F) of the proposed Final Judgment requires New West and the hospital defendants first to attempt to sell the Divestiture Assets to PacificSource.

Under the proposed Final Judgment, the United States and the State of Montana must be satisfied that none of the terms in any agreement between New West and the hospital defendants and the acquirer enable New West or the hospital defendants to interfere with the acquirer's ability to compete effectively.

Although the proposed Final Judgment does not require New West and the hospital defendants to divest the New West health-insurance contracts that covered the hospital defendants' employees and dependents, the proposed Final Judgment does require New West and the hospital defendants to use their best efforts to maintain New West's contracts for coverage of at least 14,600 enrollees in its fully- or self-insured plans until the Divestiture Assets are transferred to the acquirer. To ensure that New West's management will work aggressively to meet this membership target, New West and the hospital defendants will fund an incentive pool of at least $50,000, which will be available to New West's management if they meet the membership target as of the closing date for the sale of the Divestiture Assets. This will allow the acquirer to obtain sufficient enrollees to preserve existing levels of competition.

Section IV(A) of the proposed Final Judgment requires New West and the hospital defendants to divest the Divestiture Assets as a viable, ongoing business within 30 days after the filing of the Complaint. The quick divestiture will help preserve the existing level of competition because it will convey to the market that a new competitor will rapidly replace New West, and it will help to reduce the possibility that the Divestiture Assets will lose their value.

B. Selected Provisions of the Proposed Final Judgment

Other provisions of the proposed Final Judgment will enable the acquirer to promptly and effectively compete in the market for commercial health insurance. Most importantly, Sections IV(G)–(I) ensure that the acquirer has a cost-competitive health-care provider network. To compete effectively in the sale of commercial health insurance, insurers need a network of health-care providers at competitive rates because hospital and physician expenses constitute the large majority of an insurer's costs. By requiring New West and the hospital defendants to help to provide the acquirer with a cost-competitive provider network, Sections IV(G)–(I) help ensure that the acquirer will be able to compete as effectively as New West before the parties entered the Agreement.

Specifically, Section IV(G) requires the hospital defendants to sign three-year contracts with the acquirer on terms that are substantially similar to their existing contractual terms with New West. This requirement is vital because three of the hospital defendants (Bozeman Deaconess, St. Peter's, and Northern Montana Hospital) are the only hospitals in their respective geographic markets, while Billings Clinic and Community Medical Center each only compete with one other hospital. Because these three-year contracts provide the acquirer with a cost structure comparable to New West's costs, they position the acquirer to be competitive selling commercial health insurance in all four geographic markets.

To address health-care provider contracts that are not under the hospital defendants' control, Sections IV(H) and IV(I) require New West and the hospital defendants—at the acquirer's option—to (1) use their best efforts to assign the contracts that are not under their control to the acquirer, or (2) lease New West's provider network to the acquirer for up to three years, using their best efforts to maintain the network, including maintaining contracts with substantially similar terms.

Sections IV(M) and IV(N) also require New West and the hospital defendants to provide transitional support services as necessary for the acquirer to operate the Divestiture Assets. New West and the hospital defendants may not provide these transitional support services for more than 12 months without approval from the United States.

The proposed Final Judgment contains three provisions that address Blue Cross's relationships with health-insurance brokers and health-care providers. First, under Section V(A), Blue Cross must provide 30 days' written notice to the plaintiffs before entering into exclusive contracts with health-insurance brokers. This provision prevents Blue Cross from blocking the acquirer's access to brokers. Access to brokers is important because many customers purchase health insurance through a broker. Second, under Section V(B), Blue Cross must provide 30 days' written notice to the plaintiffs before entering into any agreement that prohibits a health-care provider from contracting with other insurers. Third, under Section V(C), Blue Cross must provide 30 days' written notice before entering into any most-favored-nation agreement with a health-care provider, which would require the provider to give Blue Cross rates that are equal to or better than other insurers. If the United States issues a Civil Investigative Demand (''CID'') within 30 days after Blue Cross notifies the plaintiffs that it intends to engage in the practices covered by Sections V(A)–(C), then Blue Cross may not adopt the practices until 30 days after certifying compliance with the CID. These provisions help ensure that Blue Cross will not interfere with the acquirer's ability to compete effectively.

Finally, if New West and the hospital defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the Court will appoint a trustee selected by the United States to carry out the divestitures. If a trustee is appointed, New West and the hospital defendants must pay the trustee's costs and expenses, and the trustee's commission will provide an incentive based on the price, terms, and speed of the divestiture. Once the trustee is appointed, the trustee will file monthly reports with the Court and the United States explaining his or her efforts to accomplish the divestiture. At the end of six months, if the divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which will enter such orders as it deems appropriate in order to carry out the purpose of the trust. This may include extending the trust or the term of the trustee's appointment for up to six additional months. However, if at the end of all extensions of the trustee's term, the trustee has not accomplished the divestiture, then New West and the hospital defendants will have no further obligations to preserve the divestiture assets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, the State of Montana, and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the

modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the defendants. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will fully address the competitive concerns set forth in the Complaint. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see also United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').[1]

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' ''prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. A court ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Respectfully submitted,

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Dated: November 8, 2011.

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298 at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Certificate of Service

I hereby certify that, on November 8, 2011, a copy of the foregoing document was served on the following persons by the following means:

____1 CM/ECF
____ Hand Delivery
____U.S. Mail
____ Overnight Delivery Service
____ Fax
____ 2,3 E-Mail

1. Clerk, U.S. District Court.

2. Counsel for Defendant Blue Cross and Blue Shield of Montana: David C. Lundsgaard, Graham & Dunn PC, Pier 70, 2801 Alaskan Way Suite 300, Seattle, WA 98121–1128. *dlundsgaard@grahamdunn.com.*

3. Counsel for Billings Clinic; Bozeman Deaconess Health Services, Inc.; Community Medical Center, Inc.; New West Health Services, Inc.; Northern Montana Health Care, Inc.; and St. Peter's Hospital: Kevin P. Heaney, Crowley Fleck PLLP, Transwestern Plaza II, 490 N. 31st St., Suite 500, Billings, MT 59101. *kheaney@crowleyfleck.com.*

Scott I. Fitzgerald,
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In the United States District Court for the District of Montana Billings Division

United States of America and State of Montana, Plaintiffs, v. *Blue Cross and Blue Shield of Montana, Inc., Billings Clinic, Bozeman Deaconess Health Services, Inc., Community Medical Center, Inc., New West Health Services, Inc., Northern Montana Health Care, Inc., and St. Peter's Hospital,* Defendants.

Case No.1:11–cv–00123–RFC

[Proposed] Final Judgment

Whereas, Plaintiffs, the United States of America and the State of Montana, filed their Complaint on November 8, 2011, alleging that Defendants Blue Cross, New West, Billings Clinic, Bozeman Deaconess, Community Medical Center, Northern Montana Health Care, and St. Peter's, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by New West and the Hospital Defendants to ensure that competition is not substantially lessened by the Agreement;

And whereas, the United States and the State of Montana require Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, New West and the Hospital Defendants have represented to the United States and the State of Montana that the divestiture required by this Final Judgment can and will be made, and that they will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions of this Final Judgment;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 1 of the Sherman Act, 15 U.S.C. 1; Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and the Montana Unfair Trade Practices Act, Mont. Code Ann. § 30–14–205.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity to whom the Divestiture Assets are divested.

B. ''Agreement'' means the Letter of Intent dated on or around August 1, 2011, by and among Blue Cross and the Hospital Defendants.

C. ''Billings Clinic'' means Defendant Billings Clinic, a Montana non-profit corporation based in Billings, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

D. ''Blue Cross'' means Defendant Blue Cross and Blue Shield of Montana, Inc., a Montana corporation based in Helena, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

E. ''Bozeman Deaconess'' means Defendant Bozeman Deaconess Health

Services, Inc., a Montana non-profit corporation based in Bozeman, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

F. ''Broker'' means any insurance agent, producer, or broker who facilitates the sale of health-insurance plans to individuals or groups.

G. ''Community Medical Center'' means Community Medical Center, Inc., a Montana non-profit corporation based in Missoula, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

H. ''Divestiture Assets'' means:

(1) New West's Commercial Health Insurance Business;

(2) all business, financial, and operational books, records, and data, both current and historical, that relate to New West's Commercial Health Insurance Business.

I. ''Health-Care Provider'' means any person or entity that provides any health-care service, including hospitals, physician groups, laboratories, ambulatory surgical centers, nursing facilities, and other providers of health-care services.

J. ''Health Insurer'' means any entity that is responsible for all or part of any expense for health-care services provided to any person or group. The term includes commercial health-insurance plans, including health-maintenance organizations, preferred-provider organizations, and indemnity plans; health-care provider rental networks, union trust funds, and multiple employer trusts; and self-insured health plans.

K. ''Hospital Defendants'' means Billings Clinic, Bozeman Deaconess, Community Medical Center, Northern Montana Health Care, and St. Peter's.

L. ''Most-Favored-Nation Provision'' means any most-favored-nation, most-favored-discount, or most-favored-pricing provision in any health-care provider agreement. The term includes any Blue Cross policy, practice, or contractual provision that conditions Blue Cross's payment rate or discount to any health-care provider on another health insurer's payment rate or discount to that provider, regardless of how such policy, practice, or contractual provision is denominated.

M. ''New West'' means New West Health Services, Inc., a Montana non-profit corporation based in Helena, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

N. ''New West's Commercial Health Insurance Business'' means all of New West's health-insurance contracts and policies for products providing commercial health insurance, including fully-insured and administrative-services-only products, health-maintenance organization products, preferred-provider organization products, point-of-service products, and indemnity-insurance products, for both groups and individuals. The term ''New West's Commercial Health Insurance Business'' does not include (1) New West's Medicare Advantage products and (2) New West's health-insurance contracts and policies covering employees and dependents of the Hospital Defendants.

O. ''Northern Montana Health Care'' means Northern Montana Health Care, Inc., a Montana non-profit corporation based in Havre, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

P. ''PacificSource'' means PacificSource Health Plans, an Oregon non-profit corporation based in Springfield, Oregon.

Q. ''Provider Network'' means all of the health-care providers that have contracted with a particular health insurer to provide medical services.

R. ''St. Peter's'' means St. Peter's Hospital, a Montana non-profit corporation based in Helena, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Blue Cross, New West, and the Hospital Defendants, as defined above, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, before complying with Sections IV and VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they must require the purchaser to be bound by the provisions of this Final Judgment. Defendants do not need to obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. New West and the Hospital Defendants are ordered, within 30 calendar days after the filing of the Complaint in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment (1) To an Acquirer acceptable to the United States in its sole discretion, after consultation with the State of Montana; and (2) on terms acceptable to the United States in its sole discretion, after consultation with the State of Montana. The United States in its sole discretion, after consultation with the State of Montana, may grant one extension of this time period not to exceed 30 calendar days in total, and shall notify the Court in such circumstances.

B. New West and the Hospital Defendants must obtain all regulatory approvals necessary for such divestitures as expeditiously as possible. If applications for approval have been filed with the appropriate governmental units within 5 calendar days after the United States has provided written notice, pursuant to Section VII(C), that it does not object to a proposed divestiture, but these required approvals have not been issued before the end of the period permitted for Divestiture in Section IV(A), the United States will extend the period for Divestiture until five business days after all necessary government approvals have been received.

C. New West and the Hospital Defendants must permit prospective Acquirers of the Divestiture Assets to have reasonable access to New West personnel and access to any and all financial, operational, or other documents and information customarily provided as part of a due-diligence process.

D. New West and the Hospital Defendants must divest New West's fully-insured Commercial Health Insurance Business to the Acquirer through a bulk-reinsurance agreement, as provided by Mont. Code Ann. § 33–2–1212. New West and the Hospital Defendants must divest the remainder of New West's Commercial Health Insurance Business, including its administrative-services-only contracts, to the Acquirer at the same time as they divest New West's fully-insured business.

E. The Divestiture must be accomplished in such a way as to satisfy the United States in its sole discretion, after consultation with the State of Montana, that the Divestiture Assets can and will be used by the Acquirer as part

of a viable, ongoing business engaged in the sale of commercial health insurance, and that the Divestiture will remedy the competitive harm alleged in the Complaint. The Divestiture must be:

(1) made to an Acquirer that, in the United States' sole judgment, after consultation with the State of Montana, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the sale of commercial health insurance in the Billings Metropolitan Statistical Area (''MSA''), Bozeman Micropolitan Statistical Area (''MiSA''), Helena MiSA, and Missoula MSA; and

(2) accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State of Montana, that none of the terms of any agreement between New West or the Hospital Defendants and the Acquirer gives New West and the Hospital Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere with the Acquirer's ability to compete effectively.

F. New West and the Hospital Defendants must first attempt to sell the Divestiture Assets to PacificSource.

G. For three years, the Hospital Defendants must contract to participate in the Acquirer's provider network on terms that are substantially similar to the Hospital Defendants' existing contractual terms with New West as determined by the United States in its sole discretion, after consultation with the State of Montana.

H. At the Acquirer's option, New West and the Hospital Defendants must use their best efforts to assign to the Acquirer all contracts for the provision of medical services that New West has with health-care providers that are not controlled by the Hospital Defendants.

I. For three years, at the Acquirer's option, New West must also lease its provider network to the Acquirer. Until the expiration of such a lease, New West and the Hospital Defendants must use their best efforts to maintain New West's provider network, including maintaining contracts, with substantially similar terms, with all health-care providers in New West's provider network as of August 1, 2011.

J. New West and the Hospital Defendants must use their best efforts to maintain New West's contracts for coverage of at least 14,600 enrollees in fully- or self-insured commercial health-insurance plans until the Divestiture Assets are transferred to the Acquirer. To encourage New West's management to meet this membership target, the Hospital Defendants and New West will fund an incentive pool of at least $50,000, which will be available to New West's management if they meet the membership target as of the closing date for the sale of the Divestiture Assets.

K. New West must provide the plaintiffs with bi-weekly reports on total commercial health-insurance membership until the divestitures required by this Final Judgment are complete.

L. New West and the Hospital Defendants must provide the Acquirer, the United States, and the State of Montana with information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. For a period of two years from the filing of the Complaint in this matter, New West may not hire or solicit to hire any such person who was hired by the Acquirer, unless the Acquirer has notified such person that the Acquirer does not intend to continue to employ the person. Until the divestiture is completed, Blue Cross may not solicit to hire any such person who was hired by the Acquirer.

M. At the Acquirer's option, and subject to approval by the United States, after consultation with the State of Montana, New West and the Hospital Defendants must provide transitional support services that are reasonably necessary for the Acquirer to operate the Divestiture Assets, including but not limited to medical-claims processing, appeals and grievances, call-center support, enrollment and eligibility services, access to form templates, pharmacy services, disease management, and quality-assurance services, and may charge the Acquirer commercially reasonable rates for these services. The Hospital Defendants and New West may not provide such transitional support services for more than 12 months from the date of the completion of the Divestiture unless the United States, after consultation with the State of Montana, shall otherwise approve.

N. To ensure an effective transition of the Divestiture Assets to the Acquirer, New West and the Hospital Defendants must cooperate and work with the Acquirer in transition planning and implementation of the transfer of the Divestiture Assets.

O. Defendants may not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

P. New West and the Hospital Defendants must communicate and cooperate fully with the Acquirer to promptly identify and obtain all consents of government agencies necessary to divest the Divestiture Assets.

V. Injunctive Relief as to Blue Cross

A. Blue Cross may not, without providing 30 days' advance written notification to the Plaintiffs:

(1) Condition the right of any broker to sell Blue Cross health-insurance products based on whether the broker sells non-Blue Cross health-insurance products; or

(2) Require any broker to be, or agree with any broker that it will become, an exclusive broker for Blue Cross.

Provided, however, that this Section does not apply to brokers who are employees of Blue Cross or entities wholly or partially owned by Blue Cross. Provided, further, that nothing in this Final Judgment prohibits Blue Cross from terminating or refusing to appoint any broker, or dealing with brokers on any terms, so long as Blue Cross does not violate the prohibitions in this Section.

B. Blue Cross, without providing 30 days' advance written notification to the Plaintiffs, may not enter into, adopt, maintain, or enforce any term in any agreement that directly or indirectly:

(1) Prohibits or discourages a health-care provider from (a) Participating in another health insurer's provider network or (b) negotiating or contracting with another health insurer; or

(2) Conditions the price that Blue Cross will pay a health-care provider, or other contract term, on whether the provider participates in another health insurer's provider network.

C. Blue Cross, without providing 30 days' advance written notification to the Plaintiffs, may not enter into, adopt, maintain, or enforce any most-favored-nation provision in any agreement with a health-care provider.

D. Within 30 days of receiving the notice required by Sections V(A)–(C) of this Final Judgment, representatives of the Antitrust Division may issue a Civil Investigative Demand (''CID''), pursuant to 15 U.S.C. 1311–14, for additional information or documentary material relevant to the notification. The Antitrust Division may share the information and documentary material produced in response to the CID with the State of Montana. If the Antitrust Division issues a CID, Blue Cross may not enter into, adopt, maintain, or enforce the notified agreement until 30 calendar days after certifying compliance with the CID.

E. Nothing in this Final Judgment prohibits Blue Cross from undertaking the actions described in Sections V(A)–(C), provided that Blue Cross provides the required notice and, if necessary,

waits for the expiration of the periods described in Section V(D).

F. This Section expires six years from the date of entry of the Final Judgment.

VI. Appointment of Trustee

A. If New West and the Hospital Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A) and (B), they must notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee may have the right to sell the Divestiture Assets. The trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, after consultation with the State of Montana, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, VI, and VII of this Final Judgment, and will have such other powers as this Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the trustee may hire at the cost and expense of New West and the Hospital Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants may not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States, the State of Montana, and the trustee within 10 calendar days after the trustee has provided the notice required under Section VII.

D. The trustee must serve at the cost and expense of New West and the Hospital Defendants, on such terms and conditions as the United States approves, and must account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to New West and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. New West and the Hospital Defendants must use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee must have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, and New West and the Hospital Defendants must develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants may not take any action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee must file monthly reports with the United States, the State of Montana, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports may not be filed in the public docket of the Court. Such reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets, and must describe in detail each contact with any such person. The trustee must maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the trustee must promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports may not be filed in the public docket of the Court. The trustee must at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems appropriate to carry out the purpose of the Final Judgment. The Court may, if necessary and requested by the United States, extend the trust and the term of the trustee's appointment by a period no longer than six months. If at the end of all extensions of the trustee's term, the trustee has not accomplished the divestiture, then New West and the Hospital Defendants will have no further obligations to preserve the divestiture assets as required by Section V of the Asset Preservation Stipulation and Order in this matter.

VII. Notice of Proposed Divestiture

A. Within two business days following execution of a definitive divestiture agreement, New West and the Hospital Defendants, or the trustee, whichever is then responsible for effecting the divestiture required herein, must notify the United States and the State of Montana of any proposed divestiture required by Section IV or VI of this Final Judgment. If the trustee is responsible, it must similarly notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within five business days of receipt by the United States and the State of Montana of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee must furnish any additional information requested within five business days of the receipt of the request, unless the parties shall otherwise agree.

C. Within 15 calendar days after receipt of the notice or within 10 calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States must provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a

divestiture proposed under Section IV or Section VI may not be consummated. Upon objection by Defendants under Section VI(C), a divestiture proposed under Section VI may not be consummated unless approved by the Court.

VIII. Financing

Defendants may not finance all or any part of any Purchase made pursuant to Section IV or VI of this Final Judgment.

IX. Asset Preservation

Until the divestiture required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants may not take any action that will jeopardize the divestiture ordered by this Court. Provided, however, that nothing in this Final Judgment precludes Blue Cross from competing for New West's commercial health-insurance customers, before or after the sale of the divestiture assets.

X. Affidavits and Records

A. Within 10 calendar days of the filing of the Complaint in this matter, and every 10 calendar days thereafter until the divestiture has been completed under Section IV or VI, New West and the Hospital Defendants must deliver to the United States and the State of Montana an affidavit as to the fact and manner of its compliance with Section IV or VI of this Final Judgment. Each such affidavit must include the name, address, and telephone number of each person who, during the preceding 10 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and must describe in detail each contact with any such person during that period. Each such affidavit must also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming that the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the State of Montana, to information provided by Defendants, including limitation on information, must be made within 14 calendar days of receipt of such affidavit.

B. Within 10 calendar days of the filing of the Complaint in this matter, Defendants must deliver to the United States and the State of Montana an affidavit that describes in reasonable detail all actions that Defendants have taken and all steps that Defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants must deliver to the United States and the State of Montana an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within 10 calendar days after the change is implemented.

C. New West and the Hospital Defendants must keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including persons retained by the United States, must, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy and electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding these matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports, or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. The United States may share information or documents obtained under Section XI with the State of Montana.

D. No information or documents obtained by the means provided in this section may be divulged by the United States or the State of Montana to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States or the State of Montana is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

E. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States must give Defendants 10 calendar days notice before divulging such material in any legal proceeding (other than grand jury proceedings).

XII. No Reacquisition

Defendants may not acquire or reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire 10 years from the date of its entry.

XV. Public-Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge

[FR Doc. 2011–29656 Filed 11–16–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–60]

Robert G. Crummie, M.D.; Decision and Order

On July 9, 2010, Administrative Law Judge (ALJ) Timothy D. Wing, issued the attached recommended decision. The Respondent did not file exceptions to the decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BC2964965, issued to Robert G. Crummie, M.D., be, and it hereby is, revoked. I further order that any pending application of Robert G. Crummie, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

Dated: November 8, 2011.

Michele M. Leonhart,

Administrator.

Christine Menendez, Esq., for the Government.

Ryan G. Cason Crummie, Esq., for the Respondent.

Opinion and Recommended Decision of the Administrative Law Judge

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* to determine whether Respondent's Certificate of Registration with the Drug Enforcement Administration (DEA) should be revoked and any pending applications for renewal or modification of that registration denied. Without this registration, Respondent, Robert G. Crummie, M.D., would be unable to lawfully possess, prescribe, dispense, or otherwise handle controlled substances.

On May 27, 2010, the Deputy Assistant Administrator, Office of Diversion Control, DEA, issued an Order to Show Cause why the DEA should not revoke Respondent's DEA Certificate of Registration, BC2964965, on the ground that Respondent lacked authority to handle controlled substances in North Carolina, the state in which he maintained his DEA registration. Respondent, through counsel, timely requested a hearing on the issues raised in the Order to Show Cause.

The Government subsequently filed a Motion for Summary Disposition, asserting that on March 17, 2010, the North Carolina Medical Board indefinitely suspended Respondent's medical license, effective April 2, 2010, and that Respondent consequently did not have authority to possess, dispense or otherwise handle controlled substances in North Carolina, the jurisdiction in which he maintained his DEA registration. The Government contended that such state authority is a necessary condition for DEA registration and therefore asked that I grant the Government's motion for summary disposition and recommend to the Deputy Administrator that Respondent's registration be revoked and any pending application for renewal or modification of such registration be denied. Counsel for the Government attached to the motion two supporting documents: (1) An Affidavit of Stephanie A. Evans, DEA Diversion Investigator, affirming that she had confirmed with the North Carolina Medical Board that Respondent's medical license had not been reinstated as of July 9, 2010 and (2) a copy of the North Carolina Medical Board's Findings of Fact, Conclusions of Law and Order of Discipline regarding Respondent, indicating that Respondent's North Carolina medical license was suspended indefinitely, beginning April 2, 2010.

On July 14, 2010, I issued an order directing Respondent to reply to the Government's motion no later than July 20, 2010. On July 20, 2010, Respondent filed a Motion for Enlargement of Time to respond to the Government's motion, requesting an extension of time until August 20, 2010, on the grounds that counsel for Respondent needed ''additional time to consult with [Respondent] and prepare a response to the Government's motion.'' I afforded Respondent an extension of time until July 29, 2010, to reply to the Government's motion. To date, Respondent has failed to file a response to the Government's motion or to request an additional extension of time.

Discussion

Loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration under 21 U.S.C. 824(a)(3). Accordingly, this agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business. *See Scott Sandarg, D.M.D.,* 74 FR 17528 (DEA 2009); *David W. Wang, M.D.,* 72 FR 54297 (DEA 2007); *Sheran Arden Yeates, M.D.,* 71 FR 39130 (DEA 2006); *Dominick A. Ricci, M.D.,* 58 FR 51104 (DEA 1993); *Bobby Watts M.D.,* 53 FR 11919 (DEA 1988). In the instant case, the Government asserts, and Respondent does not deny, that Respondent's North Carolina medical license is indefinitely suspended.

Summary disposition is warranted if the period of suspension is temporary, or if there is the potential for reinstatement of state authority because ''revocation is also appropriate when a state license had been suspended, but with the possibility of future reinstatement.'' *Stuart A. Bergman, M.D.,* 70 FR 33193 (DEA 2005); *Roger A. Rodriguez, M.D.,* 70 FR 33206 (DEA 2005).

It is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. *See Layfe Robert Anthony, M.D.,* 67 FR 35582 (DEA 2002); *Michael G. Dolin, M.D.,* 65 FR 5661 (DEA 2000). *See also Philip E. Kirk, M.D.,* 48 FR 32887 (DEA 1983), aff'd *sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *Puerto Rico Aqueduct and Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994).

As noted above, there remain no material disputed facts. The Government asserted with uncontroverted evidence that Respondent is without state authority to handle controlled substances in North Carolina at the present time. In these circumstances, I conclude that further delay in ruling on the Government's motion for summary disposition is not warranted. I therefore find that the motion for summary disposition is properly entertained and granted.

Further, inasmuch as Respondent has failed to respond to the directives issued in this proceeding, and has not shown good cause for such failure, I also find that Respondent has waived his right to a hearing under 21 CFR 1301.43(d).

[1] Based on the findings of the North Carolina Medical Board, which led it to impose an indefinite suspension of Respondent's state medical license, I conclude that the public interest requires that this Order be made effective immediately. *See* 21 CFR 1316.67.

Recommended Decision

I grant the Government's Motion for Summary Disposition and recommend that Respondent's DEA registration be revoked and any pending applications denied.

Dated: July 30, 2010.

Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2011–29721 Filed 11–16–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–3]

Silviu Ziscovici, M.D.; Decision and Order

On December 10, 2010, Administrative Law Judge (ALJ) Timothy D. Wing, issued the attached recommended decision. The Respondent did not file exceptions to the decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BZ4692756, issued to Silviu Ziscovici, M.D., be, and it hereby is, revoked. I further order that any pending application of Silviu Ziscovici, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

Dated: November 8, 2011.

Michele M. Leonhart,

Administrator.

Christine M. Menendez, Esq., for the Government

Peter D. Greenspun, Esq., for the Respondent

Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* to determine whether Respondent's Certificate of Registration (COR) with the Drug Enforcement Administration (DEA) should be revoked and any pending applications for renewal or modification of that registration denied. Without this registration, Respondent Silviu Ziscovici, M.D. (Respondent), would be unable to lawfully possess, prescribe, dispense or otherwise handle controlled substances.

I. Procedural Posture

On September 15, 2010, the Deputy Administrator, DEA, issued an Order to Show Cause and Immediate Suspension (OSC/IS) of DEA COR BZ4692756, dated September 15, 2010, and served on Respondent on September 22, 2010. The OCS/IS alleged that Respondent's continued registration constitutes an imminent danger to the public health and safety. The OSC/IS also provided notice to Respondent of an opportunity to show cause as to why the DEA should not revoke Respondent's DEA COR BZ4692756 pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal or modification, on the grounds that Respondent's continued registration would be inconsistent with the public interest under 21 U.S.C. 823(f). On October 18, 2010, Respondent, through counsel, in a letter dated October 15, 2010, timely requested a hearing with the DEA Office of Administrative Law Judges (OALJ).

I issued an Order for Prehearing Statements on October 19, 2010. The parties filed prehearing statements, and on November 23, 2010, I issued a Prehearing Ruling.

On December 2, 2010, the Government filed a Motion for Summary Disposition, with a copy served on Respondent via facsimile on December 2, 2010, and another copy sent via U.S. mail. On December 2, 2010, I issued an order staying the proceedings until the resolution of the Government's motion. Pursuant to the November 23, 2010 Order for Prehearing Statements, Respondent had until ''4:00 p.m. EST three business days after the date of service of [the Government's] motion[ ] to file a response * * * In the absence of good cause, failure to file a written response to the moving party's motion will be deemed a waiver of objection.'' (Prehearing Ruling at 6.)

As of December 10, 2010, six business days after service of the Government's motion for summary disposition, Respondent had not filed a response. Respondent is therefore deemed to waive any objection to the Government's motion. This waiver of objection does not mean that I will automatically grant the relief requested by the Government. Instead, I will carefully consider the merits of the Government's positions, taking into consideration Respondent's lack of objection, but only granting whatever relief may be warranted by the law and the facts.

II. The Parties' Contentions

A. The Government

In support of its motion for summary disposition, the Government asserts that on December 1, 2010, the Maryland State Board of Physicians [2] issued an order immediately suspending Respondent's Maryland medical license, and that Respondent consequently lacks authority to possess, dispense or otherwise handle controlled substances in Maryland, the jurisdiction in which he maintains his DEA registration. The Government contends that such state authority is a necessary condition for maintaining a DEA COR and therefore asks that I summarily recommend to the Deputy Administrator that Respondent's COR be revoked and any pending application for renewal or modification be denied. In support of its motion, the Government cites agency precedent and attaches the ''Order for Summary Suspension of License to Practice Medicine'' issued by the Maryland State Board of Physicians, marked for identification as Exhibit A.

B. Respondent

As noted above, Respondent did not respond to the Government's Motion for Summary Disposition or seek an extension within the deadline for response and is therefore deemed to waive objection.

III. Discussion

At issue is whether Respondent may maintain his DEA COR given that Maryland has suspended his state license to practice medicine.

Under 21 U.S.C. 824(a)(3), a practitioner's loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration. Accordingly, this agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business. *See Scott Sandarg, D.M.D.,* 74 FR 17,528 (DEA 2009); *David W. Wang, M.D.,* 72 FR 54,297 (DEA 2007); *Sheran*

[1] For the same reasons that led me to order that Respondent's registration be immediately suspended, I conclude that the public interest necessitates that this Order be effective immediately. *See* 21 CFR 1316.67.

[2] The Government refers to the Maryland medical licensing body as the ''Maryland Board of Medicine'' (Mot. Summ. Disp. at 1.) Government Exhibit A, however, suggests the correct name is the Maryland State Board of Physicians. (Gov't Ex. A at 1.)

Arden Yeates, M.D., 71 FR 39,130 (DEA 2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (DEA 1993); *Bobby Watts M.D.,* 53 Fed. Reg. 11,919 (DEA 1988).

Summary disposition in a DEA suspension case is warranted even if the period of suspension of a respondent's state medical license is temporary, or even if there is the potential for reinstatement of state authority because ''revocation is also appropriate when a state license had been suspended, but with the possibility of future reinstatement.'' *Stuart A. Bergman, M.D.,* 70 FR 33,193 (DEA 2005); *Roger A. Rodriguez, M.D.,* 70 FR 33,206 (DEA 2005).

It is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. *See Layfe Robert Anthony, M.D.,* 67 FR 35,582 (DEA 2002); *Michael G. Dolin, M.D.,* 65 FR 5661 (DEA 2000); *see also Philip E. Kirk, M.D.,* 48 FR 32,887 (DEA 1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984). *Accord Puerto Rico Aqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994).

In the instant case, the Government asserts, and Respondent does not contest, that Respondent's Maryland medical license is presently suspended. This allegation is confirmed by Government Exhibit A. I therefore find there is no genuine dispute as to any material fact, and that substantial evidence shows that Respondent is presently without state authority to handle controlled substances in Maryland. Because ''DEA does not have statutory authority under the Controlled Substances Act to maintain a registration if the registrant is without state authority to handle controlled substances in the state in which he practices,'' *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (DEA 2006), I conclude that summary disposition is appropriate. It is therefore

Ordered that the hearing in this case, scheduled to commence on February 7, 2011, is hereby *canceled.*

Recommended Decision

I grant the Government's motion for summary disposition and recommend that Respondent's DEA COR BZ4692756 be revoked and any pending applications denied.

Dated: December 10, 2010.

Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2011–29720 Filed 11–16–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–66]

James L. Hooper, M.D.; Decision and Order

On August 9, 2011, Chief Administrative Law Judge (ALJ) John J. Mulrooney, II, issued the attached recommended decision. On August 25, 2011, the Respondent filed Exceptions to the ALJ's decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, and Respondent's Exceptions, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended order.[1]

In his Exceptions, Respondent contends ''that the proper decision is suspension'' of his DEA Registration to be effective co-extensively with the one-year suspension of his state license to practice medicine. Exceptions at 1. He argues that because his state license has been suspended for a definite period after which it will be ''automatic[ally] reinstate[d],'' his case is unlike those cases relied on by the Government and ALJ because they involved state suspensions which were of an indefinite or indeterminate duration. *Id.*

According to Respondent, the Agency's decision in *Anne Lazar Thorn, M.D.,* 62 FR 12847 (1997), stands for the proposition that the Agency's consistent practice of revoking registrations based on a loss of state authority ''rests on the indefinite nature of a State suspension.'' Exceptions at 1–2. Respondent quotes the following passage from *Thorn:*

> [T]he Acting Deputy Administrator recognizes that he has discretionary authority to either revoke or suspend a DEA registration. However, given the indefinite nature of the suspension of Respondent's state license to practice medicine, the Acting Deputy Administrator agrees with [the ALJ] that revocation is appropriate in this case.

Id. at 2 (quoting 62 FR at 12848).

Notwithstanding the implication of the above passage, no decision of this Agency has held that a suspension (rather than a revocation) is warranted where a State has imposed a suspension of a fixed or certain duration. To the contrary, in the case of practitioners, DEA has long and consistently interpreted the CSA as mandating the possession of authority under state law to handle controlled substance as a fundamental condition for obtaining and maintaining a registration. *See, e.g., Leonard F. Faymore,* 48 FR 32886, 32887 (1983) (collecting cases). As the *Thorn* decision further explained:

> DEA has consistently interpreted the Controlled Substances Act to preclude a practitioner from holding a DEA registration if the practitioner is without authority to handle controlled substances in the state in which he/she practices. This prerequisite has been consistently upheld.
>
> * * * * *
>
> The Acting Deputy Administrator finds that the controlling question is not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather it is whether the Respondent is currently authorized to handle controlled substances in the state. In the instant case, it is undisputed that Respondent is not currently authorized to handle controlled substances in the [state in which she practices medicine]. Therefore, * * * Respondent is not currently entitled to a DEA registration.

62 FR at 128438 (citing and quoting 21 U.S.C. 823(f) and 802(21) and collecting cases). Accordingly, in *Thorn,* the Agency rejected the Respondent's contention that her registration should be suspended rather than revoked.

Respondent nonetheless argues that ''[r]evocation is not mandated for a [state license] suspension for a time certain,'' and that ''[i]n such circumstances, suspension of the [DEA registration] is the more appropriate remedy.'' Exceptions at 3. Respondent returns to the *Thorn* language that '' '[t]he Acting Deputy Administrator recognizes that he has the discretionary authority to either revoke or suspend a DEA registration,' '' and argues that ''[t]here are reason[s] the statutory framework (21 U.S.C. 824(a)) provides for both suspension and revocation. The [ALJ's] Recommended Decision reads the suspension option out of the statute.'' *Id.*

It is acknowledged that the opening sentence of section 824(a) provides that a registration ''may be suspended or revoked by the Attorney General'' upon the Attorney General's finding that one of the five grounds set forth exist. 21 U.S.C. 824(a). However, Respondent does not elaborate on the ''reason[s]'' Congress granted the Agency authority to suspend or revoke and how they apply in the context of a proceeding brought under section 824(a)(3). In any event, this general grant of authority in imposing a sanction must be reconciled with the CSA's specific provisions which mandate that a practitioner hold

[1] All citations to the ALJ's recommended decision are to the slip opinion as issued by the ALJ.

authority under state law in order to obtain and maintain a DEA registration. *See Gozlon-Peretz* v. *United States,* 498 U.S. 395, 407 (1991) (''A specific provision controls over one of more general application.''); *see also Bloate* v. *United States,* 130 S.Ct. 1345, 1354 (2010) (quoting *D. Ginsberg & Sons, Inc.,* v. *Popkin,* 285 U.S. 204, 208 (1932) (''General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.'')).

In enacting the CSA, Congress defined the term ''practitioner'' to ''mean[] a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Consistent with this definition, Congress, in setting forth the requirements for obtaining a practitioner's registration, directed that ''[t]he Attorney General shall register practitioners * * * to dispense * * * controlled substances * * * *if the applicant is authorized* to dispense * * * controlled substances under the laws of the State in which he practices.''' *Id.* § 823(f) (emphasis added). As these provisions make plain, a practitioner can neither obtain nor maintain a DEA registration unless the practitioner currently has authority under state law to handle controlled substances. Moreover, Respondent ignores that even where a practitioner's state license has been suspended for a period of certain duration, the practitioner no longer meets the statutory definition of a practitioner. Accordingly, notwithstanding the language of the grant of authority in section 824(a), I conclude that the revocation of Respondent's registration is warranted.[2]

Finally, Respondent argues that while the Consent Order constitutes resolution of the Board's charges, he did ''*not* admit any of the facts found or any wrongdoing.'' Exceptions, at 4 n.1. As stated above, Respondent's argument is not well taken because the State's action in suspending his medical license is by itself, and independent ground to revoke his registration. 21 U.S.C. 824(a)(3).

Accordingly, I will adopt the ALJ's recommended decision and will order that Respondent's DEA registration be revoked and that any pending applications for renewal be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BH4289028, issued to James L. Hooper, M.D., be, and it hereby is, revoked. I further order that any pending application of James L. Hooper, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[3]

Dated: November 8, 2011.

Michele M. Leonhart,

Administrator.

Jonathan P. Novak, Esq., for the Government

Allen H. Sachsel, Esq., for the Respondent

Order Granting Motion for Summary Disposition and Recommended Decision

John J. Mulrooney, II, Chief Administrative Law Judge. The Deputy Assistant Administrator, Drug Enforcement Administration (DEA or Government), issued an Order to Show Cause (OSC), dated June 27, 2011, proposing to revoke the DEA Certificate of Registration (COR), Number BH4289028, of James L. Hooper, M.D. (Respondent), pursuant to 21 U.S.C. 824(a)(3) and (4) (2006), because, according to the Government, the Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) (2006 & Supp. III 2010). Among several alleged factual predicates presented in support of revocation, the Government's OSC alleges that the Respondent is without authority to handle controlled substances in Maryland, the registered location of his COR. OSC at 1.

On July 22, 2011, the Respondent, through counsel, filed a timely request for hearing (Hearing Request). Therein, the Respondent conceded that he is presently under a one-year suspension from the practice of medicine by the Maryland Board of Physicians (Maryland Board) and acknowledged that he has turned in his DEA COR to that body.

On July 25, 2011, I issued an order which directed, *inter alia,* that the Government provide evidence to support its allegation that the Respondent lacks authority to handle controlled substances in the state in which he is registered with DEA, and set out a schedule for the parties to brief the issues.

On July 26, 2011, the Government timely filed a document styled ''Motion for Summary Disposition'' (Motion for Summary Disposition), wherein it avers that the Respondent was licensed by the state of Maryland to practice medicine, but through a Consent Order between the Respondent and the Maryland Board of Physicians effective June 7, 2011 (attached to the Motion for Summary Disposition), his state medical license was, *inter alia,* suspended for a period of one year. *See* Gov't Mot. for Summ. Dispo. at 1, Ex. A at 23. The Government has simultaneously requested a stay of proceedings pending a ruling on its Motion for Summary Disposition. *Id.* at 2.[1]

On its face, the Consent Order from the Maryland Board suspends the Respondent's license with the voluntary assent of the Respondent, *id.,* Ex. A at 27, after concluding that, *inter alia,* ''Respondent is guilty of unprofessional conduct in the practice of medicine, in violation of [Md. Code Ann., Health Occ.] § 14–404(a)(3)(ii); is professionally * * * incompetent, in violation of [Md. Code Ann., Health Occ.] § 14–404(a)(4); and [had] prescribed * * * drugs for * * * illegitimate medical purposes in violation of [Md. Code Ann., Health Occ.] § 14–404(a)(27),'' *id.,* Ex. A at 23. Persistently scrutinized among the Board's findings is the Respondent's prescribing practices related to controlled substances.

In its motion, the Government correctly contends that state authority is a necessary condition precedent for the acquisition or maintenance of a DEA registration, and the suspension of the Respondent's state practitioner's license precludes the continued maintenance of his DEA COR, thus requiring revocation. *Id.* at 1–2; *see id.,* Ex. A at 23.

The Respondent's timely-filed response in opposition asserts, in essence, that the CSA does not strictly require COR revocation pursuant to 21 U.S.C. 824(a)(3) where a registrant's state license has been suspended and the registrant has lost state authorization to dispense controlled substances. Resp't Resp. at 3. The Respondent argues that sanctions provided for under the CSA that are less severe than revocation are appropriate, such as

[2] This case presents no occasion to consider whether a state suspension of a practitioner's controlled substance authority is of such a short duration that revocation of his registration would be deemed arbitrary and capricious.

[3] Based on the extensive findings set forth in the State Consent Order establishing that Respondent diverted controlled substances, and the State Board's ultimate conclusion that he ''prescribed * * * drugs for illegitimate medical purposes in violation of state law,'' GX A, at 23; I conclude that the public interest requires that this Order be made effective immediately. 21 CFR 1316.67.

[1] At present, there are neither directives pending compliance, nor are there outstanding event dates scheduled by this tribunal, aside from the briefing schedule previously issued in this matter.

suspension of his COR.[2] *Id.* As a mitigating basis for a sanction recommendation less than revocation, the Respondent points out that the cases cited by the Government in its summary disposition motion involve DEA COR revocations based on a state disciplinary action other than a temporary, definite-period suspension of a state medical license. *Id.* For that reason, the Respondent argues that a summary disposition in these DEA proceedings, based on the suspension of his state licensure, would be inconsistent ''with the rationale of prior DEA decisions.'' *Id.* at 4.

The Respondent also argues that the structure of the Consent Order somehow affects the Agency's ability to issue or maintain a COR in the absence of state authority. Specifically, the Respondent posits that under his circumstances, where ''a self-executing [o]rder * * * restores [his] medical license * * * automatically, and at a time certain,'' that the appropriate remedy is ''suspension coextensive with the loss of State privileges * * * and [that] is consistent with the rationale of prior DEA decisions.'' Resp't Resp. at 4–5 (emphasis removed). However, the plain language employed by the Agency in the principal case cited by the Respondent in support of his position, *Anne Lazar Thorn,* M.D., 62 FR 12847 (1997), undermines any action short of summary revocation. In *Thorn,* the Agency affirmed the Administrative Law Judge's summary disposition recommended decision and specifically rejected the view that a COR could coexist in the face of an absence of state authority to handle controlled substances. In that case, the Agency held that:

> *the controlling question is* not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is *whether the Respondent is currently authorized to handle controlled substances in the state.* In the instant case, it is undisputed that Respondent is not currently authorized to handle controlled substances in the [state where his COR has its listed address]. Therefore, * * * Respondent is not currently entitled to a DEA [COR].

Id. at 12848 (emphasis supplied). The controlling question posed on the acknowledged facts here must, like the Respondent's petition for a hearing, be answered in the negative. In this regard, it is also imperative to acknowledge that it is DEA's responsibility to determine suitability to maintain a COR, not the Maryland Board. *See Edmund Chein, M.D.,* 72 FR 6580, 6590 (2007) (ultimate responsibility to determine whether a registration is consistent with the public interest has been delegated exclusively to the DEA, not to entities within state government), *aff'd, Chein* v. *DEA,* 533 F.3d 828 (DC Cir. 2008), *cert. denied,* __ U.S. __, 129 S. Ct. 1033, 1033 (2009); *Mortimer B. Levin, D.O.,* 55 FR 8209, 8210 (1990) (even reinstatement of state medical license does not affect DEA's independent responsibility to determine whether a registration is in the public interest). The considerations employed by, and the public responsibilities of, a state medical board in determining whether a practitioner may continue to practice within its borders are not coextensive with those attendant upon the determination that must be made by DEA relative to continuing a registrant's authority to handle controlled substances. Put another way, adopting the Respondent's argument would imbue the drafters of state medical board orders to circumscribe the options of the DEA relative to its registrants. Such a result finds no support in the statutes and regulations governing DEA or the Maryland Board and is contrary to logic.

In *Calvin Ramsey, M.D.,* 76 FR 20034, 20036 (2011), the Agency stated its position regarding the current factual scenario with such unambiguous precision that little room is realistically left for debate on the matter:

> DEA has repeatedly held that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *David W. Wang,* 72 [FR] 54297, 54298 (2007); *Sheran Arden Yeates,* 71 [FR] 39130, 39131 (2006); *Dominck A. Ricci,* 58 [FR] 51104, 51105 (1993); *Bobby Watts,* 53 [FR] 11919, 11920 (1988). This is so even where a state board has suspended (as opposed to revoked) a practitioner's authority with the possibility that the authority may be restored at some point in the future. [*Roger A. Rodriguez,* 70 FR 33206, 33207 (2005)].

The Controlled Substances Act (CSA) requires that a practitioner must be currently authorized to handle controlled substances in ''the jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''); *see also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). Therefore, because ''possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration,'' this Agency has consistently held that ''the CSA *requires* the revocation of a registration issued to a practitioner who lacks [such authority].'' *Alfred E. Boyce, M.D.,* 76 FR 17672, 17673 (2011) (emphasis supplied) (quoting *Scott Sandarg, D.M.D.,* 74 FR 17528, 174529 (2009); *John B. Freitas, D.O.,* 74 FR 17524, 17525 (2009)); *Roy Chi Lung,* 74 FR 20346, 20347 (2009); *Roger A. Rodriguez, M.D.,* 70 FR 33206, 33207 (2005); *Stephen J. Graham, M.D.,* 69 FR 11661 (2004); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Abraham A. Chaplan, M.D.,* 57 FR 55280 (1992); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Denial of an application or revocation of a registration via a summary disposition procedure is also warranted if the period of a suspension is temporary, or if there exists the potential that Respondent's state controlled substances privileges will be reinstated, because ''revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement,'' *Rodriguez,* 70 FR at 33207 (citations omitted), and even where there is a judicial challenge to the state medical board action actively pending in the state courts. *Michael G. Dolin, M.D.,* 65 FR 5661, 5662 (2000).

In order to revoke a registrant's DEA registration, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e) (2011). Once DEA has made its *prima facie* case for revocation of the registrant's DEA COR, the burden of production then shifts to the Respondent to show that, given the totality of the facts and circumstances in the record, revoking the registrant's registration would not be appropriate. *Morall* v. *DEA,* 412 F.3d 165, 174 (DC Cir. 2005); *Humphreys* v. *DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz* v. *U.S. Dept. of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 FR 72311 (1980).

Regarding the Government's request for summary disposition of the present case, it is well-settled that where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, *see Jesus R. Juarez, M.D.,* 62 FR 14945 (1997); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993), under the rationale that Congress does not intend for administrative agencies to perform meaningless tasks.

[2] *See* 21 U.S.C. 824(a) (2006) (''A registration * * * may be *suspended* or revoked * * *'') (emphasis supplied).

See Philip E. Kirk, M.D., 48 FR 32887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994); *NLRB* v. *Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consol. Mines & Smelting Co.,* 455 F.2d 432, 453 (9th Cir. 1971). To paraphrase the Agency's view as stated in *Ramsey,*

> [t]here being no dispute that the Respondent lacks the requisite authority, there [is] no need for an evidentiary hearing, as summary judgment has been used for more than 100 years to resolve legal ''actions in which there is no genuine issue as to any material fact'' and has never been deemed to violate Due Process. See Fed. R. Civ. P. 56 (Advisory Committee Notes 1937 Adoption). *Cf. Codd* v. *Velger,* 429 U.S. 624, 627 (1977).

76 FR at 20036.

The record evidence in the instant case clearly demonstrates that no genuine dispute exists over the established material fact that Respondent currently lacks state authority to handle controlled substances in Maryland, his state of registration with the DEA, since his state medical practitioner's license was suspended (with his own consent) on June 7, 2011. Notwithstanding the Respondent's arguments to the contrary, the dispositive consideration lies in his absence of state authority to handle controlled substances, which inexorably dictates that he is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that can provide the Agency with authority to continue (or *a fortiori* for me to recommend) his entitlement to a COR under the circumstances, and further delay in ruling on the Government's Motion for Summary Disposition is not warranted.

Accordingly, the Government's Motion for Summary Disposition is hereby *granted,* its motion for a stay of proceedings is *denied* as moot, and in view of the presently uncontroverted fact that the Respondent lacks state authority to handle controlled substances, it is herein recommended that the Respondent's DEA registration be *revoked* forthwith and any pending applications for renewal be denied.

Dated: August 9, 2011.

John J. Mulrooney, II,

Chief Administrative Law Judge.

[FR Doc. 2011–29709 Filed 11–16–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–54]

Joseph Giacchino, M.D.; Decision and Order

On July 9, 2010, Administrative Law Judge (ALJ) Timothy D. Wing, issued the attached recommended decision. The Respondent did not file exceptions to the decision.

Having reviewed the record in its entirety including the ALJ's recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

Respondent contends that because the State of Illinois has not issued a final determination as to whether his licenses should be suspended or revoked, DEA lacks authority to revoke his registration. Respondent's Resp. to Mot. for Summ. Disp., at 2. He argues that 21 U.S.C. 824(a)(3) ''expressly contemplates a final decision of the state agency, as it contains the plain and ordinary language that the physician is 'no longer authorized''' to handle controlled substances, that ''the future status of [his] license is uncertain and subject to procedural safeguards before a final determination is made,'' and that interpreting the statute ''to apply to 'temporary' suspensions, which are uncertain and transitory, is not consistent with the language'' of the statute. *Id.* at 3.

Respondent ignores that the Controlled Substances Act (CSA) defines ''[t]he term 'practitioner' [to] mean[] a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to dispense * * * a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). He also ignores that the CSA expressly requires, as a condition of obtaining a registration, that a practitioner be ''authorized to dispense * * * controlled substances under the laws of the State in which he practices.'' *Id.* § 823(f).

Furthermore, in 21 U.S.C. 824(a)(3), Congress expressly authorized the revocation of a DEA registration issued to a registrant whose ''State license or registration [has been] suspended * * * by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances * * * or has had the suspension, revocation, or denial of his registration recommended by competent State authority.'' Thus, the CSA expressly grants the Agency authority to revoke where a practitioner's state authority is under a suspension, which by definition is a sanction of finite duration. *See Merriam-Webster's Collegiate Dictionary* 1187 (10th ed. 1998) (defining ''suspend'' as ''to debar temporarily from a privilege * * * or function'').

Nothing in the statute precludes DEA from revoking a registration in those cases where a practitioner's state authority has been summarily suspended. Indeed, that Congress has authorized revocation where the suspension or revocation of a practitioner's state license or registration has merely been recommended by state authority, demonstrates that DEA is not required to await a final decision from the State before acting to revoke his registration. Thus, for purposes of the CSA, it does not matter that Illinois suspended Respondent's medical license and state registration prior to a hearing, at which he may ultimately prevail. *See, e.g., Bourne Pharmacy,* 72 FR 18,273, 18,274 (2007); *Agostino Carlucci, M.D.,* 49 FR 33,184, 33,184–85 (1984). Rather, what matters—as DEA has repeatedly held—is whether Respondent is without authority under Illinois law to dispense a controlled substance. *See Oakland Medical Pharmacy,* 71 FR 50,100, 50,102 (2006) (''a registrant may not hold a DEA registration if it is without appropriate authority under the laws of the state in which it does business''); *Accord Rx Network of South Florida, LLC,* 69 FR 62,093 (2004); *Wingfield Drugs, Inc.,* 52 FR 27,070 (1987). Because it is undisputed that Respondent currently lacks authority under Illinois law to dispense controlled substances, I reject Respondent's argument.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, BG6335485, issued to Joseph Giacchino, M.D., be, and it hereby is, revoked. I further order that any pending application of Joseph Giacchino, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

[1] In suspending Respondent's state licenses, the Illinois Department of Financial and Professional Regulation found that the public interest and safety ''imperatively require emergency action.'' *Department of Fin. and Prof. Reg.* v. *Joseph Giacchino, M.D.,* No. 2009–04502 (Ill. Dep't Fin. & Prof. Reg. Apr. 22, 2010) (suspension order at 1). For the same reason, I conclude that the public interest requires that this Order be effective immediately. 21 CFR 1316.67.

Dated: November 8, 2011.

Michele M. Leonhart,

Administrator.

James Hambuechen, Esq., for the Government

Gerald G. Goldberg, Esq., for the Respondent

Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication governed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* to determine whether Respondent's Certificate of Registration with the Drug Enforcement Administration (DEA) should be revoked and any pending applications for renewal or modification of that registration denied. Without this registration, Respondent, Joseph Giacchino, M.D., would be unable to lawfully possess, prescribe, dispense or otherwise handle controlled substances.

On April 22, 2010, the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation, ordered that Respondent's Physician and Surgeon License and Controlled Substance License be temporarily suspended pending further state proceedings. On April 30, 2010, the Deputy Assistant Administrator, Office of Diversion Control, DEA, issued an Order to Show Cause why DEA should not revoke Respondent's DEA Certificate of Registration, BG6335485, on the ground that Respondent lacked authority to handle controlled substances in Illinois, the state in which he maintained his DEA registration. Respondent, through counsel, timely requested a hearing on the issues raised in the Order to Show Cause.

The Government subsequently filed a Motion for Stay of Proceedings and Summary Disposition, asserting that on April 22, 2010, the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation, ordered that Respondent's Physician and Surgeon License and Controlled Substance License be suspended and that Respondent consequently did not have authority to possess, dispense or otherwise handle controlled substances in Illinois, the jurisdiction in which he maintained his DEA registration. The government contended that such state authority is a necessary condition for DEA registration and therefore asked that I issue an order of temporary stay with regard to further filing deadlines in the instant case. The Government further requested that I grant the Government's motion for summary disposition and recommend to the Deputy Administrator that Respondent's registration be revoked. Counsel for the Government attached to the motion a copy of the Notice of Temporary Suspension issued to Respondent by the State of Illinois Department of Financial and Professional Regulation, Division of Professional Regulation. The notice included an Order that suspended Respondent's Illinois Physician and Surgeon License and Controlled Substance License, effective April 22, 2010, ''pending proceedings before an Administrative Law Judge at the Department of Financial and Professional Regulation and the Medical Disciplinary Board of the State of Illinois.''

Respondent replied to the Government's motion on June 23, 2010, asserting that because the suspension of Respondent's Illinois Physician and Surgeon License and Controlled Substances License is merely temporary, the status of Respondent's state license is uncertain. Respondent argues that the Government's motion is therefore premature.

Discussion

Loss of state authority to engage in the practice of medicine and to handle controlled substances is grounds to revoke a practitioner's registration under 21 U.S.C. 824(a)(3). Accordingly, this agency has consistently held that a person may not hold a DEA registration if he is without appropriate authority under the laws of the state in which he does business. See *Scott Sandarg, DMD,* 74 FR 17528 (DEA 2009); *David W. Wang, M.D.,* 72 FR 54297 (DEA 2007); *Sheran Arden Yeates, M.D.,* 71 FR 39130 (DEA 2006); *Dominick A. Ricci, M.D.,* 58 FR 51104 (DEA 1993); *Bobby Watts M.D.,* 53 FR 11919 (DEA 1988). In the instant case, the Government asserts, and Respondent does not deny, that Respondent's Illinois Physician and Surgeon License and Controlled Substance License are temporarily suspended.

Summary disposition is warranted if the period of suspension is temporary, or if there is the potential for reinstatement of state authority because ''revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement.'' *Stuart A. Bergman, M.D.,* 70 FR 33193 (DEA 2005); *Roger A. Rodriguez, M.D.* 70 FR 33206 (DEA 2005). Respondent's argument that 21 U.S.C. 824(a)(3) ''expressly contemplates a final decision of the state agency'' is not supported by agency precedent.

It is well settled that when no questions of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required, under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. See *Layfe Robert Anthony, M.D.,* 67 FR 35582 (DEA 2002); *Michael G. Dolin, M.D.,* 65 FR 5661 (DEA 2000). See also *Philip E. Kirk, M.D.,* 48 FR 32887 (DEA 1983), aff'd *sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *Puerto Rico Aqueduct and Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994).

As noted above, in the instant case it is clear that there are no material disputed facts. The Government asserted and Respondent did not deny that Respondent is without state authority to handle controlled substances in Illinois at the present time. In these circumstances, I conclude that further delay in ruling on the Government's motion for summary disposition is not warranted. I therefore find that the motion of summary disposition is properly entertained and granted.

Recommended Decision

I grant the Government's Motion for Summary Disposition and recommend that Respondent's DEA registration be revoked and any pending applications denied.

Dated: July 9, 2010.

Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2011–29692 Filed 11–16–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Scott D. Fedosky, M.D.; Denial of Application

On March 30, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Scott D. Fedosky, M.D. (Respondent), of Fayetteville, Arkansas. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner, on the ground that his ''registration would be inconsistent with the public interest.'' Show Cause Order, at 1 (citing 21 U.S.C. 823(f)).

More specifically, the Show Cause Order alleged that ''from December 1999 through September 2003,'' Respondent had ''issued fraudulent prescriptions for

controlled substances, specifically hydrocodone under other names to obtain [the drug] for [his] personal use,'' and that he had ''voluntarily surrendered'' his previous registration ''for cause.'' *Id.* at 1. The Show Cause Order further alleged that on February 16, 2006, Respondent applied for a new registration but that he ''[s]ubsequently * * * admitted to obtaining and diverting the controlled substance, Nubain for [his] own use and voluntarily withdrew [his] application for registration.'' *Id.* Finally, the Show Cause Order alleged that Respondent ''illegally possessed controlled substances in violation of the Arkansas Medical Practice Act'' and that his ''repeated drug abuse and diversion of controlled substances is inconsistent with the public interest.'' *Id.* at 2.

On May 3, 2010, Respondent submitted a letter to the Hearing Clerk, Office of Administrative Law Judges, in which he acknowledged receipt of the Show Cause Order. Letter from Respondent to Hearing Clerk (May 3, 2010). Respondent further waived his right to a hearing and submitted the letter ''as a written statement of position.'' *Id.* Thereafter, the Government filed with my Office a Request for Final Agency Action along with the Investigative Record.

Having considered the entire record, including Respondent's statement of position and supporting letter, I conclude that the Government has made out a *prima facie* case to deny his application. I further conclude that while Respondent has accepted responsibility for his misconduct, his evidence is not sufficient to establish that he can be entrusted with a new registration. Accordingly, his application will be denied. I make the following findings of fact.

Findings

On June 12, 2009, Respondent, who holds a medical license issued by the Arkansas State Medical Board, applied for a DEA Certificate of Registration as a practitioner in schedules II through V. Respondent previously held DEA Registration BF5374234. However, between December 1999 and September 2003, Respondent wrote fraudulent prescriptions for hydrocodone, a schedule III controlled substance, ''in the name of family members and an individual identified as 'S.J.''' to obtain drugs which he diverted ''for his own use.'' Order at 1, *In re Scott David Fedosky, M.D.* (Ark. Med. Bd. Feb. 17, 2004). On October 8, 2003, Respondent voluntarily surrendered his registration.

On February 6, 2004, Respondent appeared before the Arkansas Board. *Id.* On February 17, 2004, the Board found that Respondent had ''violated the laws of the United States or the State of Arkansas regulating the possession, distribution and prescribing of scheduled medication, more specifically, the writing of fraudulent prescriptions for scheduled medication and diverting the same for his own use and benefit.'' *Id.* The Board also found that Respondent had violated state law in that he ''ha[d] exhibited habitual or excessive use of narcotics or other dangerous or habit forming drugs.'' *Id.* The Board then revoked Respondent's medical license but stayed the revocation provided that he, *inter alia,* enter into, and comply with, a ''rehabilitation and monitoring'' contract ''with the Arkansas Medical Foundation for five (5) years.'' *Id.* at 2.

Pursuant to the contract, Respondent was required ''to refrain from the use of any scheduled medication not prescribed by a physician'' and from taking any prescribed medication prior to reporting it to the Arkansas Medical Foundation; he was also required ''to attend meetings'' of one of several self-help organizations such as AA or NA and to provide proof of his attendance to the Foundation. Order at 2, *In re Scott David Fedosky, M.D.* (Ark. Med. Bd. Feb. 9, 2005). However, on October 20, 2004, Respondent ''tested positive for a metabolite of Propoxyphene, thus violating the terms of his contract with the'' Foundation. *Id.* at 3. Moreover, Respondent also failed to attend Caduceus meetings as required by his contract. *Id.*

The Board thus found that Respondent had violated its previous order and the Arkansas Medical Practice Act, and required him to enter into a new five-year contract with the Arkansas Medical Foundation. *Id.* The Board also required Respondent to undergo a psychiatric evaluation, that he provide reports from his psychiatrist every two months, and that he ''obtain a sponsor to counsel him and assist him in rehabilitation''; the Board also re-imposed the other conditions of the 2004 order. *Id.; see also* Amendment to Order at 1 (Ark. Med. Bd. Mar. 31, 2005).

On June 8, 2006, the Board conducted another hearing, at which it found that Respondent had ''obtained and diverted for his own use Nalbuphine,'' and had thus violated his contract with the Arkansas Medical Foundation. Order at 2, *In re Scott David Fedosky, M.D.,* (Ark. Med. Bd. June 21, 2006). The Board again found that Respondent had violated the Medical Practice Act, its February 9, 2005 order, as well his contract ''by taking controlled substances or mind altering drugs.'' *Id.* The Board then revoked Respondent's medical license. *Id.* at 3.

On December 7, 2007, Respondent appeared before the Board to discuss his status. The Board agreed to allow him to reapply upon his presenting proof that he had passed the Special Purpose Examination, which is used to assess a previously licensed (or currently licensed) physician's level of medical knowledge. On February 7, 2008, Respondent appeared before the Board and presented evidence that he had passed the examination. The Board then voted to reinstate Respondent's medical license with the stipulations that he continue to comply with his contract with the Arkansas Medical Foundation and that he attend Caduceus meetings; the Board, however, barred him from re-applying for a DEA registration.

On October 3, 2008, Respondent again appeared before the Board and sought permission to re-apply for a DEA registration. The Board, however, unanimously rejected his request. On June 5, 2009, Respondent again appeared before the Board and sought permission to re-apply for a DEA registration. The Board voted unanimously to approve his request. DEA, however, denied his request and served him with the Show Cause Order, which initiated this proceeding.

In his letter which he submitted in lieu of his hearing, Respondent wrote that he had ''carefully reviewed the information in the Order To Show Cause,'' that ''DEA rightfully accepted the surrender of [his] license [in] 2004,'' and that ''the history as set forth [in the Order] is factual.'' Resp. Ltr. at 1. Continuing, Respondent wrote: ''The fact that the prescriptions were obtained fraudulently understandably creates the issue of self treatment and misuse of the privilege of a DEA license and could be construed as my being a threat to the public welfare.'' *Id.* Acknowledging that his medical license had been revoked for this reason, Respondent explained that ''[s]ince that time I have come to a very real understanding that having a license to practice medicine is a privilege and not a right connected to my level of education. My DEA license was also a privilege that I did not, at that time, appreciate or protect as I should have.'' *Id.*

Respondent also wrote that he had ''voluntarily entered into a monitoring program with the Arkansas Medical Foundation in September 2006 and have documented sobriety since that time,'' and that the Arkansas Board, has ''deemed it appropriate for me to reapply for the DEA registration, giving their support in June 2009.'' *Id.*

Respondent stated that in his sixteen years of medical practice, he had never harmed a patient nor ever been the subject of a complaint by a patient. He further explained that:

> I have other accountability factors in my life that are a part of my current situation that is markedly different than my previous situation. These include, but are not limited to, attending 12 step and caduceus meetings regularly, continued monitoring by the Arkansas Medical Foundation and the Arkansas State Medical Board and the strong support of my spouse, my family and my friends.

Id. Respondent thus maintained that he does ''not pose a threat to the public'' and ''respectfully request[ed] reinstatement of [his] DEA license.'' *Id.*

In support of his application, Respondent submitted two other documents: 1) A May 3, 2010 letter from J.B.B., an attorney who stated that he is a friend of Respondent; and 2) a June 15, 2009 letter from the Executive Secretary of the Arkansas State Medical Board. In his letter, J.B.B. acknowledged ''that there has been good reason for [Respondent] not to have a license,'' but that there are three reasons why he believed his application should be granted. These were: (1) That no patient had ever filed a complaint against Respondent; (2) that no physician or pharmacist had ever filed a complaint against him ''for over prescribing or mis-prescribing to a patient,'' and (3) that he had only ''prescribed to himself and had done no harm to the public.'' J.B.B. further stated his ''opinion that [Respondent] has adequately addressed his personal problem fully.''

The Medical Board's letter noted that Respondent had appeared before it during the June 4–5 meeting. The letter further stated that the Board had voted to allow him ''to reapply for [his] DEA permit.''

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that an application for a practitioner's registration may be denied upon a determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination in the case of a practitioner, Congress directed that the following factors be considered:

> (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
>
> (2) The applicant's experience in dispensing * * * controlled substances.
>
> (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
>
> (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
>
> (5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are considered in the disjunctive.'' *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether * * * to deny an application. *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005) (citing *Morall* v. *DEA,* 412 F.3d 165, 173–74 (DC Cir. 2005)).

In the case of a practitioner, the Government has the burden of proving with substantial evidence that granting an application would be inconsistent with the public interest. However, where the Government makes out a *prima facie* case to deny an application, the burden shifts to the applicant to show why granting the application would be consistent with the public interest.

In this matter, I conclude that the Government has established a *prima facie* case to deny Respondent's application. While I find that Respondent's written statement establishes that he has accepted responsibility for his misconduct, I conclude that he has not produced sufficient evidence on the issue of his rehabilitation.

Factors One and Three—the Recommendation of the State Licensing Board and Respondent's Record of Convictions Related to the Manufacture, Distribution or Dispensing of Controlled Substances

The record establishes that on June 5, 2009, Respondent appeared before the Arkansas State Medical Board and that the Board voted to allow him to apply for a new DEA registration. However, neither the Executive Secretary's letter, nor the minutes of the Board's June 5, 2009 meeting, state that the Board was recommending that DEA grant his application.

Accordingly, while Respondent now satisfies the CSA's requirement for obtaining a registration that he be ''authorized to dispense * * * controlled substances under the laws of the State in which he practices,'' 21 U.S.C. 823(f), under Agency precedent, this factor is not dispositive of the public interest inquiry. *Patrick Stodola,* 74 FR 20727, 20730 n.16 (2009); *Mortimer Levin,* 57 FR 8680, 8681 (1992).

I also note that there is no evidence in the record that Respondent has been convicted of an offense under either Federal or State law related to manufacture, distribution, or dispensing of a controlled substance. This factor thus supports a finding that granting Respondent's application would not be inconsistent with the public interest. However, because there are multiple reasons why a person may never be convicted of a criminal offense falling under factor three, let alone prosecuted for such an offense, DEA has long held that this factor is not dispositive. *Edmund Chein,* 72 FR 6580, 6593 n.22 (2007).

Factors Two, Four, and Five—Respondent's Experience in Dispensing Controlled Substances, Record of Compliance With Applicable Laws Related to Controlled Substances, and Such Other Conduct Which May Threaten Public Health and Safety

As established by the Arkansas Board's findings, between December 1999 and September 2003, Respondent wrote fraudulent prescriptions for hydrocodone, a schedule III narcotic,[1] in the names of family members and another individual, to obtain drugs which he then personally abused. Under Federal law, it is ''unlawful for any person knowingly or intentionally * * * to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge[.]'' 21 U.S.C. 843(a)(3).[2] The Board also found that Respondent violated state law by ''exhibit[ing] habitual or excessive use of narcotics or other dangerous or habit forming drugs.'' Order at 1, *In re Scott David Fedosky, M.D.* (Ark. Med. Bd. Feb. 17, 2004) (citing Ark. Code Ann. § 17–95–409(a)(2)(h)).

While the Board placed Respondent on probation and required that he enter into a rehabilitation and monitoring contract with the Arkansas Medical Foundation, which prohibited him from taking any scheduled medication that was not prescribed to him by a physician, approximately eight months later, he tested positive for a metabolite of propoxyphene, a schedule IV narcotic;[3] in addition, the Board found that Respondent had failed to attend Caduceus meetings. The Board found that Respondent had violated its previous order (and his contract with the Foundation), required that he enter into a new five-year contract with the Foundation and imposed additional

[1] *See* 21 CFR 1308.13(e).

[2] This was also a violation of Arkansas law.

[3] *See* 21 CFR 1308.14(b).

terms, including that he undergo a psychiatric evaluation and submit reports from his psychiatrist to the Board every two months. However, on June 8, 2006, the Board found that Respondent had ''obtained and diverted to his own use Nalbuphine,'' and thus violated both Arkansas law and his rehabilitation and monitoring contract.

Contrary to the allegations of the Show Cause Order, Nalbuphine is not a federally controlled substance. *See* 21 CFR Pt. 1308. The record nonetheless establishes that Respondent issued fraudulent prescriptions for hydrocodone, which he then diverted, and that he has abused both hydrocodone and propoxyphene. *See* 21 U.S.C. 843(a)(3); *see also id.* 844(a) (''It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter * * * .''). In addition to these violations, which are properly considered under Factors Two and Four, DEA has also long held that a practitioner's self-abuse of a controlled substance can be considered under Factor Five even if there is no evidence that the practitioner abused his prescription-writing authority or otherwise engaged in an unlawful distribution to others. *See Tony T. Bui, M.D.,* 75 FR 49979, 49989–90 (2010) (collecting cases); *see also David E. Trawick,* 53 FR 5326, 5327 (1988). Accordingly, I conclude that the Government has established a *prima facie* case to deny Respondent's application.

Where, as here, ''the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must 'present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.' ''[4] *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))), *aff'd, Medicine Shoppe-Jonesborough* v. *DEA,* 300 Fed. Appx. 409 (6th Cir. 2008). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *accord Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels,* 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[ ]'' in the public interest determination).

In his statement of position, Respondent acknowledged that the allegations set forth in the Show Cause Order were ''factual'' and that the Agency had ''rightfully accepted the surrender of'' his DEA registration. Respondent further explained that ''[t]he fact that the prescriptions were obtained fraudulently understandably creates the issue of self treatment and misuse of the privilege of a DEA license and [that his conduct] could be construed as * * * being a threat to the public welfare.'' Respondent also wrote that he now recognizes that holding a DEA registration is ''a privilege'' which he did not previously ''appreciate or protect as I should have.'' I conclude that Respondent's statement is sufficient, even though it is unsworn, to establish that he accepts responsibility for his misconduct.

However, as explained above, to successfully rebut the Government's *prima facie* case, Respondent must also present sufficient evidence to establish that he will not repeat his prior misconduct. While Respondent explained that he has ''other accountability factors in [his] life,'' which he did not have at the time he was self-abusing controlled substances, such as his attendance at 12-step and Caduceus meetings, as well as monitoring by the Arkansas Medical Foundation and Arkansas State Medical Board; that he has ''documented sobriety'' since September 2006; and that he has ''the strong support of'' his family and friends; he did not produce any evidence to corroborate any of these statements. More specifically, he did not produce the testimony or reports of those professionals who have evaluated and treated him, as well as of those persons who have sponsored him at various recovery meetings. In addition, there is no evidence establishing the extent to which he has been subject to random drug testing and the results of such tests. *See Steven M. Abbadessa,* 74 FR 10077, 10079–80 (2009) (discussing evidence sufficient to support practitioner's claim of rehabilitation).[5]

I therefore conclude that Respondent has not rebutted the Government's prima *facie* case. Accordingly, I will deny Respondent's application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application of Scott D. Fedosky, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective December 19, 2011.

Dated: November 8, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–29722 Filed 11–16–11; 8:45 am]

BILLING CODE 4410–09–P

[4] This Agency has repeatedly held that a proceeding under section 303 ''is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused * * * their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be entrusted with the responsibility carried by such a registration.'' *Jackson,* 72 FR at 23853 (quoting *Miller,* 53 FR at 21932).

[5] While I have also considered J.B.B.'s letter, it offers no factual support for Respondent's claim that he is rehabilitated. Instead, it offers only his personal opinion that Respondent's has ''adequately addressed his personal problem fully.''

DEPARTMENT OF LABOR

Office of the Secretary

Labor Advisory Committee for Trade Negotiations and Trade Policy

ACTION: Meeting notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiation and Trade Policy.

Date, Time, Place: November 30, 2011; 2–4:30 p.m.; U.S. Department of Labor, Secretary's Conference Room, 200 Constitution Ave. NW., Washington, DC.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Gregory Schoepfle, Director, Office of Trade and Labor Affairs; *Phone:* (202) 693–4887.

Signed at Washington, DC the 10th day of November 2011.

Sandra Polaski,

Deputy Undersecretary, International Affairs.

[FR Doc. 2011–29719 Filed 11–16–11; 8:45 am]

BILLING CODE 4510–28–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0262]

Entergy Operations, Inc.; Notice of Receipt and Availability of Application for Renewal of Grand Gulf Nuclear Station, Unit 1; Facility Operating License No. NPF–29 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated October 28, 2011, from Entergy Operations, Inc., filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and in Title 10 of the Code of Federal Regulations (10 CFR) part 54, to renew the operating license for Grand Gulf Nuclear Station, Unit 1 (GGNS). Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for GGNS (NPF–29) expires on November 1, 2024. GGNS is a boiling water reactor designed by General Electric. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike, Rockville, Maryland 20852 or through the NRC's Agencywide Documents Access and Management System (ADAMS) Accession Number ML113080132. 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.* In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1-(800) 397–4209 or at (301) 415–4737, or by email to *pdr@nrc.gov.*

A copy of the license renewal application for GGNS is also available to local residents near the site at the Harriette Person Memorial Library, 606 Main St., Port Gibson, MS 39150.

Dated at Rockville, Maryland this 9th day of November, 2011.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–29717 Filed 11–16–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2011–0259]

Florida Power & Light Company, Turkey Point, Units 3 and 4; Draft Environmental Assessment and Draft Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; opportunity to comment.

DATES: Comments must be filed by December 19, 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 and/or Safeguards Information is necessary to respond to this notice must request document access by November 28, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0259 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–2011–0259. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *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, 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 email to *pdr.resource@nrc.gov.* The application for amendment, dated October 21, 2010, contains proprietary information and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application for amendment, dated December 14, 2011, is available electronically under ADAMS Accession No. ML103560167.
- *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–2011–0259.

FOR FURTHER INFORMATION CONTACT: Jason Paige, Project Manager, Plant Licensing Branch 2–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001. Telephone: (301) 415–5888; fax number: (301) 415–1222; email: *Jason.Paige@nrc.gov.*

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment for Renewed Facility Operating License Nos. DPR–31 and DPR–41, issued to Florida Power & Light Company (FPL, the licensee) for operation of the Turkey Point (PTN), Units 3 and 4, for a license amendment to increase the maximum power level from 2300 megawatts thermal (MWt) to 2644 MWt for each unit. In accordance with 10 CFR 51.21, the NRC has prepared this draft Environmental Assessment (EA) and draft Finding of No Significant Impact (FONSI) for the proposed action. The proposed power increase is approximately 15-percent over the current licensed thermal power, including a 13-percent power uprate and a 1.7-percent measurement uncertainty recapture, and approximately a 20-percent increase from the original licensed power level of 2200 MWt. The NRC did not identify any significant environmental impacts associated with the proposed action based on its evaluation of the information provided in the licensee's application and other available information. The draft EA and draft FONSI are being published in the **Federal Register** with a 30-day public comment period ending December 19, 2011.

II. Environmental Assessment

Plant Site and Environs

The PTN site is located on 11,000 acres (ac) (4,450 hectares (ha)) in Florida's South Miami-Dade County approximately 25 miles (mi) (40 kilometers [km]) south of Miami, Florida. The nearest city limits are Florida City approximately 8 miles (13 km) to the west, Homestead at approximately 9 miles (15 km) to the northwest and Key Largo at approximately 10 miles (16 km) south of the PTN site. The PTN site is bordered to the east by Biscayne National Park (BNP), to the north by the BNP and Homestead Bayfront Park, and on the west and south by FLP's 13,000 ac (5,260 ha) Everglades Mitigation Bank. The PTN site consists of five electric generating units. PTN Units 3 and 4 are nuclear reactors; Units 1, 2, and 5 are fossil-fueled units and are not covered by the proposed licensing action. Each nuclear reactor is a Westinghouse pressurized light-water reactor with three steam generators producing steam that turns turbines to generate electricity. The site features a 5,900 ac (2,390 ha) system of closed, recirculating cooling canals that are used to cool the heated water discharged by all five electric generating units. The five units and supporting equipment (excluding the cooling canal system) occupy approximately 130 ac (53 ha).

In June 2009, FPL submitted an application for a combined construction permit and operating license (COL) for two Westinghouse Advanced Passive 1000 (AP1000) pressurized-water reactors (PWRs) designated as Turkey Point, Units 6 and 7.

Background Information on the Proposed Action

By application dated October 21, 2010, the licensee requested an amendment to its license for an extended power uprate (EPU) for PTN Units 3 and 4 to increase the licensed thermal power level from 2300 MWt to 2644 MWt for each unit. This represents an increase of approximately 15-percent above the current licensed thermal power, including a 13-percent power uprate and a 1.7-percent measurement uncertainty recapture. This change requires NRC approval prior to the licensee implementing the EPU. The proposed action is considered an EPU by NRC because it exceeds the typical 7-percent power increase that can be accommodated with only minor plant changes. EPUs typically involve extensive modifications to the nuclear steam supply system contained within the plant buildings.

FPL plans to make extensive physical modifications to the plant's secondary side (i.e., non-nuclear) steam supply system to implement the proposed EPU. These modifications would occur during separate refueling outages for each unit. The EPU-related work for Unit 3 is scheduled for the spring 2012 outage and Unit 4 during the fall 2012 outage. The EPU, if approved by the NRC, would be implemented following each unit's refueling outage in 2012.

Approximately 800 operational people are currently employed at PTN Units 3 and 4 on a full-time basis. FPL estimates an average of approximately 1,000 construction workers per day would be required to implement the EPU at PTN Units 3 and 4 during two separate refueling outages. During periods of peak activity, approximately 1,400 construction workers would be at the PTN site. The number of workers would be larger than the number of workers required for a routine 35-day refueling outage.

As part of the overall process to obtain approval for the EPU, in September 2007, FPL submitted a Petition to Determine Need for Expansion of Electrical Power Plants to the Florida Public Service Commission (FPSC). The petition contained FPL's analysis for meeting the need for electric system reliability, integrity, and providing adequate electricity at a reasonable cost; how the proposed EPU is the most cost-effective alternative available; and why there are no renewable energy sources and technologies or conservation measures reasonably available to FPL that would avoid or mitigate the need for the proposed EPU. On January 7, 2008, the FPSC issued a Final Order Granting Petition for Determination of Need approving the proposed expansion of PTN Units 3 and 4 based on compliance with conditions required by the state.

The Need for the Proposed Action

As stated in the FPL's application, the proposed action is to provide an additional supply of electric generation in the State of Florida without the need to site and construct new facilities. The proposed EPU will increase the electrical output for each unit by 104 megawatts electric (MWe), from 700 MWe to 804 MWe.

Environmental Impacts of the Proposed Action

As part of the original licensing process for PTN Units 3 and 4, the NRC published a Final Environmental Statement (FES) in July 1972. The FES contains an evaluation of the potential environmental impacts associated with the operation of PTN Units 3 and 4 over their licensed lifetimes. In 2002, the NRC evaluated the environmental impacts of renewing the operating license of PTN units 3 and 4 for an additional 20 years beyond its current operating license. The NRC concluded that the overall environmental impacts of license renewal were small. This evaluation is presented in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plant, Supplement 5, Regarding Turkey Point, Units 3 and 4'' (EIS Supplement No. 5 (SEIS–5)) issued in January 2002 ADAMS Accession Nos. ML020280119, ML020280202, and ML020280226). Additionally, in October 2008, the State of Florida Department of Environmental Protection (FDEP) completed a review under the Florida Electrical Power Plant Siting Act and issued a site certification to FPL approving the proposed EPU for PTN Units 3 and 4. In June 2009, FPL submitted an application for a combined

construction permit and operating license (COL) for two Westinghouse Advanced Passive 1000 (AP1000) pressurized-water reactors (PWRs) designated as Turkey Point, Units 6 and 7. The COL application included an Environmental Report (ER) with FPL's analysis of the reasonably foreseeable impacts to the environment from the construction and operation of the two new units along with an environmental description of the existing PTN site. The NRC staff used information from the licensee's license amendment request for the EPU, the FESs, SEIS–5 to NUREG–1437, documents related to the FDEP site certification process, and information provided in the Turkey Point COL Environmental Report to perform its EA for the proposed EPU for PTN Units 3 and 4.

In order to implement the EPU, significant modifications will be required to the steam and power conversion equipment located within the buildings of PTN Units 3 and 4. Two changes outside of the reactor buildings including a change to the electric switchyard to accommodate new electrical equipment and construction of a temporary warehouse for EPU-related equipment would occur in developed portions of the power plant site. Modifications to the secondary side (*i.e.,* non-nuclear) of each unit include the following: replacing the high-pressure turbine, modifying condensate pump operations, installing fast acting backup automatic feedwater isolation valves, replacing two feedwater heaters, providing supplemental cooling for selected plant systems, implementing electrical upgrades, system modifications to accommodate greater steam and condensate flow rates, and changing system setpoints and associated software.

The sections below describe the potential nonradiological and radiological impacts to the environment that could result from the proposed EPU.

Nonradiological Impacts

Land Use and Aesthetic Impacts

Potential land use and aesthetic impacts from the proposed EPU include impacts from plant modifications at the PTN site. While some plant components would be modified, most plant changes related to the proposed EPU would occur within existing structures, buildings, and fenced equipment yards housing major components within the developed part of the site. As previously discussed, EPU-related modifications at the PTN plant site would occur within the developed portions of the power plant site.

Existing parking lots, road access, equipment lay-down areas, offices, workshops, warehouses, and restrooms would be used during plant modifications. Therefore, land use conditions would not change at the PTN site. Also, there would be no land use changes along transmission line corridors and no new transmission lines would be required. The PTN Units 3 and 4 electric switchyard would be expanded to accommodate new equipment, which will be expanded on previously disturbed or already developed portions of the PTN site.

Since land use conditions would not change at the PTN site, and because any land disturbance would occur within previously disturbed areas, there would be little or no impact to aesthetic resources in the vicinity of PTN Units 3 and 4. Therefore, there would be no significant impact from EPU-related plant modifications on land use and aesthetic resources in the vicinity of the PTN site.

Air Quality Impacts

Major air pollution emission sources at the PTN site are regulated by the FDEP's Division of Air Resource Management under the Prevention of Significant Deterioration program. Nonradioactive emission sources at PTN Units 3 and 4 consist of four 2.5 MWe emergency generators, five smaller emergency generators, and various general purpose generators regulated under a Florida Title V Air Operating Permit. There will be no changes to the emissions from these sources as a result of the EPU.

Some minor and short duration air quality impacts would occur during implementation of the EPU at the PTN site. The main source of air emissions would come from the vehicles driven by outage workers needed to implement the EPU. However, air emissions from the EPU workforce, truck deliveries, and construction/modification activities would not be significantly greater than previous refueling outages at the PTN site.

Upon completion of the proposed EPU, nonradioactive air pollutant emissions would not increase. Therefore, there would be no significant impact on air quality in the region during and following implementation of the proposed EPU.

Water Use Impacts

Surface Water:

PTN Units 3 and 4 are located in the low-lying areas of coastal Miami-Dade County on the western shore of Biscayne Bay. There are no significant freshwater surface bodies outside of the PTN site (i.e., lakes, major rivers, or dams), but there is a network of canals, such as the Everglades National Park-South Dade Conveyance System, in addition to local drainage canals that either control drainage from southeast Florida to Biscayne Bay or provide freshwater to the Everglades National Park. The most significant surface water body on the PTN site is the closed-cycle cooling canal system (CCS), permitted by the State of Florida as an industrial wastewater facility, used for the cooling of heated water discharged from the main condensers and auxiliary systems of PTN Units 1 through 4.

The CCS covers approximately 5,900 ac (2,390 ha) of the PTN site with a large system of north-south aligned 189 miles of interconnected earthen canals to dissipate heat through surface evaporation. The canals are a closed recirculating loop that serves as the ultimate heat sink for PTN Units 3 and 4. The CCS is operated under an industrial wastewater facility ''No Discharge'' National Pollutant Discharge Elimination System (NPDES) permit from the FDEP (NPDES permit number FL0001562) for water discharges to an onsite closed-loop recirculation cooling canal system. The seasonal temperature of the canal water ranges from approximately 85 °F to 105 °F (29 °C to 40 °C) for heated water entering the CCS with cooled water returning to the power plants at approximately 70 °F to 90 °F (21 °C to 32 °C). Additionally, the CCS water is hyper-saline (twice the salinity of Biscayne Bay) with seasonal variations ranging from approximately 40 to 650 parts per thousand (ppt).

The CCS does not discharge directly to fresh or marine surface waters. Makeup water to replace water lost due to evaporation comes from used plant process water that has been treated, incident rainfall, storm water runoff, and from infiltration and exchange of saline water with local groundwater and Biscayne Bay. Because the PTN canals are unlined, it is likely that there is an exchange of water between the PTN canal system and local groundwater and Biscayne Bay. An interceptor ditch is located along the west side of the CCS. During the dry season, when the natural groundwater gradient is from Biscayne Bay and Card Sound toward the Everglades, water is pumped from the interceptor ditch to the CCS to create an artificial groundwater gradient from the Everglades into the ditch. This prevents the flow of hyper-saline water from the CCS toward the Everglades. Maintenance of the CCS includes mechanical removal of submerged,

rooted marine plants on an approximate 3-year cycle and removal of terrestrial woody vegetation from the canal berms on a 10-year cycle.

Each nuclear unit discharges approximately 5.35 billion British Thermal Units (BTU) per hour of waste heat to the CCS. Under the proposed EPU, the quantity of waste heat discharged by each nuclear unit to the CCS would increase to approximately 6.10 billion BTU per hour. This results in a net total increase of 1.5 billion BTU in waste heat discharged by both nuclear units. The licensee calculated that the maximum change in water temperature due to the proposed EPU would be approximately 2.0 °F to 2.5 °F (1.1 °C to 1.4 °C) for a total maximum water temperature up to 108.6 °F (42.6 °C) for water entering the CCS and a 0.9 °F (0.5 °C) increase with a total maximum water temperature up to 92.8 °F (33.8 °C) for the water returning to the power plants. The licensee calculated that the higher water temperature will increase water losses from the CCS due to evaporation resulting in a slight increase in salinity of approximately 2 to 3 ppt.

In accordance with the FDEP site certification process for the proposed EPU, FPL must meet state imposed requirements contained in the Conditions of Certification (CoC). The CoC was developed based on interactions by FPL with the FDEP and other stakeholders during the FDEP site certification process. The inclusion of stakeholders' recommendations into the CoC formed the basis for FDEP recommending approval of the site certification application for the proposed EPU. The purpose of the CoC is to require FPL to have a program to monitor and assess the potential direct and indirect impacts to ground and surface water from the proposed EPU. The monitoring includes measuring water temperature and salinity in the CCS and monitoring the American crocodile populations at the PTN site. The monitoring plan expands FPL's monitoring of the CCS's ground and surface water to include the land and water bodies surrounding the PTN site such as Biscayne Bay.

The implementation of the CoC monitoring plan is an ongoing program coordinated by FDEP. The results of the monitoring will be publicly available via a South Florida Water Management District (SFWMD) Web site. If the proposed EPU is approved by the NRC, the CoC monitoring plan would continue to assess the environmental impacts. The CoC allows FDEP to impose additional measures if the monitoring data is insufficient to adequately evaluate environmental changes, or if the data indicates a significant degradation to aquatic resources by exceeding State or County water quality standards, or the monitoring plan is inconsistent with the goals and objectives of the Comprehensive Everglades Restoration Plan Biscayne Bay Coastal Wetlands Project. Additional measures could include enhanced monitoring, modeling, or mitigation. Abatement actions provided in the CoC include: mitigation measures to comply with State and local water quality standards, which may include methods to reduce and mitigate salinity levels in groundwater; operational changes to the PTN cooling canal system to reduce environmental impacts; and other measures required by FDEP in consultation with SFWMD and Miami-Dade County to reduce the environmental impacts to acceptable levels.

The field data on surface water monitoring currently available are being reviewed by FPL, FDEP, SFWMD, and stakeholders for the development of a water budget model. The data and other documentation show that there is indirect surface water communication between the CCS and Biscayne Bay. Approving the proposed EPU license amendment is not expected to cause significant impacts greater than current operations because the monitoring plan will provide data for FPL and state agencies to assess the effectiveness of current environmental controls and additional limits and controls could be imposed if the impacts are larger than expected. Therefore, there would be no significant impact to surface water resources following implementation of the proposed EPU.

Groundwater

Southeastern Miami/Dade County is underlain by two aquifer systems; the unconfined Biscayne Aquifer and the Floridian Aquifer System (FAS). The Biscayne Aquifer has been declared a sole-source aquifer by the U.S. Environmental Protection Agency (EPA). The Biscayne Aquifer underlying the PTN site, however, contains saline to saltwater in this area and is not usable as a potable water supply. The FAS underlies approximately 100,000 square miles (258,000 km^2) in southern Alabama, southeastern Georgia, southern South Carolina, and all of Florida. The FAS is a multiple-use aquifer system in that where it contains freshwater, it is the principal source of water supply. Where the aquifer contains saltwater, such as along the southeastern coast of Florida, treated sewage and industrial wastes are injected into it.

Recharge of groundwater at the Turkey Point site varies seasonally between surface recharge during the rainy season and saline recharge from the ocean during the dry season. As a result, there is a large seasonal variation in the salinity of the groundwater near the surface at the Turkey Point site. However, below about 40 ft (12 meters (m)) into the FAS aquifer, relatively high salinity (greater than 28 ppt) exists year round. Florida classifies the groundwater in this area as G-III based on its salinity. This classification is used to identify groundwater that has no reasonable potential as a future source of drinking water due to high total dissolved solids.

The current and proposed operations at the PTN site do not require the withdrawal of groundwater. The potable water and general service water supply at the PTN site are provided by Miami-Dade County public water supply. This potable water comes from the Biscayne Aquifer, which occurs at or close to the ground surface and extends to a depth of about 70 ft (21 m) below the surface. PTN Units 3 and 4 use approximately 690 gallons per minute (25121 liters per minute (L/m)) of potable water. FPL is not requesting an increase in water supply under the proposed EPU. Therefore, no significant impacts to offsite users of the Miami-Dade public water supply are expected.

As discussed in the surface water impacts section, the FPL's implementation of the CoC monitoring plan is ongoing and consists of an integrated system of surface, groundwater, vadose zone, and ecologic sampling. Fourteen groundwater monitoring well clusters at selected sites have been constructed in accordance with the monitoring plan and an associated quality assurance plan. The field data collected prior to implementation of the proposed EPU will be used to characterize existing environmental conditions from current PTN operations. The CoC allows the FDEP to require additional measures if the pre- and post-EPU monitoring data are insufficient to evaluate changes as a result of the EPU. If the data indicate an adverse impact, additional measures, including enhanced monitoring, modeling or mitigation, would likely be required to evaluate or to abate such impacts.

Abatement actions provided in the CoC include: (1) mitigation measures to offset such impacts of the proposed EPU necessary to comply with State and local water quality standards; (2) operational changes in the cooling canal

system to reduce impacts; and (3) other measures to abate impacts specified a revised CoC approved by the FDEP after consultation with SFWMD and Miami-Dade County.

Approving the proposed EPU license amendment is not expected to cause significant impacts greater than current operations because the monitoring plan will provide data for FPL and state agencies to assess the effectiveness of current environmental controls and additional limits and controls could be imposed if the impacts are larger than expected. Therefore, there would be no significant impact to the groundwater following implementation of the proposed EPU.

Aquatic Resources Impacts

The discharges of chemicals and heated wastewater from PTN Units 3 and 4 have the potential to impact aquatic biota from the proposed EPU. Biscayne Bay and Card Sound are shallow, subtropical marine waters located between the mainland and a grouping of barrier islands that form the northern-most Florida Keys. These waters contain a variety of marine life, including seagrass, sponges, mollusks, crustaceans, fish, sea turtles, and marine mammals. The portion of Biscayne Bay adjacent to Turkey Point is part of Biscayne National Park, which includes the mainland shore, the bay, the keys, and offshore coral reefs. The Intracoastal Waterway traverses Biscayne Bay and Card Sound, and a barge passage runs from the Intracoastal Waterway to the fossil-fueled facility at the Turkey Point site. Biscayne Bay and Card Sound would be unaffected by the proposed EPU because FPL does not withdraw or discharge to any natural water body.

Turkey Point's cooling system receives heated water discharged from the two reactors as well as from the two fossil fueled electric generating stations. The cooling system spans about 5,900 ac (2,400 ha) spread out over a 5 mi by 2 mi (8 km by 3.2 km) area of the site. The heated water is discharged into a series of 32 feeder channels that dissipate the heat. The feeder channels merge into a single collector canal that returns the cooled water to the plants through six return channels.

Under EPU conditions, the cooling canal system would increase in both temperature and salinity. FPL predicts that discharged water would increase a maximum of an additional 2.5 °F (1.4 °C), which would increase the change in temperature as water passes through the condensers from 16.8 °F to 18.8 °F (9.3 to 10.4 °C). Because condenser cooling water discharges at the northeastern corner of the cooling canal system flows west, and then south, the system exhibits a north-south temperature gradient. Therefore, while the northeast portion of the system may increase by 2.0 °F to 2.5 °F (1.1 °C to 1.4 °C) under EPU conditions, the temperature increase attributable to the EPU would decrease as water moves south through the system. The increased discharge temperatures will cause additional evaporative losses to the cooling canal system. The Florida Department of Environmental Protection predicted that an additional 2 to 3 million gallons per day (7,600 to 11,000 cubic meters per day) will be lost to evaporation under EPU conditions. The increased evaporation would, in turn, increase the cooling canal's salinity of 40 to 60 ppt by 2 to 3 ppt. Due to the north-south temperature gradient, evaporative losses would be greater in the northern portion of the canal system, and thus, salinity will also demonstrate a north-south gradient.

The cooling canal system supports a variety of aquatic species typical of shallow, subtropical, hyper saline environments, including phytoplankton, zooplankton, marine algae, rooted plants, crabs, and estuarine fish. The most abundant fish in the cooling canal system is killifish (Family Cyprinidontidae). The aquatic species found within the cooling canal system are subtropical or tropical and readily adapt to hyper saline environments. The aquatic populations within the cooling canal system do not contribute any commercial or recreational value because the cooling canal system is owner-controlled and closed to the public.

Because the cooling canal system is unconnected to Biscayne Bay, Card Sound, or any natural water body, changes to the conditions within the cooling canal system would not affect any aquatic species' populations in the natural aquatic habitats. Therefore, the staff concludes that there would be no significant impacts to aquatic resources as a result of the proposed EPU.

Terrestrial Resources Impacts

The Turkey Point site is situated on low, swampy land that was previously mangrove-covered tidal flats. Mangrove swamps extend inland approximately 3 to 4 mi (5 to 6.5 km), and undeveloped portions of the site remain under 1 to 3 inches (2 to 8 centimeters) of water, even during low tide. Of the 24,000-ac (9,700-ha) site, the majority is developed for PTN Units 3 and 4, the cooling canal system, and three FPL-owned fossil fuel units.

The impacts that could potentially affect terrestrial resources include loss of habitat, construction and refurbishment-related noise and lighting and sediment transport or erosion. Because all activities associated with the EPU would occur on the developed portion of the site, the proposed EPU would not directly affect any natural terrestrial habitats and would not result in loss of habitat. Noise and lighting would not impact terrestrial species beyond what would be experienced during normal operations because refurbishment and construction activities would take place during outage periods, which are already periods of heightened activity. Sediment transport and erosion is not a concern because activity would only take place on previously developed land and best management practices would ensure that no loose sediment is transported to wetland areas, tidal flats, or waterways. The staff concludes that the proposed EPU would have no significant effect on terrestrial resources.

Threatened and Endangered Species Impacts

Under section 7 of the Endangered Species Act of 1973, as amended (ESA), Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (as appropriate), must ensure that actions the agency authorizes, funds, or carries out are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat.

In order to fulfill its duties under section 7 of the ESA, the NRC prepared and submitted a biological assessment to the FWS in order to determine the potential effects of the proposed EPU on Federally listed species. The following Table identifies the species that the NRC considered in its biological assessment.

TABLE OF FEDERALLY LISTED SPECIES OCCURRING IN MIAMI-DADE COUNTY

Scientific name	Common name	ESA status [a]
Birds		
Ammodramus maritimus mirabilis	Cape Sable seaside sparrow	E
Charadrius melodus	piping plover	T
Dendroica kirtlandii	Kirtland's warbler [b]	E
Mycteria americana	wood stork	E
Polyborus plancus audubonii	Audubon's crested caracara [b]	T
Rostrhamus sociabilis plumbeus	Everglade snail kite	E
Vermivora bachmanii	Bachman's warbler [b]	E
Flowering Plants		
Amorpha crenulata	crenulate lead-plant	E
Chamaesyce deltoidea ssp. Deltoidea	deltoid spurge	E
Chamaesyce garberi	Garber's spurge	T
Cucurbita okeechobeensis ssp. Okeechobeensis	okeechobee gourd [b]	E
Galactia smallii	Small's milkpea	E
Jacquemontia reclinata	beach jacquemontia	E
Polygala smallii	tiny polygala	E
Insects		
Heraclides aristodemus ponceanus	schaus swallowtail butterfly	E
Mammals		
Puma concolor	mountain lion [b]	T/SA
Felis concolor coryi	Florida panther	E
Trichechus manatus	West Indian manatee	E
Reptiles		
Alligator mississippiensis	American alligator	T/SA
Caretta caretta	loggerhead sea turtle	T
Chelonia mydas	green sea turtle	E
Crocodylus acutus	American crocodile	T
Dermochelys coriacea	leatherback sea turtle	E
Drymarchon corais couperi	eastern indigo snake	T
Eretmochelys imbricata	hawksbill sea turtle	E
Lepidochelys kempii	Kemp's ridley sea turtle [c]	E
Snails		
Orthalicus reses	Stock Island tree snail [b]	T

[a] E = endangered; T = threatened; T/SA = threatened due to similarity of appearance
[b] Species not previously considered in 2001 biological assessment for Turkey Point.
[c] The Kemp's ridley is not listed by the FWS as occurring in Miami-Dade County. However, the species occurs in the neighboring Monroe County and FPL has reported the species' occurrence in Biscayne Bay and Card Sound.
Source: U.S. Fish and Wildlife Service.

In the biological assessment, the NRC concluded that the proposed EPU may adversely affect the American crocodile (*Crocodylus acutus*). The NRC concluded that the proposed EPU would not adversely affect the remaining 26 species listed in the Table. The NRC also concluded that the proposed EPU may adversely modify the cooling canal system, which is designated as a critical habitat for the American crocodile. Section 7 consultation with the FWS regarding the American crocodile and its critical habitat is ongoing at this time, and results of the consultation will be documented in the final Environmental Assessment.

Historic and Archaeological Resources Impacts

As reported in the SEIS–5, the NRC reviewed historic and archaeological site files at the Florida Department of State, Division of Historical Resources; the National Park Service Southeast Archaeological Center; and at Biscayne National Park; and confirmed that no historic or archaeological and historic architectural sites have been recorded on the PTN site. As previously discussed, EPU-related plant modifications would take place within existing buildings and facilities at PTN, except for the expansion of the switchyard on previously disturbed land. Since ground disturbance or construction-related activities would not occur outside of previously disturbed areas, there would be no significant impact from the proposed EPU on historic and archaeological resources in the vicinity of PTN Units 3 and 4 and the switchyard.

Socioeconomic Impacts

Potential socioeconomic impacts from the proposed EPU include increased demand for short-term housing, public services, and increased traffic in the region due to the temporary increase in the number of workers at the PTN site required to implement the EPU. The proposed EPU could also increase tax payments due to increased power generation.

Currently, approximately 800 workers are employed at PTN Units 3 and 4, residing primarily in Miami-Dade County, Florida. FPL estimates a peak workforce of 1,400 construction workers per day would be required to implement the EPU for each unit with an average of approximately 1,000 workers per day for approximately 60 days for each unit. As previously discussed, EPU-related modifications would take place during the spring and fall 2012 refueling outages for Units 3 and 4, respectively. Once EPU-related plant modifications have been completed, the size of the refueling outage workforce would return to normal levels, with no significant increases during future refueling outages. The size of the regular plant operations workforce would be unaffected by the proposed EPU.

Most of the EPU-related plant modification workers would be expected to relocate temporarily to Miami-Dade County, resulting in short-term increases in the local population along with increased demands for public services and housing. Because plant modification work would be short-term, most workers would stay in available rental homes, apartments, mobile homes, and camper-trailers. According to the 2010 census housing data, there were approximately 122,000 vacant housing units in Miami-Dade County available to meet the demand for rental housing. Additionally, there are over 200,000 available public lodging accommodations in Miami-Dade County. Therefore, a temporary increase in plant employment for a short duration would have little or no noticeable effect on the availability of housing and public services in the region.

The principal road access to the PTN site is via East Palm Drive (SW 344 Street). East Palm Drive is a two-lane road for approximately half of its length from the PTN plant to Florida City, where it intersects with U.S. Highway 1 approximately 14 km (9 miles) from the PTN site. Increased traffic volumes during normal refueling outages typically have not degraded the level of service capacity on local roads. However, the additional number of workers and truck material and equipment deliveries needed to support EPU-related plant modifications could cause short-term level of service impacts on access roads in the immediate vicinity of PTN. During periods of high traffic volume (*i.e.,* morning and afternoon shift changes), work schedules could be staggered and employees and/or local police officials could be used to direct traffic entering and leaving the PTN site to minimize level of service impacts on SW 334th Street (East Palm Drive).

Tangible personal property (principally business equipment) and real property (namely land and permanent buildings) are subject to property tax in Florida as administered by the local government. For 2007, FPL paid approximately $6.9 million to Miami-Dade County and the Miami-Dade school district in real property taxes for PTN Units 3 and 4. The tangible personal property taxes for PTN Units 3 and 4 in the year 2007 were approximately $6.5 million. Future property tax payments could take into account the increased value of PTN Units 3 and 4 as a result of the EPU and increased power generation.

Due to the short duration of EPU-related plant modification activities, there would be little or no noticeable effect on tax revenues generated by temporary workers residing in Miami-Dade County. Therefore, there would be no significant adverse socioeconomic impacts from EPU-related plant modifications and operations under EPU conditions in the vicinity of the TP site.

Environmental Justice Impacts

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from activities associated with the proposed EPU at the PTN site. Such effects may include human health, biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing in the vicinity of the PTN site, and all are exposed to the same health and environmental effects generated from activities at PTN Units 3 and 4.

The NRC considered the demographic composition of the area within a 50-mi (80-km) radius of the PTN site to determine the location of minority and low-income populations and whether they may be affected by the proposed action.

Minority populations in the vicinity of the PTN site, according to the U.S. Census Bureau data for 2000, comprise approximately 70 percent of the population (approximately 2,170,000 individuals) residing within a 50-mile (80-kilometer) radius of the PTN site. The largest minority group was Hispanic or Latino (approximately 1,465,000 persons or 47 percent), followed by Black or African Americans (approximately 670,000 persons or about 22 percent).

According to the U.S. Census Bureau, about 83 percent of the Miami-Dade County population identified themselves as minorities, with persons of Hispanic or Latino origin comprising the largest minority group (63 percent). According to 2009 American Community Survey census data 1-year estimate, as a percent of total population, the minority population of Miami-Dade County increased approximately one percent, with persons of Hispanic or Latino origin comprising the largest minority group (82 percent) in 2009.

According to 2000 census data, low-income populations comprised approximately 98,000 families and 488,000 individuals (approximately 13 and 16 percent, respectively) residing within a 50-mi (80-km) radius of the PTN site.

The 2009 Federal poverty threshold was $22,490 for a family of four with one related child under 18 years. According to census data in the 2009 American Community Survey 1-Year Estimate, the median household income for Florida was $53,500, with 11 percent of families and 15 percent of individuals determined to be living below the Federal poverty threshold. Miami-Dade County had a lower median household income average ($42,000) than the State of Florida and also had higher percentages of county families (14 percent) and individuals (18 percent), respectively, living below the poverty level.

Environmental Justice Impact Analysis

Potential impacts to minority and low-income populations would mostly consist of environmental and socioeconomic effects (*e.g.,* noise, dust, traffic, employment, and housing impacts). Radiation doses from plant operations after the EPU are expected to continue to remain below regulatory limits.

Noise and dust impacts would be short-term and limited to onsite activities. Minority and low-income populations residing along site access and the primary commuter roads through Florida City, Florida (*e.g.,* U.S. Highway 1 and East Palm Drive) could experience increased commuter vehicle traffic during shift changes. Increased demand for rental housing during EPU-related plant modifications could disproportionately affect low-income populations. However, due to the short duration of the EPU-related work and the availability of rental housing, impacts to minority and low-income populations would be short-term and limited. According to 2010 census information, there were approximately

122,000 vacant housing units in Miami-Dade County and approximately 20,000 vacant housing units in Monroe County.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the proposed EPU would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the PTN site.

Nonradiological Cumulative Impacts

The NRC considered potential cumulative impacts on the environment resulting from the incremental impact of the proposed EPU when added to other past, present, and reasonably foreseeable future actions. For the purposes of this analysis, past actions are related to the construction and licensing of PTN Units 3 and 4, present actions are related to current operations, and future actions are those that are reasonably foreseeable through the end of station operations including operations under the EPU.

The application to build two new nuclear units at the PTN site is considered a reasonably foreseeable future action that is considered in this review. A COL application was submitted by FPL to the NRC in June 2009, for the construction and operation of two Westinghouse AP1000 units at the PTN site along with the construction of transmission corridors. It is expected, however, that the proposed EPU, if approved, would be completed prior to the construction of the new units. Thus, the cumulative impacts briefly discussed in this section consider PTN Units 3 and 4 operations (under the EPU) combined with the environmental impacts from the proposed construction and operation of PTN Units 6 and 7.

It is important to note, that submitting the COL application does not commit FPL to build two new nuclear units, and does not constitute approval of the proposal by the NRC. The COL application will be evaluated on its merits and after considering and evaluating the environmental and safety implications of the proposal, the NRC will decide whether to approve or deny the licenses. Environmental impacts of constructing and operating PTN Units 6 and 7 will depend on their actual design characteristics, construction practices, and power plant operations. These impacts will be assessed by the NRC in a separate National Environmental Policy Act (NEPA) document. The cumulative impacts presented in this EA may differ from those impacts assessed for the COL.

For some resource areas (*e.g.,* air quality, water, aquatic, terrestrial resources, and threatened and endangered species), the contributory effect of ongoing actions within a region are regulated and monitored through a permitting process (*e.g.,* NPDES and 401/404 permits under the Clean Water Act) under State or Federal authority. In these cases, impacts are managed as long as these actions are in compliance with their respective permits and conditions of certification.

PTN Units 6 and 7 would be constructed on undeveloped land immediately south of PTN Units 3 and 4. EPU modifications to PTN Units 3 and 4 are expected to be completed before the proposed PTN Units 6 and 7 are constructed.

PTN Units 6 and 7 would have a closed-cycle cooling system utilizing cooling towers with makeup water from Biscayne Bay and treated wastewater from Miami-Dade County. Blowdown waste water discharges would be disposed by deep well injection. Impacts to water resources for PTN Units 3 and 4 and PTN Units 6 and 7 would occur separately, and any potential cumulative impacts would not be significantly greater than current operations.

PTN Units 6 and 7, transmission lines, and related infrastructure improvements would be constructed and operated according to Federal and State regulations, permit conditions, existing procedures, and established best management practices. Nevertheless, wildlife may be destroyed or displaced during land clearing for PTN Units 6 and 7. Less mobile animals, such as reptiles, amphibians, and small mammals, would incur greater mortality than more mobile animals, such as birds. Although undisturbed habitat would be available for displaced animals during construction, increased competition for available habitat may result in local population stresses. As construction activities end, habitats could be restored either naturally or through mitigation activities.

Terrestrial species and habitat could be affected by PTN Units 6 and 7cooling system operations. As described in the Environmental Report for the new units, the primary source of makeup water would be treated waste water from the Miami-Dade Water and Sewer Department. If not enough reclaimed water is available to meet the needs of PTN Units 6 and 7, then seawater would be withdrawn from under Biscayne Bay via radial collector wells. Because of this situation, the operation of mechanical cooling towers can result in salt deposition (*i.e.,* salt drift); a greater risk of collision mortality; and noise.

Land needed for the proposed Units 6 and 7 has been surveyed for historical and archaeological sites. The survey identified no new or previously recorded historic or archaeological resources within or adjacent to the proposed site.

Socioeconomic impacts from the construction and operation of PTN Units 6 and 7 would occur several years after the EPU. The large construction and operation workforces combined with ongoing operation of PTN Units 3 and 4 under the EPU would have a noticeable effect on socioeconomic conditions in local communities from the increased demand for temporary and permanent housing, public services (*e.g.,* public schools), and increased traffic.

Nonradiological Impacts Summary

As discussed above, the proposed EPU would not result in any significant nonradiological impacts. Table 1 summarizes the nonradiological environmental impacts of the proposed EPU at PTN Units 3 and 4.

TABLE 1—SUMMARY OF NONRADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use	The proposed EPU is not expected to cause a significant impact on land use conditions and aesthetic resources in the vicinity of the PTN.
Air Quality	The proposed EPU is not expected to cause a significant impact to air quality.
Water Use	The proposed EPU is not expected to cause impacts significantly greater than current operations. No significant impact on groundwater or surface water resources.
Aquatic Resources	The proposed EPU is not expected to cause impacts significantly greater than current operations. No significant impact to aquatic resources due to chemical or thermal discharges.
Terrestrial Resources	The proposed EPU is not expected to cause impacts significantly greater than current operations. No significant impact to terrestrial resources.
Threatened and Endangered Species	The proposed EPU would not cause impacts significantly greater than current operations. No significant impact to federally-listed species.

TABLE 1—SUMMARY OF NONRADIOLOGICAL ENVIRONMENTAL IMPACTS—Continued

Historic and Archaeological Resources ..	No significant impact to historic and archaeological resources on site or in the vicinity of the PTN.
Socioeconomics	No significant socioeconomic impacts from EPU-related temporary increase in workforce.
Environmental Justice	No disproportionately high and adverse human health and environmental effects on minority and low-income populations in the vicinity of the PTN site.
Cumulative Impacts	The proposed EPU would not cause impacts significantly greater than current operations. To address potential cumulative impacts for water and ecological resources, a monitoring plan for the PTN site has been implemented. The State of Florida has authority to impose limits on nonradiological discharges to abate any significant hydrology and ecology impacts. The NRC staff has not identified any significant cumulative impacts associated with construction and operation of Units 6 and 7; however, the NRC will prepare a separate Environmental Impact Statement documenting the potential impacts associated with the construction and operation of Units 6 and 7.

Radiological Impacts

Radioactive Gaseous and Liquid Effluents and Solid Waste

PTN uses waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and EPA radiation safety standards. The licensee's evaluation of plant operation at the proposed EPU conditions shows that no physical changes would be needed to the radioactive gaseous, liquid, or solid waste systems.

Radioactive Gaseous Effluents

The gaseous waste management systems include the radioactive gaseous system, which manages radioactive gases generated during the nuclear fission process. Radioactive gaseous wastes are principally activation gases and fission product radioactive noble gases resulting from process operations, including continuous degasification of systems, gases collected during system venting, gases used for tank cover gas, and gases generated in the radiochemistry laboratory. The licensee's evaluation determined that implementation of the proposed EPU would not significantly increase the inventory of carrier gases normally processed in the gaseous waste management system, since plant system functions are not changing and the volume inputs remain the same. The analysis also showed that the proposed EPU would result in an increase in the equilibrium radioactivity in the reactor coolant, which in turn increases the radioactivity in the waste disposal systems and radioactive gases released from the plant. The bounding increases in effluent releases estimated by the licensee from the proposed EPU are 17.1 percent for noble gases, 17.6 percent for gaseous radionuclides with short half-lives, and 15.3 percent for tritium while a higher secondary side moisture carryover could result in a bounding increase of 25.3 percent in iodine releases.

The licensee's evaluation concluded that the proposed EPU would not change the radioactive gaseous waste system's design function and reliability to safely control and process the waste. The projected gaseous release following EPU would remain bounded by the values given in the FES for PTN Units 3 and 4. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive gaseous releases within the dose limits of 10 CFR 20.1302 and the as low as is reasonably achievable (ALARA) dose objectives in Appendix I to 10 CFR part 50.

Radioactive Liquid Effluents

The liquid waste management system collects, processes, and prepares radioactive liquid waste for disposal. Radioactive liquid wastes include liquids from various equipment drains, floor drains, the chemical and volume control system, steam generator blowdown, chemistry laboratory drains, laundry drains, decontamination area drains and liquids used to transfer solid radioactive waste. The licensee's evaluation shows that the proposed EPU implementation would not significantly increase the inventory of liquid normally processed by the liquid waste management system. This is because the system functions are not changing and the volume inputs remain the same. The proposed EPU would result in a 15.3-percent increase in the equilibrium radioactivity in the reactor coolant which in turn would impact the concentrations of radioactive nuclides in the waste disposal systems.

Since the composition of the radioactive material in the waste and the volume of radioactive material processed through the system are not expected to significantly change, the current design and operation of the radioactive liquid waste system will accommodate the effects of the proposed EPU. The projected liquid effluent release following EPU would remain bounded by the values given in the FES for PTN Units 3 and 4. The existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive liquid releases within the dose limits of 10 CFR 20.1302 and ALARA dose standards in Appendix I to 10 CFR part 50.

Radioactive Solid Wastes

Radioactive solid wastes include solids recovered from the reactor coolant systems, solids that come into contact with the radioactive liquids or gases, and solids used in the reactor coolant system operation. The licensee evaluated the potential effects of the proposed EPU on the solid waste management system. The largest volume of radioactive solid waste is low-level radioactive waste (LLRW), which includes sludge, oily waste, bead resin, spent filters, and dry active waste (DAW) that result from routine plant operation, refueling outages, and routine maintenance. DAW includes paper, plastic, wood, rubber, glass, floor sweepings, cloth, metal, and other types of waste generated during routine maintenance and outages.

The licensee manages LLRW contractually and continues to ship Class A, B, and C LLRW offsite for processing and disposal. EnergySolutions, Inc. (with a Class A disposal facility located in Clive, Utah) is currently under contract with FPL for the processing and disposal of Class A LLRW. Studsvik, Inc., is under contract with FPL for processing, storage, and disposal of Class B and C LLRW.

As stated by the licensee, the proposed EPU would not have a significant effect on the generation of radioactive solid waste volume from the primary reactor coolant and secondary side systems since the systems functions are not changing and the volume inputs remain consistent with historical generation rates. The waste can be handled by the solid waste management system without modification. The equipment is designed and operated to

process the waste into a form that minimizes potential harm to the workers and the environment. Waste processing areas are monitored for radiation and there are safety features to ensure worker doses are maintained within regulatory limits. The proposed EPU would not generate a new type of waste or create a new waste stream. Therefore, the impact from the proposed EPU on the management of radioactive solid waste would not be significant.

Occupational Radiation Dose at EPU Conditions

The licensee stated that the in-plant radiation sources are expected to increase approximately linearly with the proposed increase in core power level. To protect the workers, the licensee's radiation protection program monitors radiation levels throughout the plant to establish appropriate work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR part 20 and ALARA.

In addition to the work controls implemented by the radiation protection program, permanent and temporary shielding is used throughout PTN Units 3 and 4 to protect plant personnel against radiation from the reactor and auxiliary systems containing radioactive material. The licensee determined that the current shielding design is adequate to offset the increased radiation levels that are expected to occur from the proposed EPU since:

- Conservative analytical techniques were used to establish the shielding requirements,
- Conservatism in the original design basis reactor coolant source terms used to establish the radiation zones, and
- Plant Technical Specification 3.4.8, which limits the reactor coolant concentrations to levels significantly below the original design basis source terms.

Based on the above, the staff concludes that the proposed EPU is not expected to significantly affect radiation levels within the plants and, therefore, there would not be a significant radiological impact to the workers.

Offsite Doses at EPU Conditions

The primary sources of offsite dose to members of the public from PTN Units 3 and 4 are radioactive gaseous and liquid effluents. The contribution of radiation shine from plant buildings and stored radioactive solid waste was evaluated by the licensee and found to be negligible. As previously discussed, operation at the proposed EPU conditions will not change the radioactive waste management systems' abilities to perform their intended functions. Also, there would be no change to the radiation monitoring system and procedures used to control the release of radioactive effluents in accordance with NRC radiation protection standards in 10 CFR part 20 and Appendix I to 10 CFR part 50.

Based on the above, the offsite radiation dose to members of the public would continue to be within NRC and EPA regulatory limits and, therefore, would not be significant.

Spent Nuclear Fuel

Spent fuel from PTN Units 3 and 4 is stored in the plant's spent fuel pool and in dry casks in the Independent Spent Fuel Storage Installation. PTN Units 3 and 4 are licensed to use uranium-dioxide fuel that has a maximum enrichment of 4.5 percent by weight uranium-235. Approval of the proposed EPU would increase the maximum fuel enrichment to 5 percent by weight uranium-235. The average fuel assembly discharge burnup for the proposed EPU is expected to be approximately 52,000 megawatt days per metric ton uranium (MWd/MTU) with no fuel pins exceeding the maximum fuel rod burnup limit of 62,000 MWd/MTU. The licensee's fuel reload design goals will maintain the fuel cycles within the limits bounded by the impacts analyzed in 10 CFR part 51, Table S–3—Table of Uranium Fuel Cycle Environmental Data, and Table S–4—Environmental Impact of Transportation of Fuel and Waste to and from One Light-Water-Cooled Nuclear Power Reactor, as supplemented by NUREG–1437, Volume 1, Addendum1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Main Report, Section 6.3—Transportation Table 9.1, Summary of findings on NEPA issues for license renewal of nuclear power plants.'' Therefore, there would be no significant impacts resulting from spent nuclear fuel.

Postulated Design-Basis Accident Doses

Postulated design-basis accidents are evaluated by both the licensee and the NRC to ensure that PTN Units 3 and 4 can withstand normal and abnormal transients and a broad spectrum of postulated accidents without undue hazard to the health and safety of the public.

On June 25, 2009, the licensee submitted license amendment request (LAR) number 196 (LAR 196), Alternative Source Term to the NRC, to update its design-basis accident analysis. In LAR 196, the licensee requested NRC approval to use a set of revised radiological consequence analyses using the guidance in NRC's Regulatory Guide 1.183, *Alternative Radiological Source Terms (AST) for Evaluating Design Basis Accidents at Nuclear Power Reactors.* On June 25, 2010, the licensee submitted a supplement to LAR 196 to revise the radiological dose consequence analyses. The analyses for LAR 196 are applicable for the power level in the proposed EPU. The NRC evaluated the proposed changes in LAR 196 separately from the EPU.

In LAR 196, the licensee reviewed the various design-basis accident (DBA) analyses performed in support of the proposed EPU for their potential radiological consequences and concluded that the analyses adequately account for the effects of the proposed EPU. The licensee states that the results of the revised AST analysis were found to be acceptable with respect to the radiological consequences of postulated DBAs, since the calculated doses meet the exposure guideline values specified in 10 CFR 50.67 and General Design Criteria 19 in Appendix A of 10 CFR part 50.

The results of the NRC's evaluation and conclusion approving the proposed changes submitted in LAR 196 are documented in a Safety Evaluation related to Amendment Nos. 244 and 240 for PTN Units 3 and 4, respectively (ADAMS Accession No. ML110800666).

Radiological Cumulative Impacts

The radiological dose limits for protection of the public and workers have been developed by the NRC and EPA to address the cumulative impact of acute and long-term exposure to radiation and radioactive material. These dose limits are specified in 10 CFR part 20 and 40 CFR part 190.

The cumulative radiation dose to the public and workers are required to be within the regulations cited above. The public dose limit of 25 millirem (0.25 millisieverts) in 40 CFR part 190 applies to all reactors that may be on a site and also includes any other nearby nuclear power reactor facilities. There is no other nuclear power reactor or uranium fuel cycle facility located near PTN Units 3 and 4. The NRC staff reviewed several years of radiation dose data contained in the licensee's annual radioactive effluent release reports for PTN Units 3 and 4. The data demonstrate that the dose to members of the public from radioactive effluents is within the limits of 10 CFR part 20 and 40 CFR part 190. To evaluate the projected dose at EPU conditions for PTN Units 3 and 4, the NRC staff

increased the actual dose data contained in the reports by 15 percent. The projected doses at EPU conditions remained within regulatory limits. Therefore, the NRC staff concludes that there would not be a significant cumulative radiological impact to members of the public from increased radioactive effluents from PTN Units 3 and 4 at the proposed EPU operation.

A COL application was submitted in June 2009 to the NRC to construct and operate two new AP1000 reactor plants on the PTN site designated as Units 6 and 7. FPL's radiological assessment of the radiation doses to members of the public from the proposed two new reactors concluded that the doses would be within regulatory limits. The staff expects continued compliance with regulatory dose limits during PTN Units 3 and 4 operations at the proposed EPU power level. Therefore, the staff concludes that the cumulative radiological impacts to members of the public from increased radioactive effluents from the combined operations of PTN Units 3 and 4 at EPU conditions and the proposed two new reactors would not be significant.

As previously discussed, the licensee has a radiation protection program that maintains worker doses within the dose limits in 10 CFR part 20 during all phases of PTN Units 3 and 4 operations. The NRC staff expects continued compliance with NRC's occupational dose limits during operation at the proposed EPU power level. Therefore, the staff concludes that operation of PTN Units 3 and 4 at the proposed EPU levels would not result in a significant impact to the worker's cumulative radiological dose.

Radiological Impacts Summary

As discussed above, the proposed EPU would not result in any significant radiological impacts. Table 2 summarizes the radiological environmental impacts of the proposed EPU at PTN Units 3 and 4.

TABLE 2—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Radioactive Gaseous Effluents	Amount of additional radioactive gaseous effluents generated would be handled by the existing system.
Radioactive Liquid Effluents	Amount of additional radioactive liquid effluents generated would be handled by the existing system.
Occupational Radiation Doses	Occupational doses would continue to be maintained within NRC limits.
Offsite Radiation Doses	Radiation doses to members of the public would remain below NRC and EPA radiation protection standards.
Radioactive Solid Waste	Amount of additional radioactive solid waste generated would be handled by the existing system.
Spent Nuclear Fuel	The spent fuel characteristics will remain within the bounding criteria used in the impact analysis in 10 CFR part 51, Table S–3 and Table S–4.
Postulated Design-Basis Accident Doses	Calculated doses for postulated design-basis accidents would remain within NRC limits.
Cumulative Radiological	Radiation doses to the public and plant workers would remain below NRC and EPA radiation protection standards.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU were not approved for PTN Units 3 and 4, other agencies and electric power organizations may be required to pursue other means, such as fossil fuel or alternative fuel power generation, to provide electric generation capacity to offset future demand. Construction and operation of such a fossil-fueled or alternative-fueled plant could result in impacts in air quality, land use, and waste management greater than those identified for the proposed EPU for PTN Units 3 and 4. Furthermore, the proposed EPU does not involve environmental impacts that are significantly different from those originally identified in the PTN Unit 3 or Unit 4 FES, and NUREG–1437, SEIS–5.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the PTN Unit 3 or Unit 4 FES.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the FDEP, SFWMD, Miami-Dade County, BNP, and FWCC regarding the environmental impact of the proposed action and specifically regarding the monitoring and mitigation plan that formed the basis of the Florida agencies recommending approval to the FDEP for the proposed EPU subject to the CoC during the State of Florida site certification process.

III. Draft Finding of No Significant Impact

On the basis of the details provided in the EA, the NRC concludes that granting the proposed EPU license amendment is not expected to cause impacts significantly greater than current operations. Therefore, the proposed action of implementing the EPU for PTN Units 3 and 4 will not have a significant effect on the quality of the human environment because no significant permanent changes are involved and the temporary impacts are within previously disturbed areas at the site and the capacity of the plant systems. Accordingly, the NRC has determined it is not necessary to prepare an environmental impact statement for the proposed action. A final determination to prepare an environmental impact statement or a final finding of no significant impact will not be made until the public comment period closes and the NRC addresses the comments.

For further details with respect to the proposed action, see the licensee's application dated October 21, 2010, as supplemented on December 14, 2010 and on April 22, 2011.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 4th day of November 2011.

Douglas A. Broaddus,

Chief, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–29718 Filed 11–16–11; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding five Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our

ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. *Title and Purpose of Information Collection:* Railroad Service and Compensation Reports/System Access Application; OMB 3220–0008.

Under Section 9 of the Railroad Retirement Act (RRA) and Section 6 of the Railroad Unemployment Insurance Act (RUIA) the Railroad Retirement Board (RRB) maintains for each railroad employee, a record of compensation paid to that employee by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the employee's railroad employer(s), except in cases when an employee files a protest pertaining to his or her reported compensation within the statue of limitations cited in Section 9 of the RRA and Section 6 of the RUIA.

Railroad Employers' Reports and Responsibilities are prescribed in 20 CFR 209. The RRB currently utilizes Form BA–3, *Annual Report of Creditable Compensation* and Form BA–4, *Report of Creditable Compensation Adjustments,* to secure required information from railroad employers. Form BA–3 provides the RRB with information regarding annual creditable service and compensation for each individual who worked for a railroad employer covered by the RRA and RUIA in a given year. Form BA–4 provides for the adjustment of any previously submitted reports and also the opportunity to provide any service and compensation that had been previously omitted. Requirements specific to Forms BA–3 and BA–4 are prescribed in 20 CFR 209.8 and 209.9.

Employers currently have the option of submitting the reports on the aforementioned forms, electronically by File Transfer Protocol (FTP), secure Email or via the Internet utilizing the RRB's Employer Reporting System (ERS) (for Form BA–4), or in like format on magnetic tape cartridges, and CD–ROMs. The RRB proposes the implementation of an Internet equivalent version of Form BA–3 that can be submitted through the ERS which will include the option to file a ''negative report.''

The information collection also includes RRB Form BA–12, Application for Employer Reporting Internet Access, and Form G–440, Report Specifications Sheet. Form BA–12 is completed by railroad employers to obtain system access to the RRB's Employer Reporting System (ERS) as well as to authorize the degree of access (view/only, data entry/modification or approval/submission) appropriate for designated employees. Once access is obtained, authorized employees may submit reporting forms to the RRB via the Internet. Form BA–12 is also used to terminate an employee's access to ERS. Form G–440, Report Specifications Sheet, serves as a certification document for various RRB employer reporting forms (the previously mentioned BA–3 and BA–4 as well as the BA–6a, BA–6, Address Report (OMB 3220–0005); BA–9, Report of Separation Allowance or Severance Pay (OMB 3220–0173); and BA–11, Report of Gross Earnings (OMB 3220–0132)), records the type of medium the report was submitted on, and serves as a summary recapitulation sheet for reports filed on paper.

Submission of Forms BA–3, BA–4, and G–440 is mandatory. Completion of Form BA–12 is voluntary. One response is requested of each respondent for all of the forms in the collection. Depending on circumstances and method of submission chosen, multiple responses will be received from a respondent for Forms BA–4 and G–440.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 54812 on September 2, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Railroad Service and Compensation Reports/System Access Application.

OMB Control Number: 3220–0008.

Forms Submitted: BA–3, BA–3 (Internet), BA–4, BA–4 (Internet), BA–12, and Form G–440.

Type of Request: Revision of a currently approved collection of information.

Affected Public: Private Sector.

Abstract: Under the Railroad Retirement Act and Railroad Unemployment Insurance Act, employers are required to report service and compensation for each employee to update Railroad Retirement Board records for payments of benefits. The collection obtains service and compensation information, information needed to ensure secure system access from employers who voluntarily opt to use the RRB's Internet-based Employer Reporting System to submit reporting forms, and information needed to certify employer reporting transactions.

Changes Proposed: The RRB proposes the implementation of an Internet equivalent version of Form BA–3 that can be submitted through ERS, which will include the option to file a ''negative report.'' Minor non-burden impacting changes are proposed to Forms BA–4, BA–12 and G–440.

The Burden Estimate for the ICR Is as Follows:

Reporting	Responses	Time (minutes)	Burden (hours)
BA–3			
Paper	20	7,011 (116.85 hrs)	2,337
Electronic Media	152	2,775 (46.25 hrs)	7,030
BA–3 (Internet)	410	2,775 (46.25 hrs)	18,963
BA–4			
Paper	160	75	200
Electronic Media	285	60	285
BA–4 (Internet)	3,852	20	1,284

Reporting	Responses	Time (minutes)	Burden (hours)
BA–12			
Initial Access	550	20	183
Access Termination	50	10	8
G–440 (certification)			
Form BA–3 (zero employees)	26	15	7
Form BA–11 (zero employees)	138	15	35
Paper forms (without recap)	270	15	68
Electronic transactions	728	30	364
BA–3 and BA–4 (with recap)	200	75	250
Total	6,841		31,014

2. *Title and purpose of information collection:* Medical Reports; OMB 3220–0038. Under Sections 2(a)(1)(iv) and 2(a)(1)(v) of the Railroad Retirement Act (RRA), annuities are payable to qualified railroad employees whose physical or mental condition makes them unable to (1) work in their regular occupation (occupational disability) or (2) work at all (permanent total disability). The requirements for establishing disability and proof of continuing disability under the RRA are prescribed in 20 CFR 220.

Under Sections 2(c)(1)(ii)(C) and 2(d)(1)(ii) of the RRA, annuities are also payable to qualified spouses and widow(ers), respectively, who have a qualifying child who became disabled before age 22. Annuities are also payable to surviving children on the basis of disability under section 2(d)(1)(iii)(C) if the child's disability began before age 22 as well as to widow(er)s on the basis of disability under section 2(d)(1)(i)(B). To meet the disability standard, the RRA provides that individuals must have a permanent physical or mental condition such that they are unable to engage in any regular employment.

Under Section 2(d)(1)(v) of the RRA, annuities are also payable to remarried widow(er)s and surviving divorced spouses on the basis of, among other things, disability or having a qualifying disabled child in care. However, the disability standard in these cases is that found in the Social Security Act. That is, individuals must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. The RRB also determines entitlement to a Period of Disability and entitlement to early Medicare based on disability for qualified claimants in accordance with Section 216 of the Social Security Act.

When making disability determinations, the RRB needs evidence from acceptable medical sources. The RRB currently utilizes Forms G–3EMP, Report of Medical Condition by Employer; G–197, Authorization to Release Medical Information to the Railroad Retirement Board; G–250, Medical Assessment; G–250A, Medical Assessment of Residual Functional Capacity; G–260, Report of Seizure Disorder; RL–11B, Disclosure of Hospital Medical Records; RL–11D, Disclosure of Medical Records from a State Agency; and RL–250, Request for Medical Assessment, to obtain the necessary medical evidence. One response is requested of each respondent. Completion is voluntary.

Previous requests for comments: The RRB has already published the initial 60-day notice (76 FR 52025 on August 19, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Medical Reports.

OMB Control Number: 3220–0038.

Form(s) submitted: G–3EMP, G–197, G–250, G–250a, G–260, RL–11B, RL–11D, RL–250.

Type of request: Revision of a currently approved collection of information.

Affected public: Individuals or households; Private Sector; State, Local and Tribal Government.

Abstract: The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

Changes proposed: The RRB proposes minor editorial changes to Form G–197. No changes to the other forms in the collection are proposed.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–3EMP	600	10	100
G–197	6,000	10	1,000
G–250	11,950	30	5,975
G–250A	50	20	17
G–260	100	25	42
RL–11B	5,000	10	833
RL–11D	250	10	42
RL–250	11,950	10	1,992
Total	35,900		10,001

3. *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 benefit payments that are based on 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) and 20 CFR 229.

The survivor student annuity is usually paid by direct deposit to a financial institution either into the

student's checking or savings account or into a joint bank account with a parent. The requirements for eligibility as a student are prescribed in 20 CFR 216.74, and include students in independent study and home schooling.

To help determine if a child is entitled to student benefits, the RRB requires evidence of full-time school attendance. This evidence is acquired through the RRB's student monitoring program, which utilizes the following forms. Form G–315, Student Questionnaire, obtains certification of a student's full-time school attendance as well as information on the 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, from a school, verification of a student's full-time attendance when the student fails to return a monitoring Form G–315. Form G–315A.1, School Official's Notice of Cessation of Full-Time School Attendance, is used by a school to notify the RRB that a student has ceased full-time school attendance.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 52026 on August 19, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Student Beneficiary Monitoring.

OMB Control Number: 3220–0123.

Form(s) submitted: G–315, G–315A, G–315A.1.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under the Railroad Retirement Act (RRA), a student benefit is not payable if the student ceases full-time school attendance, marries, works in the railroad industry, has excessive earnings or attains the upper age limit under the RRA. The report obtains information to be used in determining if benefits should cease or be reduced.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–315	860	15	215
G–315A	20	3	1
G–315A.1	20	2	1
Total	900		217

4. *Title and Purpose of information collection:* Gross Earnings Report; OMB 3220–0132. In order to carry out the financial interchange provisions of section 7(c)(2) of the Railroad Retirement Act (RRA), the RRB obtains annually, from railroad employers, the gross earnings for their employees on a one-percent basis, *i.e.,* 1% of each employer's railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits ''30.'' The gross earnings are used to compute payroll taxes under the financial interchange.

The gross earnings information is essential in determining the tax amounts involved in the financial interchange with the Social Security Administration and Centers for Medicare & Medicaid Services. Besides being necessary for current financial interchange calculations, the gross earnings file tabulations are also an integral part of the data needed to estimate future tax income and corresponding financial interchange amounts. These estimates are made for internal use and to satisfy requests from other government agencies and interested groups. In addition, cash flow projections of the social security equivalent benefit account and railroad retirement account, as well as cost estimates made for proposed amendments to laws administered by the RRB, are dependent on input developed from the information collection.

The RRB utilizes Form BA–11 or its electronic equivalents to obtain gross earnings information from railroad employers. Employers currently have the option of preparing and submitting BA–11 reports on paper, or in like format on magnetic tape cartridges, File Transfer Protocol (FTP), or secure Email. Completion is mandatory. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 54812 on September 2, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Gross Earnings Report.

OMB Control Number: 3220–0132.

Form(s) submitted: BA–11.

Type of request: Revision of a currently approved collection of information.

Affected public: Private Sector.

Abstract: Section 7(c)(2) of the Railroad Retirement Act requires a financial interchange between the OASDHI trust funds and the railroad retirement account. The collection obtains gross earnings of railway employees on a 1% basis. The information is used to determine the amount which would place the OASDHI trust funds in the position they would have been if railroad service had been covered by the Social Security and FIC Acts.

Changes proposed: The RRB proposes no changes to Form BA–11. However, the RRB does propose the implementation of an Internet equivalent version of Form BA–11 that can be submitted through the Employer Reporting System, which will include the option to file a ''negative report.''

The burden estimate for the ICR is as follows:

Form Number	Annual responses	Time (minutes)	Burden (hours)
BA–11 magnetic tape/file transfer protocol	9	300 (5 hrs)	45
BA–11 manual form	38	30	19
BA–11 CD–ROM	13	30	6

Form Number	Annual responses	Time (minutes)	Burden (hours)
BA–11 secure Email	23	30	11
BA–11 (Internet)			
Positive Reports	77	30	38
Negative Reports	217	15	54
Total	377		173

5. *Title and Purpose of information collection:* RUIA Claims Notification and Verification System; OMB 3220–0171.

Section 5(b) of the Railroad Unemployment Insurance Act (RUIA), requires that effective January 1, 1990, when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of the claim to the claimant's base year employer(s) to provide them an opportunity to submit information relevant to the claim before making an initial determination. If the RRB determines to pay benefits to the claimant under the RUIA, the RRB shall notify the base-year employer(s).

The purpose of the RUIA Claims Notification and Verification System is to provide two notices, pre-payment Form ID–4K, Prepayment Notice of Employees' Applications and Claims for Benefits Under the Railroad Unemployment Insurance Act, and post-payment Form ID–4E, Notice of RUIA Claim Determination.

Prepayment Form ID–4K provides notice to a claimant's base-year employer(s), of each unemployment application and unemployment and sickness claim filed for benefits under the RUIA and provides the employer an opportunity to convey information relevant to the proper adjudication of the claim. The railroad employer can elect to receive notices of applications and claims by one of three options: A computer-generated Form Letter ID–4K paper notice, an Electronic Data Interchange (EDI) version of the Form Letter ID–4K notice, or an Internet equivalent ID–4K, which is transmitted through the RRB's Internet-based Employer Reporting System (ERS).

The railroad employer can respond to the ID–4K notice by telephone, manually by mailing a completed ID–4K back to the RRB, or electronically via EDI or ERS. Completion is voluntary.

Once the RRB determines to pay a claim post-payment Form Letter ID–4E, Notice of RUIA Claim Determination, is used to notify the base-year employer(s). This gives the employer a second opportunity to challenge the claim for benefits.

The mainframe-generated ID–4E paper notice and the EDI and Internet equivalent versions are transmitted on a daily basis, generally on the same day that the claims are approved for payment. Railroad employers who are mailed Form ID–4E are instructed to write if they want a reconsideration of the RRB's determination to pay. Employers who receive the ID–4E electronically, may file a reconsideration request by completing the ID–4E by either EDI or ERS. Completion is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 55719 on September 8, 2011) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: RUIA Claims Notification and Verification System.

OMB Control Number: 3220–0171.

Form(s) submitted: ID–4K, ID–4K (INTERNET), ID–4E, ID–4E (INTERNET).

Type of request: Extension without change of a currently approved collection.

Affected public: Private Sector; Businesses or other for-profits.

Abstract: Section 5(b) of the RUIA requires that effective January 1, 1990, when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base-year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claim before making an initial determination on the claim. When the RRB determines to pay benefits to a claimant under the RUIA, the RRB shall provide notice of such determination to the claimant's base year employer.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
ID–4K (Manual)	1,250	2	42
ID–4K (EDI)	24,215	(*)	210
ID–4K (Internet)	52,300	2	1,743
ID–4E (Manual)	50	2	2
ID–4E (Internet)	120	2	4
Total	77,935		2,001

* The burden for the 5 participating employers who transmit EDI responses is calculated at 10 minutes each per day, 251 workdays a year or 210 total hours of burden.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (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, Email address: *OIRA_Submission@omb.eop.gov*.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011–29698 Filed 11–16–11; 8:45 am]

BILLING CODE 7905–01–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 will hold a Closed Meeting on Monday, November 21, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Monday, November 21, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 15, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29853 Filed 11–15–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65721; File No. SR–DTC–2011–07]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Relating To a New Daily Report Subscription for Security Position Reports

November 10, 2011.

I. Introduction

On August 24, 2011, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change File No. SR–DTC–2011–07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder [2] and on August 31, 2011, and September 7, 2011,[3] filed Amendment Nos. 1 and 2, respectively, to the proposed rule change. The proposed rule change enables DTC to add a new Daily Report subscription category to its Security Position Report (''SPR'') Service. The proposed rule change was published for comment in the **Federal Register** on September 14, 2011.[4] No comment letters were received. This order approves the proposed rule change.

II. Description of the Proposal

SPRs are reports produced by DTC that provide information on the holdings on a specified day of an issuer's security in DTC participant accounts. The SPR service enables an issuer, trustee, or authorized third party to request on a subscription basis a report that reflects each DTC participant's closing position recorded by DTC for a specific issue. Currently, DTC offers subscriptions on a weekly, monthly, dividend record date, and special request (*i.e.,* ''as needed'') basis.[5] With respect to special request SPRs, the entities requesting these reports tend to be corporate issuers seeking holder information with respect to their equity securities.

Recently, some authorized users of the SPR service had been ordering the special request SPR on a daily basis in order to satisfy certain tax reporting requirements in non-U.S. markets. DTC's fees for special request SPRs are currently $120 per CUSIP. Because of the expense associated with ordering SPRs on a daily basis, the non-U.S. issuer/trustee community requested that DTC create a daily report subscription category for SPRs. DTC reviewed this request and determined that it would be feasible for it to offer SPR subscriptions on a daily basis.

Pursuant to this proposed rule change, DTC is updating its Fee Schedule to reflect the new subscription type. Specifically, DTC will charge $9,450 per year for the first recipient of the Daily SPR for a security issue and $6,785 for each additional recipient of the Daily SPR for that security. In addition, DTC will charge $2,785 per year for each additional CUSIP in the same family (*i.e.,* securities whose CUSIP numbers have the same first six characters) of securities, one of which is the subject of an existing Daily Report annual subscription. A one year minimum Daily Report subscription is required to qualify for this new subscription category.

In addition, DTC will offer a new ''Commercial Paper Family Report'' that will indicate DTC's participants' closing positions as of a specific date in issues of commercial paper . The fee for this report will be $9,450 per year for the first CUSIP and $22 per report for each additional CUSIP in the same family (*i.e.,* securities whose CUSIP numbers have the same first six characters) of securities, one of which is the subject of an existing Daily Report annual subscription.

DTC is also updating its SPR Fee Schedule with certain technical changes that are detailed in Exhibit 5 to DTC's filing and that can be viewed online at *http://www.dtcc.com/legal/rule_filings/dtc/2011.php*.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, based on DTC's representation that the proposed fees are designed to recover the reasonable costs of providing the securities position listing, the Commission believes the proposal is consistent with DTC's obligations under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] DTC's amendment of August 31, 2011, clarified that the effective date of the proposed fee schedule would be the date that the Commission approves the proposed rule change. DTC's amendment of September 7, 2011, added a statement that DTC believes that the proposed rule change is consistent with Rule 17Ad–8, 17 CFR 240.17Ad–8.

[4] Securities Exchange Act Release No. 65286 (Sept. 7, 2011), 76 FR 56847.

[5] *See* Securities Exchange Act Release No. 52393 (Sept. 8, 2005), 70 FR 54598 (Sept. 15, 2005) [File No. SR–DTC–2005–12].

Rule 17Ad–8,[6] which requires DTC upon request to promptly furnish a securities position listing to each issuer whose securities are held in the name of DTC or its nominee and which permits DTC to charge issuers requesting securities position listings a fee designed to recover the reasonable costs of providing the securities position listing to the issuer. By providing the new Daily Report and Commercial Paper Family Report subscription services, DTC is providing the issuer community with various ways to obtain needed shareholder information from DTC.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular Section 17A of the Act,[7] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–DTC–2011–07) be and hereby is approved.[9]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29670 Filed 11–16–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65727; File No. SR–Phlx–2011–146]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Routing Fees to C2

November 10, 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 November 1, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Customer and Professional Routing Fees governing pricing for Exchange members using the Phlx XL II system,[3] for routing standardized equity and index option Customer and Professional orders to the C2 Options Exchange, Inc. (''C2'') for execution.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov/,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing Customer and Professional orders in equity and index options to C2.

The Exchange's Fee Schedule includes Routing Fees for routing and executing Customer and Professional orders to away markets. The Exchange currently assesses a Customer Routing Fee of $0.31 per contract and a Professional Routing Fee of $0.46 per contract for option orders that are routed to C2.

C2 recently amended its Fees Schedule to increase its public customer taker fee from $.25 to $.44 and to increase its professional taker fee from $.33 to $.45 per contract.[4] The Exchange is proposing to amend both its Customer and Professional Routing Fees to C2 to account for this increase. The Exchange proposes to amend its Fee Schedule to assess a Customer Routing Fee of $0.50 per contract for option orders that are routed to C2. The Exchange also proposes to amend its Fee Schedule to assess a Professional Routing Fee of $0.51 per contract for option orders that are routed to C2.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (''NOS''), a member of the Exchange, as the Exchange's exclusive order router.[5] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange is proposing this amendment in order to recoup clearing and transaction charges incurred by the Exchange when Customer[6] and Professional[7] orders are routed to C2.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Shedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that these fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer and

[6] 17 CFR 240.17Ad–8.

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

[4] *See* SR–C2–2011–032.

[5] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[6] The Exchange is proposing to recoup the $.44 per contract public customer transaction fee for orders routed to C2 along with the $0.06 clearing fee which is incurred by the Exchange, as explained above. *See* C2 Fees Schedule.

[7] The Exchange is proposing to recoup the $.45 per contract professional transaction fee for orders routed to C2 along with the $0.06 clearing fee which is incurred by the Exchange, as explained above. *See* C2 Fees Schedule.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78(b)(4).

Professional orders to C2 on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the proposed Routing Fees will enable the Exchange to recover the public customer and professional transaction fees assessed by C2, plus clearing fees for the execution of Customer and Professional orders. The Exchange also believes that the proposed Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all Customers and Professionals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–146 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx-2011–146. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–146 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29673 Filed 11–16–11; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65729, File No. SR–BYX–2011–022]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend and Restate the Amended and Restated Bylaws of BATS Global Markets, Inc.

November 10, 2011.

I. Introduction

On September 7, 2011, BATS Y–Exchange, Inc. (''BYX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Bylaws of the Exchange's sole stockholder, BATS Global Markets, Inc. (''Corporation''), in connection with the Corporation's anticipated initial public offering of shares of its Class A Common Stock (the ''IPO''). The proposed rule change was published for comment in the **Federal Register** on September 26, 2011.[3] On November 3, 2011, the Exchange filed Partial Amendment No. 1 to the proposed rule change.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Partial Amendment No. 1.

II. Description of the Proposal

On May 13, 2011, the Corporation filed a registration statement on Form S–1 with the Commission to register shares of Class A common stock and to disclose its intention to conduct an IPO offering those shares and to list those shares for trading on the Exchange. In connection with its IPO, the Exchange filed this proposed rule change to amend and restate the Corporation's current Bylaws and adopt these changes as its Second Amended and Restated Bylaws (''New Bylaws''). The proposal would primarily amend and restate various provisions of the Bylaws in a manner that the Exchange believes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65352 (September 19, 2011), 76 FR 59462 (September 26, 2011) (''Notice'').

[4] Partial Amendment No. 1 corrects an inconsistency between the Third Amended and Restated Certificate of Incorporation of the Corporation and the Corporation's proposed amended bylaws concerning actions of stockholders without a meeting. This is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the rule filing.

would reflect changes to conform with provisions that are more customary for publicly-owned companies and also conform the New Bylaws to the Corporation's Certificate of Incorporation.[5]

A. Stockholders Meetings and Actions Without a Meeting

The Exchange has proposed to revise the current Bylaw procedures to require stockholders to make certain disclosures and representations in notices to the Corporation concerning business proposals and director nominations to be considered at annual meetings.[6] In addition, the Exchange would require that all proposals and nominations comply with applicable requirements of the Act.[7] The Exchange has represented that the purpose of the disclosure and representation requirements is to assure that stockholders asked to vote on stockholder proposals or nominations are more fully informed and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.[8]

In addition, the Exchange has proposed that the New Bylaws would only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by a majority of the board of directors.[9] The Exchange has also proposed to revise certain notice requirements with respect to written consent from stockholders to approve certain corporate actions taken without a meeting.[10] Additionally, the Exchange has proposed to prohibit any action by written consent following a change of ownership, except as provided in the Corporation's Certificate of Incorporation.[11] The Exchange notes that these provisions are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders or action by written consent.[12]

B. Board of Directors and Board Committees

The Exchange has proposed changing the current Bylaws to revise the process to remove directors and board committees. The proposed rule change would allow the board of directors or any director to be removed by the affirmative vote of at least a majority of voting power of all outstanding shares of the Corporation.[13] The Exchange has represented that the purpose of this change is to align these requirements with Delaware General Corporation Laws.[14] The Exchange also has proposed to eliminate references to executive committees, to authorize the board of directors to create committees, and, so as to ensure that the full board of directors considers significant corporate decisions, to prohibit board committees from (i) Approving, adopting, or recommending to stockholders any matter required by Delaware law to be submitted for stockholder approval or (ii) adopting, amending, and repealing the New Bylaws.[15]

Currently, the Corporation's Bylaws provide that either the board of directors or shareholders may adopt, amend, or repeal the Bylaws of the Corporation. The proposal would modify this provision so that, upon a Change in Ownership,[16] stockholders may only adopt, amend, or repeal the New Bylaws upon the affirmative vote of at least 70% of the total voting power of all outstanding shares of the Corporation.[17]

C. Other Amendments

The proposal will also amend and restate various other provisions such as those relating to the registered office of the Corporation,[18] shares held by the Corporation in a fiduciary capacity, [19] form of stock certificates,[20] loans to officers,[21] and indemnification of directors,[22] among others.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[24] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with the provisions of the Act.

The Exchange has represented that the proposed rule change relates solely to the Bylaws of the Corporation and that the Exchange will continue to be governed by its existing certificate of incorporation and by-laws.[25] The Exchange also has represented that the Corporation will continue to directly and solely hold the stock in, and voting power of, the Exchange and that the Exchange will continue to operate pursuant to its existing governance structure.[26] The Commission also notes that the Exchange does not propose any new substantive changes to Article 12 of the current Bylaws (relating to SRO Functions of BATS Exchange, Inc. and BAT–Y Exchange, Inc.).

The Commission, therefore, believes that the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act, which requires the Exchange to have the ability to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with provisions of the

[5] *See* Notice, *supra* note 3, 76 FR at 59463. The Exchange also filed a proposed rule change to amend the Corporation's Certificate of Incorporation in anticipation of its upcoming IPO, which proposed rule change was recently approved by the Commission. *See* Securities Exchange Act Release No. 65647 (October 27, 2011), 76 FR 67784 (November 2, 2011) (SR–BYX–2011–021) (order approving proposed rule change to amend and restate the Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.).

[6] *See* proposed Section 2.02 of the New Bylaws. The New Bylaws also state that such notice requirements would be satisfied if done in compliance with Exchange Act Rule 14a–8. *See* Notice, *supra* note 3, 76 FR at 59464. Additionally, the New Bylaws requires stockholders to appear at any meeting to present such proposals or nominations. *See id.*

[7] *See* Notice, *supra* note 3, 76 FR at 59464.

[8] *See id.*

[9] *See* proposed Section 2.03 of the New Bylaws. Under the current Bylaws, a special meeting of the stockholders could be called by the chairman of the board of directors, chief executive officer, the majority of the board of directors, or by the stockholders entitled to vote at least ten percent of the votes at the meeting. The Exchange also proposed that, whenever preferred stockholders have the right to elect directors, the preferred stockholders may call a special meeting of preferred stockholders pursuant to a resolution of the board. *See id.*

[10] *See* proposed Section 2.10 of the New Bylaws.

[11] *See* Notice, *supra* note 3, 76 FR at 59464 n. 4 (defining a ''Change of Ownership'' as occurring at such time as the beneficial owners of the Class B Common Stock and Non-Voting Class B Common Stock own, in the aggregate, less than a majority of the total voting power of the Corporation) and Partial Amendment 1.

[12] *See* Notice, *supra* note 3, 76 FR 59464.

[13] *See* proposed Section 3.05 of the New Bylaws.

[14] *See* Notice, *supra* note 3, 76 FR at 59464.

[15] *See* proposed Section 3.10 of the New Bylaws.

[16] *See supra* note 11.

[17] *See generally* proposed Section 2.10 of the New Bylaws.

[18] *See* Notice, *supra* note 3, 76 FR at 59463.

[19] The Exchange also has proposed that any shares of stock held by the Corporation would have no voting rights, except when such shares are held in a fiduciary capacity. *See* proposed Section 2.07 of the New Bylaws.

[20] *See* Notice, *supra* note 3, 76 FR at 59465.

[21] *See id.*

[22] *See id.*

[23] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(1).

[25] *See* Notice, *supra* note 3, 76 FR at 59463.

[26] *See id.*

Act, the rules and regulations thereunder, and the rules of the Exchange.[27]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–BYX–2011–022), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29675 Filed 11–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65731; File No. SR–ISE–2011–74]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove the Requirement That its Members Pass the DTR Examination Prior To Registering

November 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act,[3] the Exchange is filing a proposed rule change to remove the requirement that Designated Trading Representatives (''DTRs'') pass an examination administered by the ISE before they can be approved by the Exchange to enter quotations and orders on behalf of market makers.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange rules governing registration, examination, and continuing education requirements for ISE members previously only applied to associated persons who conducted a public customer business. Such persons were required, in part, to pass the General Securities Representative examination (''Series 7'') and the ISE's Designated Trading Representative examination (''DTR Exam'') to function as representatives if accepting orders from non-member customers.[4] ISE members whose business was limited to proprietary securities trading (''Prop Traders'') were only required to pass the DTR exam prior to receiving approval to enter quotations and orders on the Exchange.

The ISE recently amended its rules governing registration, examination, and continuing education to require members, regardless of whether they conduct a public business or proprietary securities business, to register, qualify and comply with continuing education requirements.[5] To address the gap in registration and examination requirements related to Prop Traders, the ISE, in conjunction with other SROs,[6] implemented a new examination for Prop Traders (''Series 56'') that is administered by the Financial Industry Regulatory Authority on behalf of the SROs.[7]

Because the ISE now requires all Prop Traders to pass the Series 56 examination prior to being approved for membership, the Exchange believes that it is no longer necessary to administer its own exam. Likewise, the associated persons who are required to pass the Series 7 examination prior to receiving approval to enter quotations and orders on the Exchange, should no longer be required to also pass the DTR Exam because the Series 7 is a much more comprehensive examination and tests the candidate's knowledge of the subject matter applicable to proprietary trading. Accordingly, the Exchange proposes to delete the requirement that Designated Trading Representatives take the DTR Exam. Such individuals will continue to be subject to the Exchange's registration and other requirements specific [sic] Designated Trading Representatives.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(1)[9] of the Act in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange. The Exchange also believes the proposed rule change furthers the objectives of Section 6(c)(3)[10] of the Act, which authorizes ISE to prescribe standards of training, experience and competence for persons associated with ISE members, in that this filing establishes that ISE members must take and pass the Series 56 examination, which is being adopted by other SROs so as to create market-wide consistency in the examination process, instead of administering an ISE specific examination. ISE believes the Series 56 examination program establishes the appropriate

[27] 15 U.S.C. 78f(b)(1).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] *See* ISE Rule 602.

[5] *See* Securities Exchange Act Release No. 63843 (February 4, 2011), 76 FR 7885 (February 11, 2011) (SR–ISE–2010–115).

[6] The Series 56 examination program is shared by the ISE, Boston Options Exchange, Inc., Chicago Board Options Exchange, Inc., C2 Options Exchange, Inc., Chicago Stock Exchange, Inc., NASDAQ OMX, BX, NASDAQ OMX, PHLX, NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, and NYSE Amex, Incorporated.

[7] The Series 56 examination tests a candidate's knowledge of proprietary trading generally and the industry rules applicable to trading of equity securities and listed options contracts. The Series 56 examination covers, among other things, recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. While the examination is primarily dedicated to topics related to proprietary trading, the Series 56 examination also covers a few general concepts relating to customers. The Series 56 examination became available to ISE members on August 1, 2011.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(c)(3).

qualifications for an individual associated person that is required to register as a Proprietary Trader under Exchange Rule 313, including, but not limited to, Market-Makers, proprietary traders and individuals effecting transactions on behalf of other broker-dealers. The Exchange believes the Series 56 addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for individuals required to register as Designated Trading Representatives under ISE Rule 801.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)[11] of the Act and Rule 19b–4(f)(6)[12] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission. The Commission believes that such waiver will allow the Exchange to decommission the use of its own examination for registration purposes in conjunction with the Exchange's deadline for its membership to have taken and passed the Series 56 examination. Waiver of the operative delay will help to streamline the exam procedures, while simultaneously protecting investors and the public interest. Therefore, the Commission designates the proposal to be operative upon filing.[13]

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 email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–74 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–74. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–74 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29677 Filed 11–16–11; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65736; File No. SR–NYSE–2011–56]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers (''DMMs'')

November 10, 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 31, 2011, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 104 to codify certain traditional Trading Floor[3] functions

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Rule 6A defines the term ''Trading Floor'' to mean, in relevant part, ''the restricted-access

Continued

that may be performed by Designated Market Makers (''DMMs''),[4] to make Exchange systems available to DMMs that would provide DMMs with certain market information, to amend the Exchange's rules governing the ability of DMMs to provide market information to Floor brokers, and to make conforming amendments to other rules. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 104 to codify certain traditional Trading Floor functions that may be performed by DMMs; these functions were previously described in the Exchange's Floor Official Manual. In addition, the Exchange proposes to amend its rules to make Exchange systems available to DMMs that would provide DMMs with certain market information about securities in which the DMM is registered. The Exchange also proposes to amend its rules governing the ability of DMMs to provide market information to Floor brokers. Finally, the Exchange proposes to make clarifying and conforming amendments to other rules.[5]

Background

On October 24, 2008, the Commission approved, as a pilot program, certain of the rules that govern the current operation of the Exchange.[6] These rules are all elements of the Exchange's ''New Market Model.'' [7] The New Market Model pilot rules include NYSE Rule 104, which sets forth certain affirmative obligations of DMMs, the category of market participant that replaced specialists. DMMs have obligations with respect to the quality of the markets in securities to which they are assigned that are similar to certain obligations formerly held by specialists.

In addition to their trading functions, DMMs provide support on the Trading Floor to assist in the efficient operation of the Exchange market and maintain fair and orderly markets. These Trading Floor functions were performed by specialists before the New Market Model was adopted, and the functions were described in the Exchange's *Floor Official Manual*.[8] Under the New Market Model, there continues to be a need for DMMs to be permitted to perform these Trading Floor functions. As such, the Exchange proposes to codify these Trading Floor functions into Rule 104 by adding a new subparagraph (j)(i).[9]

DMM Trading Floor Functions

There are four categories of Trading Floor functions that DMMs may perform: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel; (2) bringing Floor brokers together to facilitate trading; (3) assisting Floor brokers with respect to their orders; and (4) researching the status of orders or questioned trades.

First, a DMM may maintain order among Floor brokers manually trading at the DMM's assigned panel. For example, where there is significant agency interest in a security, the DMM may help Floor Officials maintain order by managing trading crowd activity and facilitating the execution of one or more Floor broker's orders trading at the post.

Second, a DMM may bring Floor brokers together to facilitate trading, which may include the DMM acting as a buyer or seller. This function is consistent with the floor-based nature of the Exchange's hybrid market. For example, if a DMM is aware that a Floor broker representing buying interest inquired about selling interest in one of his or her assigned securities and later a Floor broker representing selling interest makes an inquiry about buying interest, the assigned DMM may inform the Floor broker representing the buying interest of the other Floor broker's selling interest. In addition, the DMM itself may provide contra-side interest to a Floor broker representing interest at the post.

Third, DMMs may assist Floor brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker. For example, if a Floor broker's handheld device is not operational, the DMM may assist the Floor broker by entering or canceling broker interest on the Floor broker's behalf.[10]

Fourth, DMMs may research the status of orders or questioned trades. DMMs may do so on their own initiative or at the request of the Exchange or a Floor broker when a Floor broker's hand-held device is not operational, when there is activity indicating that a potentially erroneous order was entered

physical areas designated by the Exchange for the trading of securities.''

[4] NYSE Rule 2(i) defines the term ''DMM'' to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE Rule 2(j) defines the term ''DMM unit'' as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE Rule 98.

[5] The Exchange's affiliate, NYSE Amex LLC, has submitted substantially the same proposed rule change to the Commission. *See* SR–NYSEAmex–2011–86.

[6] *See* Securities Exchange Act Release No. 48845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (''New Market Model Approval Order'').

[7] The New Market Model pilot is currently scheduled to expire on January 31, 2012. *See* Securities Exchange Act Release No. 64761 (June 28, 2011), 76 FR 39147 (July 5, 2011) (SR–NYSE–2011–29).

[8] *See 2004 Floor Official Manual, Market Surveillance June 2004 Edition,* Chapter Two, Section I.A. at 7 (''specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities''), Section I.B.3. at 10–11 (''[i]n opening and reopening trading in a listed security, a specialist should * * * [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate'' and ''[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary''), Section I.B.4. at 11 (''In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows * * * [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.''), and Section I.B.5. at 12 (A specialist should ''[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors.''). Relevant excerpts of the *2004 Floor Official Manual* are attached as Exhibit 3 of this filing.

[9] The Exchange proposes to redesignate the rule text currently set forth in section (j) as section (k) of Rule 104.

[10] The Exchange maintains records of whether a Floor broker's order is entered or cancelled by Exchange systems under such circumstances.

or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.

DMM Access to Exchange Systems

The Exchange proposes to amend Rule 104 to add new subparagraph (j)(ii), which would state that the Exchange may make systems available to a DMM at the post that display the following types of information about securities in which the DMM is registered: (A) Aggregated information about buying and selling interest;[11] (B) disaggregated information about the price and size of any individual order or Floor broker agency interest file, also known as ''e-Quotes,'' except that Exchange systems would not make available to DMMs information about any order or e-Quote, or portion thereof, that a market participant has elected not to display to a DMM; and (C) post-trade information. For the latter two categories, the DMM would have access to entering and clearing firm information and, as applicable, the badge number of the Floor broker representing the order. The systems would not contain any information about the ultimate customer (*i.e.,* the name of the member or member organization's customer) in a transaction. Aggregated information about buying and selling interest and post-trade information are currently available to DMMs.

Under the proposed rule change, Exchange systems would make available to DMMs disaggregated information about the following interest in securities in which the DMM is registered: (a) The price and size of all displayable interest submitted by off-Floor participants; and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.[12] The Exchange believes that it is appropriate to provide DMMs with this disaggregated order information because the information will assist DMMs in carrying out their Trading Floor functions as described above. For example, access to the disaggregated order information will increase DMMs' ability to assist Floor brokers with respect to their orders and researching the status of orders or questioned trades. In addition, providing DMMs with access to the disaggregated order information will contribute to the DMMs' ability to carry out their responsibility for managing the auction market process at the Exchange, which includes the function of bringing buyers and sellers together to facilitate trading. In addition, the proposed rule change would have no impact on the Exchange's priority and parity rules; DMM manual transactions would continue to be required to yield to intra-day public customer orders pursuant to Exchange Rule 72(c)(xi). The Exchange further notes that the manner by which the DMM would access disaggregated order information is limited. For example, a DMM can access the disaggregated order information only while located at the post on the Trading Floor. In addition, DMMs' ability to access the disaggregated order information is largely manual, in that the DMM must query the specific information about a particular security, which limits the number of securities about which disaggregated order information can be accessed at any given time. Exchange systems would not provide any information to the algorithmic trading systems of any DMM unit,[13] and would not support any electronic dissemination of the disaggregated order information to other market participants. The Exchange notes that market participants who do not want the DMM to have access to disaggregated order information have the option to electronically enter dark interest that is not visible to the DMM in disaggregated form. The Exchange also notes that the proposed rule change would specifically prohibit DMMs from using any trading information available to them in Exchange systems, including disaggregated order information, in a manner that would violate the Exchange rules or federal securities laws or regulations.[14]

In addition, the Exchange notes that any non-public market information that a DMM receives through Exchange systems would be subject to specific restrictions as ''non-public order information'' [15] under Exchange Rule 98. For example, Exchange Rule 98(c)(2)(A) would require DMMs to maintain the confidentiality of any such non-public market information and would prohibit the DMM member organization's departments, divisions, or aggregation units that are not part of the DMM unit, including investment banking, research, and customer-facing departments, from having access to that information. In addition, Rule 98 sets forth restrictions on access to non-public order information by the off-Floor locations of a DMM unit, including restrictions on the ability of a DMM located on the Trading Floor from communicating directly with off-Floor individuals or systems responsible for making off-Floor trading decisions.[16]

The Exchange believes that the proposed rule change would contribute substantially to the fair and orderly operation of the Exchange Trading Floor, and that the benefits of that contribution would significantly outweigh any incremental benefit to the DMMs by virtue of having access to disaggregated order information. DMM assistance at the post through the performance of the Trading Floor functions is an invaluable resource to minimize any disruption to the market, particularly if the Exchange is experiencing a systems issue; the Exchange systems that provide disaggregated order information play a pivotal role in that assistance, for example by allowing DMMs to enter or cancel orders on behalf of Floor brokers. Allowing DMMs to have access to those Exchange systems to perform the Trading Floor functions is more efficient than diverting Exchange resources to attend to individual Floor broker issues, particularly when the DMMs are ready

[11] Exchange systems make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-Floor participants; (b) all Minimum Display Reserve Orders, including the reserve portion; (c) all displayable Floor broker agency interest files (''e-Quotes''); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the Floor broker elects to exclude that reserve quantity from availability to the DMM.

[12] The Exchange previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchange stopped making such information available to DMMs on January 19, 2011. *See* Information Memo 11–03.

[13] The order information in these systems would be available for a DMM to view manually at the post and as such is different from the advance order-by-order information that DMM trading algorithms previously received before implementation of the New Market Model pilot (sometimes referred to as ''the look''). Under the proposed rule change, as is the case today, DMM trading algorithms would have the same information with respect to orders entered on the Exchange, Floor broker agency interest files or reserve interest as is disseminated to the public by the Exchange. *See* Rule 104(b)(iii).

[14] *See* Proposed NYSE Rule 104(j)(ii).

[15] NYSE Rule 98(b)(7) defines the term ''non-public order'' to mean ''any order, whether expressed electronically or verbally, or any information regarding a reasonably imminent non-public transaction or series of transactions entered or intended for entry or execution on the Exchange and which is not publicly available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook® or otherwise not publicly available. Non-public orders include order information at the opening, re-openings, the close, when the security is trading in slow mode, and order information in the NYSE Display Book® that is not available via NYSE OpenBook®.''

[16] *See* Rules 98(d)(2)(B)(i)–(iii), (f)(1)(A)(i)–(ii), and (f)(3)(C)(ii). In addition, Rule 98(c)(2)(A)(ii) provides that a DMM may make available to a Floor broker associated with an approved person or member organization any information that the DMM would be permitted to provide under Exchange rules to an unaffiliated Floor broker.

and able to perform the same functions. In contrast, the proposed rule change would provide DMMs with a disaggregated format of information that they already have access to on an aggregated basis. Any potential value to having order information on a disaggregated basis is mitigated by the fact that DMMs only have information about orders at the Exchange, which represent just a portion of the overall volume of trading in Exchange-listed stocks across the market. The information is likely to be stale upon receipt to the DMMs, thereby diminishing any likelihood that the information would be useful to DMMs in connection with their electronic or algorithmic trading. For example, the DMMs would have to use a manual process to access the information, the DMMs' access to disaggregated information at any given time would be limited to a single stock, and the information would not be dynamically updated to the DMM, in real time or otherwise. In addition, as described above, all intra-day manual trades entered by the DMM yield to public orders pursuant to Rule 72 and DMMs are restricted from sharing order information pursuant to Rule 98, both of which limit any potential for the DMMs to use the disaggregated order information in connection with their manual trading.

Conforming Amendments

To reflect the information that would be available to DMMs through Exchange systems, the Exchange proposes amendments to Rules 70(e), (f) and (i) and 70.25(a)(vii) to specify which information is available to a DMM through Exchange systems. The Exchange also proposes changes to Rule 70 to specify what information about e-Quotes is available to the DMM.

In addition, the Exchange proposes to delete Rule 104(a)(6), which currently provides that DMMs, trading assistants and anyone acting on their behalf are prohibited from using the Display Book® system to access information about Floor broker agency interest excluded from the aggregated agency interest and Minimum Display Reserve Order information other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect such transaction.

Ability of DMMs To Provide Market Information on the Trading Floor

The Exchange proposes to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and visitors on the Trading Floor. Specifically, Rule 104(j)(iii) would permit a DMM to provide the market information to which he or she has access under proposed Rule 104(j)(ii) to: (1) A Floor broker in response to an inquiry in the normal course of business; or (2) a visitor to the Trading Floor for the purpose of demonstrating methods of trading. This aspect of the proposal builds on and modifies current NYSE Rule 115, and the Exchange therefore proposes to delete NYSE Rule 115, which covers the same subject.[17]

Currently, NYSE Rule 115 provides that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors to the Trading Floor. This aspect of current Rule 115 would be replicated in proposed Rule 104(j)(iii)(B). Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System (''ITS''). This text is obsolete as the ITS Plan has been eliminated and therefore would not be included in amended Rule 104.[18] Third, a DMM may, while acting in a market making capacity, provide information about buying or selling interest in the market, including (a) Aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule (''CCS'') interest as described in Rule 1000(c), in response to an inquiry from a member conducting a market probe [19] in the normal course of business.

Proposed Rule 104(j)(iii) would permit DMMs to provide Floor brokers not only with the same aggregated order information that DMMs currently are permitted to provide under Rule 115 but also with the disaggregated and post-trade order information described above.[20] Broadening the scope of information that DMMs can provide Floor brokers will assist DMMs with carrying out their historical function of bringing Floor brokers together to facilitate trading. In addition, NYSE notes that Rule 115 allowed Exchange specialists to provide disaggregated order information to Floor brokers prior to adoption of the Hybrid Market.[21] Moreover, as noted above, both Floor brokers and off-Floor participants have the ability to enter partially or completely ''dark'' orders that are not visible to the DMM, and DMMs therefore would be unable to disseminate information about such ''dark'' orders or the dark portion of the orders in response to an inquiry from a Floor broker. When providing information, the individual DMM is responsible for fairly and impartially providing accurate and timely information to all inquiring Floor brokers about buying and selling interest in his or her assigned security.

Proposed Rule 104(j)(iii) also would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided ''in response to an inquiry from a member conducting a market probe in the normal course of business,'' as currently provided in Rule 115. The Exchange believes that the term ''market probe'' no longer accurately reflects the manner in which DMMs and Floor brokers interact on the Trading Floor. Rather, the Exchange believes that the Floor broker's normal course of business, as an agent for customers, includes both seeking market probes into the depth of the market as well as seeking out willing contra-side buyers and sellers in a particular security. In addition, the rule would specify that a Floor broker may not submit an inquiry to the DMM by electronic means and that the DMM may not use electronic means to transmit market information to a Floor broker in response an inquiry. Under the

[17] Rule 115 will be redesignated as ''Reserved.'' The Exchange further proposes to make conforming amendments to Rules 13, 98 Former, 104(a)(6), and 750.

[18] *See* Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007) (Intermarket Trading System; Notice of Filing and Immediate Effectiveness of the Twenty Fourth Amendment to the ITS Plan Relating to the Elimination of the ITS Plan).

[19] Generally, a market probe refers to when a Floor broker is seeking to ascertain the depth of the market in a security to determine at what price point a security may trade. However, it is a term of art whose meaning is not codified.

[20] Because DMMs on the Trading Floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

[21] *See* NYSE Regulation Information Memo 05–5 (stating that, under Rule 115, specialists may disclose the identity of the members or member organizations representing any orders entrusted to the specialist). The Exchange amended Rule 115 in connection with the Hybrid Market because at that time, there was no way for Floor brokers to enter fully dark electronic interest. Now that Exchange systems can accept fully dark electronic interest from both Floor brokers and off-Floor participants, the Hybrid Market change to Rule 115 has been obviated and the rule can return to its former status.

proposed rule change, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and they would only be able to access such market information through a direct interaction with a DMM at the post.

The Exchange believes that providing Floor brokers with access to the disaggregated order information would serve a valuable function by increasing the ability of Floor brokers to source liquidity and provide price discovery for block transactions. In particular, the ability of Floor brokers to receive the disaggregated order information should, in turn, enhance their ability to facilitate transactions for their customers by identifying market participants with trading interest that could trade with the Floor brokers' customers. Floor brokers have historically served this role on behalf of their customers, which include institutional clients and block-trading desks, and they continue to perform this agency function today. The Exchange notes that Floor brokers continue to be subject to their existing obligations with respect to Floor trading and access to information. In particular, Floor brokers remain subject to the restrictions in Section 11(a) of the Securities Exchange Act of 1934 (the ''Act'') and the rule thereunder, which effectively prohibit Floor brokers from effecting transactions for their own account, the account of an associated person, or an account with respect to which the member, member organization, or an associated person thereof exercises investment discretion.[22]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[23] in general, and Section 6(b)(5) of the Act,[24] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for 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 clarifies that DMMs may perform certain defined Trading Floor functions, which were previously performed by specialists, in furtherance of the efficient, fair, and orderly operation of the Exchange. In addition, increasing the amount of information, including disaggregated order information, that a DMM is permitted to view and provide to Floor brokers would further the ability of DMMs to carry out the defined Trading Floor functions and, as a result, is designed to remove impediments to and perfect the mechanism of a free and open market through the efficient operation of the Exchange, in particular by facilitating the bringing of buyers and sellers together. Although a vast majority of the transactions executed on the Exchange are automated, Floor brokers continue to play an important role for customers in those transactions that require the expertise of a professional trading floor agent, including engaging in price discovery and sourcing liquidity for block transactions. While the disaggregated order information that would be available to DMMs and Floor brokers under the proposed rule change is important to them in carrying out their unique roles in a floor trading environment, the Exchange believes this information would not be material to market participants executing automated orders. In addition, the means of access by DMMs and Floor brokers to the disaggregated order information is largely manual. Accordingly, the Exchange believes that access to disaggregated order information as set forth in this proposed rule change provides no unfair advantage to DMMs or Floor brokers. In addition, as noted above, DMMs would be specifically prohibited from using the market information available through Exchange systems for any purpose that would violate Exchange rules or federal securities laws or regulations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be approved.

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 email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2011–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[22] *See also* NYSE Rule 90.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

available publicly. All submissions should refer to File Number SR–NYSE–2011–56 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29679 Filed 11–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65737; File No. SR–FINRA–2011–066]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Order Audit Trail System Definitions of Index Arbitrage Trade and Program Trade

November 10, 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 November 4, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA filed the proposal as a ''non-controversial'' proposed rule change pursuant to 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)[4] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the definitions of ''Index Arbitrage Trade'' and ''Program Trade'' in FINRA Rule 7410 (Definitions) to reflect the deletion of NYSE Rule 132B and the adoption of NYSE Rule 7410.[5]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

FINRA is filing the proposed rule change to update the definitions of ''Index Arbitrage Trade'' and ''Program Trade'' found in FINRA Rule 7410.

The definitions of ''Index Arbitrage Trade'' and ''Program Trade'' in FINRA Rule 7410(f) and (m), respectively, incorporate by reference the definitions of ''index arbitrage'' and ''program trading'' in NYSE Rule 132B. In connection with the extension of FINRA's Order Audit Trail System (''OATS'') rules (''OATS Rules'') to all NMS stocks, the NYSE filed with the SEC a proposed rule change to delete NYSE Rules 132A, 132B, and 132C (the NYSE's Order Tracking System, or OTS, Rules) and to adopt, with minor conforming changes, the text of the FINRA Rule 7400 Series, the OATS Rules.[6] As part of that rule change, the NYSE relocated its definitions of ''index arbitrage'' and ''program trading'' from NYSE Rule 132B.10 to NYSE Rule 7410(g) and (m). Because the OTS Rules, including NYSE Rule 132B, will no longer be in the NYSE Rulebook after the OATS Rules are extended to all NMS stocks on November 28, 2011,[7] FINRA is amending the definitions of ''Index Arbitrage Trade'' and ''Program Trade'' in paragraphs (f) and (m) of FINRA Rule 7410 to refer to new NYSE Rule 7410 rather than NYSE Rule 132B.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules by updating the cross-references to the new NYSE rule. FINRA also believes that the proposed rule change will promote the harmonization of industry rules by ensuring that the definitions of ''Program Trade'' and ''Index Arbitrage Trade'' in the OATS Rules will remain consistent with the analogous definitions in the NYSE rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 65523 (October 7, 2011); 76 FR 64154 (October 17, 2011).

[6] *See* Securities Exchange Act Release No. 65523 (October 7, 2011); 76 FR 64154 (October 17, 2011).

[7] FINRA began phasing in the extension of the OATS Rules to all NMS stocks on October 17, 2011. *See* Securities Exchange Act Release No. 65442 (September 29, 2011); 76 FR 61773 (October 5, 2011). The phase-in will be completed on November 28, 2011. *See OATS Reporting Technical Specifications,* at ii (ed. May 3, 2011). The NYSE is phasing out the OTS requirements on the same timetable as FINRA is phasing in the OATS requirements. *See* Securities Exchange Act Release No. 65523, n.16 (October 7, 2011); 76 FR 64154, 64156 n.16 (October 17, 2011).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission is waiving the 30-day operative period.[13] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow FINRA to cross-reference the appropriate NYSE rule and thereby reduce confusion regarding the applicable NYSE rule definition. The Commission, therefore, designates the proposed rule change to be operative upon filing with the Commission.

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 email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–066. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–066 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

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BILLING CODE 8011–01–P

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. FINRA has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65735; File No. SR–NYSEAmex–2011–86]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers

November 10, 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 31, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The 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 Equities Rule 104 to codify certain traditional Trading Floor[3] functions that may be performed by Designated Market Makers (''DMMs''),[4] to make Exchange systems available to DMMs that would provide DMMs with certain market information, to amend the Exchange's rules governing the ability of DMMs to provide market information to Floor brokers, and to make conforming amendments to other rules. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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.

[3] NYSE Amex Equities Rule 6A defines the term ''Trading Floor'' to mean, in relevant part, ''the restricted-access physical areas designated by the Exchange for the trading of securities.''

[4] NYSE Amex Equities Rule 2(i) defines the term ''DMM'' to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE Amex Equities Rule 2(j) defines the term ''DMM unit'' as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE Amex Equities Rule 98.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Amex Equities Rule 104 to codify certain traditional Trading Floor functions that may be performed by DMMs. These functions were previously described in the Floor Official Manual for the New York Stock Exchange LLC (''NYSE''). NYSE Amex conformed its equity trading rules and practices to those of the NYSE when it became a subsidiary of NYSE Euronext on October 1, 2008.[5] In addition, the Exchange proposes to amend its rules to make Exchange systems available to DMMs that would provide DMMs with certain market information about securities in which the DMM is registered. The Exchange also proposes to amend its rules governing the ability of DMMs to provide market information to Floor brokers. Finally, the Exchange proposes to make clarifying and conforming amendments to other rules.[6]

Background

On October 24, 2008, the Commission approved, as a pilot program, certain of the rules that govern the current operation of the NYSE.[7] These rules are all elements of the NYSE's ''New Market Model.'' [8] The New Market Model pilot rules include NYSE Rule 104, which sets forth certain affirmative obligations of DMMs, the category of market participant that replaced specialists. DMMs have obligations with respect to the quality of the markets in securities to which they are assigned that are similar to certain obligations formerly held by specialists. NYSE Amex adopted amendments to implement the New Market Model, including amendments to NYSE Amex Equities Rule 104, on November 26, 2008.[9]

In addition to their trading functions, DMMs provide support on the Trading Floor to assist in the efficient operation of the Exchange market and maintain fair and orderly markets. These Trading Floor functions were performed by specialists before the New Market Model was adopted, and the functions were described in the Exchange's *Floor Official Manual*.[10] Under the New Market Model, there continues to be a need for DMMs to be permitted to perform these Trading Floor functions. As such, the Exchange proposes to codify these Trading Floor functions into NYSE Amex Equities Rule 104 by adding a new subparagraph (j)(i).[11]

DMM Trading Floor Functions

There are four categories of Trading Floor functions that DMMs may perform: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel; (2) bringing Floor brokers together to facilitate trading; (3) assisting Floor brokers with respect to their orders; and (4) researching the status of orders or questioned trades.

First, a DMM may maintain order among Floor brokers manually trading at the DMM's assigned panel. For example, where there is significant agency interest in a security, the DMM may help Floor Officials maintain order by managing trading crowd activity and facilitating the execution of one or more Floor broker's orders trading at the post.

Second, a DMM may bring Floor brokers together to facilitate trading, which may include the DMM acting as a buyer or seller. This function is consistent with the floor-based nature of the Exchange's hybrid market. For example, if a DMM is aware that a Floor broker representing buying interest inquired about selling interest in one of his or her assigned securities and later a Floor broker representing selling interest makes an inquiry about buying interest, the assigned DMM may inform the Floor broker representing the buying interest of the other Floor broker's selling interest. In addition, the DMM itself may provide contra-side interest to a Floor broker representing interest at the post.

Third, DMMs may assist Floor brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker. For example, if a Floor broker's handheld device is not operational, the DMM may assist the Floor broker by entering or canceling broker interest on the Floor broker's behalf.[12]

Fourth, DMMs may research the status of orders or questioned trades. DMMs may do so on their own initiative or at the request of the Exchange or a Floor broker when a Floor broker's hand-held device is not operational, when there is activity indicating that a potentially erroneous order was entered or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.

DMM Access to Exchange Systems

The Exchange proposes to amend NYSE Amex Equities Rule 104 to add new subparagraph (j)(ii), which would state that the Exchange may make systems available to a DMM at the post that display the following types of information about securities in which the DMM is registered: (A) Aggregated information about buying and selling interest; [13] (B) disaggregated information about the price and size of any individual order or Floor broker agency interest file, also known as ''e-Quotes,''

[5] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the merger).

[6] NYSE has submitted substantially the same proposed rule change to the Commission. *See* SR–NYSE–2011–56.

[7] *See* Securities Exchange Act Release No. 48845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (''New Market Model Approval Order'').

[8] The New Market Model pilot is currently scheduled to expire on January 31, 2012. *See* Securities Exchange Act Release No. 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR–NYSE–2011–43).

[9] *See* Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 December 3, 2008) (SR–NYSEALTR–2008–10).

[10] *See 2004 Floor Official Manual, Market Surveillance June 2004 Edition,* Chapter Two, Section I.A. at 7 (''specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities''), Section I.B.3. at 10–11 (''[i]n opening and reopening trading in a listed security, a specialist should * * * [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate'' and ''[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary''), Section I.B.4. at 11 (''In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows * * * [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.''), and Section I.B.5. at 12 (A specialist should ''[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors.''). Relevant excerpts of the *2004 Floor Official Manual* are attached as Exhibit 3 of this filing.

[11] The Exchange proposes to redesignate the rule text currently set forth in section (j) as section (k) of NYSE Amex Equities Rule 104.

[12] The Exchange maintains records of whether a Floor broker's order is entered or cancelled by Exchange systems under such circumstances.

[13] Exchange systems make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-Floor participants; (b) all Minimum Display Reserve Orders, including the reserve portion; (c) all displayable Floor broker agency interest files (''e-Quotes''); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the Floor broker elects to exclude that reserve quantity from availability to the DMM.

except that Exchange systems would not make available to DMMs information about any order or e-Quote, or portion thereof, that a market participant has elected not to display to a DMM; and (C) post-trade information. For the latter two categories, the DMM would have access to entering and clearing firm information and, as applicable, the badge number of the Floor broker representing the order. The systems would not contain any information about the ultimate customer (*i.e.,* the name of the member or member organization's customer) in a transaction. Aggregated information about buying and selling interest and post-trade information are currently available to DMMs.

Under the proposed rule change, Exchange systems would make available to DMMs disaggregated information about the following interest in securities in which the DMM is registered: (a) The price and size of all displayable interest submitted by off-Floor participants; and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.[14] The Exchange believes that it is appropriate to provide DMMs with this disaggregated order information because the information will assist DMMs in carrying out their Trading Floor functions as described above. For example, access to the disaggregated order information will increase DMMs' ability to assist Floor brokers with respect to their orders and researching the status of orders or questioned trades. In addition, providing DMMs with access to the disaggregated order information will contribute to the DMMs' ability to carry out their responsibility for managing the auction market process at the Exchange, which includes the function of bringing buyers and sellers together to facilitate trading. In addition, the proposed rule change would have no impact on the Exchange's priority and parity rules; DMM manual transactions would continue to be required to yield to intra-day public customer orders pursuant to NYSE Amex Equities Rule 72(c)(xi). The Exchange further notes that the manner by which the DMM would access disaggregated order information is limited. For example, a DMM can access the disaggregated order information only while located at the post on the Trading Floor. In addition, DMMs' ability to access the disaggregated order information is largely manual, in that the DMM must query the specific information about a particular security, which limits the number of securities about which disaggregated order information can be accessed at any given time. Exchange systems would not provide any information to the algorithmic trading systems of any DMM unit,[15] and would not support any electronic dissemination of the disaggregated order information to other market participants. The Exchange notes that market participants who do not want the DMM to have access to disaggregated order information have the option to electronically enter dark interest that is not visible to the DMM in disaggregated form. The Exchange also notes that the proposed rule change would specifically prohibit DMMs from using any trading information available to them in Exchange systems, including disaggregated order information, in a manner that would violate the Exchange rules or federal securities laws or regulations.[16]

In addition, the Exchange notes that any non-public market information that a DMM receives through Exchange systems would be subject to specific restrictions as ''non-public order information'' [17] under NYSE Amex Equities Rule 98. For example, NYSE Amex Equities Rule 98(c)(2)(A) would require DMMs to maintain the confidentiality of any such non-public market information and would prohibit the DMM member organization's departments, divisions, or aggregation units that are not part of the DMM unit, including investment banking, research, and customer-facing departments, from having access to that information. In addition, NYSE Amex Equities Rule 98 sets forth restrictions on access to non-public order information by the off-Floor locations of a DMM unit, including restrictions on the ability of a DMM located on the Trading Floor from communicating directly with off-Floor individuals or systems responsible for making off-Floor trading decisions.[18]

The Exchange believes that the proposed rule change would contribute substantially to the fair and orderly operation of the Exchange Trading Floor, and that the benefits of that contribution would significantly outweigh any incremental benefit to the DMMs by virtue of having access to disaggregated order information. DMM assistance at the post through the performance of the Trading Floor functions is an invaluable resource to minimize any disruption to the market, particularly if the Exchange is experiencing a systems issue; the Exchange systems that provide disaggregated order information play a pivotal role in that assistance, for example by allowing DMMs to enter or cancel orders on behalf of Floor brokers. Allowing DMMs to have access to those Exchange systems to perform the Trading Floor functions is more efficient than diverting Exchange resources to attend to individual Floor broker issues, particularly when the DMMs are ready and able to perform the same functions. In contrast, the proposed rule change would provide DMMs with a disaggregated format of information that they already have access to on an aggregated basis. Any potential value to having order information on a disaggregated basis is mitigated by the fact that DMMs only have information about orders at the Exchange, which represent just a portion of the overall volume of trading in Exchange-listed stocks across the market. The information is likely to be stale upon receipt to the DMMs, thereby diminishing any likelihood that the information would be useful to DMMs in connection with their electronic or algorithmic trading. For example, the DMMs would have to use a manual process to access the information, the DMMs' access to disaggregated information at any given time would be limited to a single stock, and the information would not be dynamically updated to the DMM, in real time or

[14] The Exchange previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchange stopped making such information available to DMMs on January 19, 2011. *See* Information Memo 11–03.

[15] The order information in these systems would be available for a DMM to view manually at the post and as such is different from the advance order-by-order information that DMM trading algorithms previously received before implementation of the New Market Model pilot (sometimes referred to as ''the look''). Under the proposed rule change, as is the case today, DMM trading algorithms would have the same information with respect to orders entered on the Exchange, Floor broker agency interest files or reserve interest as is disseminated to the public by the Exchange. *See* NYSE Amex Equities Rule 104(b)(iii).

[16] *See* Proposed NYSE Amex Equities Rule 104(j)(ii).

[17] NYSE Amex Equities Rule 98(b)(7) defines the term ''non-public order'' to mean ''any order, whether expressed electronically or verbally, or any information regarding a reasonably imminent non-public transaction or series of transactions entered or intended for entry or execution on the Exchange and which is not publicly available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook® or otherwise not publicly available. Non-public orders include order information at the opening, re-openings, the close, when the security is trading in slow mode, and order information in the NYSE Display Book® that is not available via NYSE OpenBook®.''

[18] *See* NYSE Amex Equities Rules 98(d)(2)(B)(i)–(iii), (f)(1)(A)(i)–(ii), and (f)(3)(C)(ii). In addition, NYSE Amex Equities Rule 98(c)(2)(A)(ii) provides that a DMM may make available to a Floor broker associated with an approved person or member organization any information that the DMM would be permitted to provide under Exchange rules to an unaffiliated Floor broker.

otherwise. In addition, as described above, all intra-day manual trades entered by the DMM yield to public orders pursuant to NYSE Amex Equities Rule 72 and DMMs are restricted from sharing order information pursuant to NYSE Amex Equities Rule 98, both of which limit any potential for the DMMs to use the disaggregated order information in connection with their manual trading.

Conforming Amendments

To reflect the information that would be available to DMMs through Exchange systems, the Exchange proposes amendments to NYSE Amex Equities Rules 70(e), (f) and (i) and 70.25(a)(vii) to specify which information is available to a DMM through Exchange systems. The Exchange also proposes changes to NYSE Amex Equities Rule 70 to specify what information about e-Quotes is available to the DMM.

In addition, the Exchange proposes to delete NYSE Amex Equities Rule 104(a)(6), which currently provides that DMMs, trading assistants and anyone acting on their behalf are prohibited from using the Display Book® system to access information about Floor broker agency interest excluded from the aggregated agency interest and Minimum Display Reserve Order information other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect such transaction.

Ability of DMMs To Provide Market Information on the Trading Floor

The Exchange proposes to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and visitors on the Trading Floor. Specifically, NYSE Amex Equities Rule 104(j)(iii) would permit a DMM to provide the market information to which he or she has access under proposed NYSE Amex Equities Rule 104(j)(ii) to: (1) A Floor broker in response to an inquiry in the normal course of business; or (2) a visitor to the Trading Floor for the purpose of demonstrating methods of trading. This aspect of the proposal builds on and modifies current NYSE Amex Equities Rule 115, and the Exchange therefore proposes to delete that Rule, which covers the same subject.[19]

Currently, NYSE Amex Equities Rule 115 provides that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors to the Trading Floor. This aspect of current NYSE Amex Equities Rule 115 would be replicated in proposed NYSE Amex Equities Rule 104(j)(iii)(B). Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System (''ITS''). This text is obsolete as the ITS Plan has been eliminated and therefore would not be included in amended NYSE Amex Equities Rule 104.[20] Third, a DMM may, while acting in a market making capacity, provide information about buying or selling interest in the market, including (a) Aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest, (b) aggregated interest of Minimum Display Reserve Orders and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule (''CCS'') interest as described in NYSE Amex Equities Rule 1000(c), in response to an inquiry from a member conducting a market probe[21] in the normal course of business.

Proposed NYSE Amex Equities Rule 104(j)(iii) would permit DMMs to provide Floor brokers not only with the same aggregated order information that DMMs currently are permitted to provide under NYSE Amex Equities Rule 115 but also with the disaggregated and post-trade order information described above.[22] Broadening the scope of information that DMMs can provide Floor brokers will assist DMMs with carrying out their historical function of bringing Floor brokers together to facilitate trading. In addition, the Exchange notes that NYSE Amex Equities Rule 115 allowed Exchange specialists to provide disaggregated order information to Floor brokers prior to adoption of the Hybrid Market.[23] Moreover, as noted above, both Floor brokers and off-Floor participants have the ability to enter partially or completely ''dark'' orders that are not visible to the DMM, and DMMs therefore would be unable to disseminate information about such ''dark'' orders or the dark portion of the orders in response to an inquiry from a Floor broker. When providing information, the individual DMM is responsible for fairly and impartially providing accurate and timely information to all inquiring Floor brokers about buying and selling interest in his or her assigned security.

Proposed NYSE Amex Equities Rule 104(j)(iii) also would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided ''in response to an inquiry from a member conducting a market probe in the normal course of business,'' as currently provided in NYSE Amex Equities Rule 115. The Exchange believes that the term ''market probe'' no longer accurately reflects the manner in which DMMs and Floor brokers interact on the Trading Floor. Rather, the Exchange believes that the Floor broker's normal course of business, as an agent for customers, includes both seeking market probes into the depth of the market as well as seeking out willing contra-side buyers and sellers in a particular security. In addition, the rule would specify that a Floor broker may not submit an inquiry to the DMM by electronic means and that the DMM may not use electronic means to transmit market information to a Floor broker in response an inquiry. Under the proposed rule change, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and they would only be able to access such market information through a direct interaction with a DMM at the post.

The Exchange believes that providing Floor brokers with access to the disaggregated order information would serve a valuable function by increasing the ability of Floor brokers to source liquidity and provide price discovery for block transactions. In particular, the ability of Floor brokers to receive the disaggregated order information should,

[19] NYSE Amex Equities Rule 115 will be redesignated as ''Reserved.'' The Exchange further proposes to make conforming amendments to NYSE Amex Equities Rules 13 and 104(a)(6).

[20] *See* Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007) (Intermarket Trading System; Notice of Filing and Immediate Effectiveness of the Twenty Fourth Amendment to the ITS Plan Relating to the Elimination of the ITS Plan).

[21] Generally, a market probe refers to when a Floor broker is seeking to ascertain the depth of the market in a security to determine at what price point a security may trade. However, it is a term of art whose meaning is not codified.

[22] Because DMMs on the Trading Floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

[23] *See* NYSE Regulation Information Memo 05–5 (stating that, under NYSE Rule 115, specialists may disclose the identity of the members or member organizations representing any orders entrusted to the specialist). The NYSE amended Rule 115 in connection with the Hybrid Market because at that time, there was no way for Floor brokers to enter fully dark electronic interest. Now that NYSE and Exchange systems can accept fully dark electronic interest from both Floor brokers and off-Floor participants, the Hybrid Market change to NYSE Rule 115 has been obviated.

in turn, enhance their ability to facilitate transactions for their customers by identifying market participants with trading interest that could trade with the Floor brokers' customers. Floor brokers have historically served this role on behalf of their customers, which include institutional clients and block-trading desks, and they continue to perform this agency function today. The Exchange notes that Floor brokers continue to be subject to their existing obligations with respect to Floor trading and access to information. In particular, Floor brokers remain subject to the restrictions in Section 11(a) of the Securities Exchange Act of 1934 (the ''Act'') and the rule thereunder, which effectively prohibit Floor brokers from effecting transactions for their own account, the account of an associated person, or an account with respect to which the member, member organization, or an associated person thereof exercises investment discretion.[24]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[25] in general, and Section 6(b)(5) of the Act,[26] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for 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 clarifies that DMMs may perform certain defined Trading Floor functions, which were previously performed by specialists, in furtherance of the efficient, fair, and orderly operation of the Exchange. In addition, increasing the amount of information, including disaggregated order information, that a DMM is permitted to view and provide to Floor brokers would further the ability of DMMs to carry out the defined Trading Floor functions and, as a result, is designed to remove impediments to and perfect the mechanism of a free and open market through the efficient operation of the Exchange, in particular by facilitating the bringing of buyers and sellers together. Although a vast majority of the transactions executed on the Exchange are automated, Floor brokers continue to play an important role for customers in those transactions that require the expertise of a professional trading floor agent, including engaging in price discovery and sourcing liquidity for block transactions. While the disaggregated order information that would be available to DMMs and Floor brokers under the proposed rule change is important to them in carrying out their unique roles in a floor trading environment, the Exchange believes this information would not be material to market participants executing automated orders. In addition, the means of access by DMMs and Floor brokers to the disaggregated order information is largely manual. Accordingly, the Exchange believes that access to disaggregated order information as set forth in this proposed rule change provides no unfair advantage to DMMs or Floor brokers. In addition, as noted above, DMMs would be specifically prohibited from using the market information available through Exchange systems for any purpose that would violate Exchange rules or federal securities laws or regulations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–86 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–2011–86. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–86 and should be submitted on or before December 8, 2011.

[24] *See also* NYSE Amex Equities Rule 90.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29678 Filed 11–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65730; File No. SR–NYSEArca–2011–79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Modify the Fees Relating to Qualified Contingent Cross Orders

November 10, 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 November 1, 2011, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 the NYSE Arca Options Fee Schedule (''Fee Schedule'') to modify the fees relating to Qualified Contingent Cross (''QCC'') orders. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to modify the fees relating to QCC orders. Specifically, the Exchange intends to adopt a rebate of $.10 per contract for executed QCC orders. The rebate will be credited to the executing Floor Broker.

The Exchange notes that the terms of a QCC order are negotiated and agreed to prior to being brought to an exchange for possible execution. In bringing a QCC order to the Exchange for execution, OTP Holders have two primary means of doing so. They can configure their systems to deliver the QCC order to the Exchange matching engines for validation and execution. Alternatively they can utilize the services of another OTP Holder acting as a Floor Broker. In turn, the Floor Broker who is in receipt of such an order can enter the order through an Exchange-provided system[3] to be delivered to the Exchange matching engine for validation and potential execution. In light of the fact that the Exchange does not offer a front-end for order entry, unlike some of the competing exchanges,[4] the Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a QCC order. The Exchange expects that the rebate offered to executing Floor Brokers will allow them to price their services at a level that will enable them to attract QCC order flow from participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver QCC orders directly to the Exchange systems. To the extent that Floor Brokers are able to attract these QCC orders, they will gain important information that will allow them to solicit the parties to the QCC orders for participation in other trades, which will in turn benefit all other Exchange participants through the additional liquidity and price discovery that may occur as a result. The Exchange notes that at least two other exchanges offer a similar rebate.[5]

The proposed change will be operative on November 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[6] of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4)[7] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes the proposed $.10 per contract rebate for Floor Brokers who enter QCC orders that execute is reasonable because it will allow Floor Brokers the opportunity to compete for QCC orders that would otherwise be entered into front-end order entry systems of competing exchanges.[8] The proposed rebate is comparable to that found on other exchanges[9] in that it is being offered to Floor Brokers as an inducement that may allow them to competitively price their services offered to all participants. To the extent that the rebate is successful in attracting additional order flow to the Exchange, all participants should benefit. As such, the Exchange believes that the rebate is appropriate and reasonable.

The Exchange believes the proposal to adopt a $.10 per contract rebate is equitable and not unfairly discriminatory because it would uniformly apply to all QCC orders entered by a Floor Broker for validation by the system and potential execution. The rebate is not unfairly discriminatory to firms that enter QCC orders directly into the NYSE Arca System through electronic connection, because the fee for the QCC order is the same whether it is entered electronically or through a Floor Broker. In addition, under Commentary .01 to Arca Options Rule 6.90, only Floor Brokers may enter a QCC order from the Floor; therefore,

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Floor Brokers are required by NYSE Arca Options Rule 6.67 to have systematized orders prior to representing them in open outcry. Using the same Electronic Order Capture System, Floor Brokers will be able to enter QCC orders for validation by the Exchange matching engines and potential execution.

[4] The International Securities Exchange offers PRECISE TRADE as a means for users to enter orders and Chicago Board Options Exchange has a similar front-end order entry system called PULSE. Such systems do not require users to develop their own internal front-end order entry systems and may provide savings to users in terms of development time and costs.

[5] *See* Securities Exchange Act Release No. 65472 (October 3, 2011), 76 FR 62887 (October 11, 2011) (SR–NYSEAmex–2011–72) and NASDAQ OMX PHLX fee schedule dated September 12, 2011, page 21 (describing a Floor Broker Subsidy that can range as high as $.09 per contract), available at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See supra* note 4.

[9] *See supra* note 5.

providing the rebate to Floor Brokers does not discriminate against other QCC orders entered into the NYSE Arca System from on the Floor. Any participant will be able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the entry of the QCC order to the Floor Broker into the Exchange systems for validation and execution. The additional order flow attracted by this rebate should benefit all participants. The rebate is meant to assist Floor Brokers to recruit business on an agency basis from both OTP Holders and non-OTP Holder firms. The Floor Broker may use all or part of the rebate to offset the Floor Brokerage charges billed to the Firm. For this reason the Exchange believes the adoption of the proposed rebate is both equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2011–79 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–2011–79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–79 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65728, File No. SR–BATS–2011–035]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend and Restate the Amended and Restated Bylaws of BATS Global Markets, Inc.

November 10, 2011.

I. Introduction

On September 7, 2011, BATS Exchange, Inc. (''BATS'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Bylaws of the Exchange's sole stockholder, BATS Global Markets, Inc. (''Corporation''), in connection with the Corporation's anticipated initial public offering of shares of its Class A Common Stock (the ''IPO''). The proposed rule change was published for comment in the **Federal Register** on September 26, 2011.[3] On November 3, 2011, the Exchange filed Partial Amendment No. 1 to the proposed rule change.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Partial Amendment No. 1.

II. Description of the Proposal

On May 13, 2011, the Corporation filed a registration statement on Form S–1 with the Commission to register shares of Class A common stock and to disclose its intention to conduct an IPO offering those shares and to list those shares for trading on the Exchange. In connection with its IPO, the Exchange filed this proposed rule change to amend and restate the Corporation's current Bylaws and adopt these changes as its Second Amended and Restated Bylaws (''New Bylaws''). The proposal would primarily amend and restate various provisions of the Bylaws in a manner that the Exchange believes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65353 (September 19, 2011), 76 FR 59472 (September 26, 2011) (''Notice'').

[4] Partial Amendment No. 1 corrects an inconsistency between the Third Amended and Restated Certificate of Incorporation of the Corporation and the Corporation's proposed amended bylaws concerning actions of stockholders without a meeting. This is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the rule filing.

would reflect changes to conform with provisions that are more customary for publicly-owned companies and also conform the New Bylaws to the Corporation's Certificate of Incorporation.[5]

A. Stockholders Meetings and Actions Without a Meeting

The Exchange has proposed to revise the current Bylaw procedures to require stockholders to make certain disclosures and representations in notices to the Corporation concerning business proposals and director nominations to be considered at annual meetings.[6] In addition, the Exchange would require that all proposals and nominations comply with applicable requirements of the Act.[7] The Exchange has represented that the purpose of the disclosure and representation requirements is to assure that stockholders asked to vote on stockholder proposals or nominations are more fully informed and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.[8]

In addition, the Exchange has proposed that the New Bylaws would only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by a majority of the board of directors.[9] The Exchange has also proposed to revise certain notice requirements with respect to written consent from stockholders to approve certain corporate actions taken without a meeting.[10] Additionally, the Exchange has proposed to prohibit any action by written consent following a change of ownership, except as provided in the Corporation's Certificate of Incorporation.[11] The Exchange notes that these provisions are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders or action by written consent.[12]

B. Board of Directors and Board Committees

The Exchange has proposed changing the current Bylaws to revise the process to remove directors and board committees. The proposed rule change would allow the board of directors or any director to be removed by the affirmative vote of at least a majority of voting power of all outstanding shares of the Corporation.[13] The Exchange has represented that the purpose of this change is to align these requirements with Delaware General Corporation Laws.[14] The Exchange also has proposed to eliminate references to executive committees, to authorize the board of directors to create committees, and, so as to ensure that the full board of directors considers significant corporate decisions, to prohibit board committees from (i) Approving, adopting, or recommending to stockholders any matter required by Delaware law to be submitted for stockholder approval or (ii) adopting, amending, and repealing the New Bylaws.[15]

Currently, the Corporation's Bylaws provide that either the board of directors or shareholders may adopt, amend, or repeal the Bylaws of the Corporation. The proposal would modify this provision so that, upon a Change in Ownership,[16] stockholders may only adopt, amend, or repeal the New Bylaws upon the affirmative vote of at least 70% of the total voting power of all outstanding shares of the Corporation.[17]

C. Other Amendments

The proposal will also amend and restate various other provisions such as those relating to the registered office of the Corporation,[18] shares held by the Corporation in a fiduciary capacity,[19] form of stock certificates,[20] loans to officers,[21] and indemnification of directors,[22] among others.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[24] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with the provisions of the Act.

The Exchange has represented that the proposed rule change relates solely to the Bylaws of the Corporation and that the Exchange will continue to be governed by its existing certificate of incorporation and by-laws.[25] The Exchange also has represented that the Corporation will continue to directly and solely hold the stock in, and voting power of, the Exchange and that the Exchange will continue to operate pursuant to its existing governance structure.[26] The Commission also notes that the Exchange does not propose any new substantive changes to Article 12 of the current Bylaws (relating to SRO Functions of BATS Exchange, Inc. and BAT-Y Exchange, Inc.).

The Commission, therefore, believes that the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act, which requires the Exchange to have the ability to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with provisions of the

[5] *See* Notice, *supra* note 3, 76 FR at 59473. The Exchange also filed a proposed rule change to amend the Corporation's Certificate of Incorporation in anticipation of its upcoming IPO, which proposed rule change was recently approved by the Commission. *See* Securities Exchange Act Release No. 65646 (October 27, 2011), 76 FR 67783 (November 2, 2011) (SR–BATS–2011–033) (order approving proposed rule change to amend and restate the Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.).

[6] *See* proposed Section 2.02 of the New Bylaws. The New Bylaws also state that such notice requirements would be satisfied if done in compliance with Exchange Act Rule 14a-8. *See* Notice, *supra* note 3, 76 FR at 59474. Additionally, the New Bylaws requires stockholders to appear at any meeting to present such proposals or nominations. *See id.*

[7] *See* Notice, *supra* note 3, 76 FR at 59474.

[8] *See id.*

[9] *See* proposed Section 2.03 of the New Bylaws. Under the current Bylaws, a special meeting of the stockholders could be called by the chairman of the board of directors, chief executive officer, the majority of the board of directors, or by the stockholders entitled to vote at least ten percent of the votes at the meeting. The Exchange also proposed that, whenever preferred stockholders have the right to elect directors, the preferred stockholders may call a special meeting of preferred stockholders pursuant to a resolution of the board. *See id.*

[10] *See* proposed Section 2.10 of the New Bylaws.

[11] *See* Notice, *supra* note 3, 76 FR at 59474 n. 4 (defining a ''Change of Ownership'' as occurring at such time as the beneficial owners of the Class B Common Stock and Non-Voting Class B Common Stock own, in the aggregate, less than a majority of the total voting power of the Corporation) and Partial Amendment 1.

[12] *See* Notice, *supra* note 3, 76 FR 59474.

[13] *See* proposed Section 3.05 of the New Bylaws.

[14] *See* Notice, *supra* note 3, 76 FR at 59474.

[15] *See* proposed Section 3.10 of the New Bylaws.

[16] *See supra* note 11.

[17] *See generally* proposed Section 2.10 of the New Bylaws.

[18] *See* Notice, *supra* note 3, 76 FR at 59473.

[19] The Exchange also has proposed that any shares of stock held by the Corporation would have no voting rights, except when such shares are held in a fiduciary capacity. *See* proposed Section 2.07 of the New Bylaws.

[20] *See* Notice, *supra* note 3, 76 FR at 59475.

[21] *See id.*

[22] *See id.*

[23] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(1).

[25] *See* Notice, *supra* note 3, 76 FR at 59473.

[26] *See id.*

Act, the rules and regulations thereunder, and the rules of the Exchange.[27]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–BATS–2011–035), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29674 Filed 11–16–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65724; File No. SR–ISE–2011–72]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Transaction Fees and Rebates for Certain Complex Orders Executed on the Exchange

November 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 28, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend certain transaction fees and rebates. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[27] 15 U.S.C. 78f(b)(1).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees are applicable to regular and complex orders executed in the Select Symbols.[4] The fees and rebates for complex orders in the Select Symbols also apply to all symbols that are in the Penny Pilot program.[5]

For complex orders in the Select Symbols and in symbols that are in the Penny Pilot program but excluding the Designated Symbols, the Exchange currently charges a ''take'' fee of: (i) $0.30 per contract for ISE Market Maker,[6] Market Maker Plus,[7] Firm Proprietary and Customer (Professional)[8] orders; and (ii) $0.35 per contract for Non-ISE Market Maker[9] orders. Priority Customer[10] orders are not charged a ''take'' fee for complex orders. For complex orders in these same symbols, the Exchange currently charges a ''make'' fee of: (i) $0.10 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a ''make'' fee for complex orders.

For complex orders in the Designated Symbols, the Exchange currently charges a ''take'' fee of: (i) $0.31 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.36 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a ''take'' fee for complex orders in the Designated Symbols. The ''make'' fee for complex orders in the Designated Symbols is the same as the ''make'' fee the Exchange currently charges for the Select Symbols and symbols that are in the Penny Pilot program noted above. Priority Customer orders are not charged a ''make'' fee for complex orders in the Designated Symbols.

The Exchange now proposes to increase the ''take'' fee for complex orders in both the Select Symbols and the Designated Symbols to (i) $0.32 per contract for ISE Market Maker, Market

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The Exchange has also adopted fees and rebates for complex orders in a subset of the Select Symbols (''Designated Symbols'') that are different from the fees for complex orders in the Select Symbols. These Designated Symbols are AAPL, BAC, C, F, GLD, INTC, IWM, JPM, QQQ, SLV, SPY and XLF. *See* Exchange Act Release Nos. [sic] 65084 (August 10, 2011), 76 FR 50805 (August 16, 2011) (SR–ISE–2011–49).

[5] *See* Exchange Act Release Nos. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR–ISE–2011–45); and 65550 (October 13, 2011), 76 FR 64984 (October 19, 2011) (SR–ISE–2011–65).

[6] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25). Market Makers who remove liquidity in the Select Symbols from the Complex Order Book by trading with orders preferenced to them are currently charged $0.28 per contract.

[7] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[8] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[9] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[10] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.36 for Non-ISE Market Maker orders. With this proposed fee change, the Exchange seeks to standardize the ''take'' fee charged for complex orders in the Select Symbols and the Designated Symbols and, as a result, proposes to remove the table identifying the Designated Symbols from its Schedule of Fees as it is no longer necessary to separately identify the ''take'' fee for Designated Symbols from the ''take'' fee for the Select Symbols because all Select Symbols are now charged one rate.

Further, for Priority Customer complex orders in the Select Symbols and in the symbols that are in the Penny Pilot program but excluding the Designated Symbols, the Exchange currently provides a rebate of $0.25 per contract when these orders trade with non-customer orders in the complex order book. For Priority Customer complex orders in the Designated Symbols, the Exchange currently provides a rebate of $0.27 per contract when these orders trade with non-customer orders in the complex order book. The Exchange now proposes to increase the rebate for Priority Customer complex orders in the Select Symbols and the Designated Symbols to $0.30 per contract when these orders trade with non-customer orders in the complex order book. With this proposed fee change, the Exchange seeks to standardize the rebate for Priority Customer complex orders in both the Select Symbols and the Designated Symbols when these orders trade with non-customer orders in the complex order book and proposes to reflect this change in footnote 3 on the Schedule of Fees.

The Exchange does not propose to change the rebate for Priority Customer complex orders in the symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'') when these orders trade with non-customer orders in the complex order book. That rebate shall remain at $0.25 per contract. In order to distinguish this established rebate from the newly proposed rebate for Priority Customer complex orders in the Select Symbols, the rebate for Non-Select Penny Pilot Symbols is now reflected in the proposed new text in footnote 11 on the Schedule of Fees.

Additionally, ISE Market Makers who remove liquidity in the Select Symbols from the complex order book by trading with orders that are preferenced to them are currently charged $0.28 per contract. Further, ISE Market Makers who remove liquidity in the Designated Symbols from the complex order book by trading with orders that are preferenced to them are currently charged $0.29 per contract. The Exchange now proposes to increase the fee charged to ISE Market Makers who remove liquidity in the Select Symbols and the Designated Symbols from the complex order book by trading with orders that are preferenced to them to a single rate of $0.30 per contract. Thereby, once again, standardizing the fee charged to ISE Market Makers who remove liquidity from the complex order book by trading with orders that are preferenced to them in both the Select Symbols and the Designated Symbols.

The Exchange proposes a fee of $0.28 per contract for ISE Market Makers who remove liquidity in the Non-Select Penny Pilot Symbols from the complex order book by trading with orders that are preferenced to them. In order to distinguish this fee from the fee that is applicable to ISE Market Makers who remove liquidity from the complex order book in the Select Symbols by trading with orders preferenced to them, the fee charged to ISE Market Makers who remove liquidity in the Non-Select Penny Pilot Symbols from the complex order book by trading with orders that are preferenced to them is now reflected in proposed footnote 12 on the Schedule of Fees.

Further, the Exchange does not propose any changes to the fees and rebates for complex orders in Non-Select Penny Pilot Symbols. The Exchange currently charges a ''take'' fee of (i) $0.30 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.35 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a ''take'' fee for complex orders in Non-Select Penny Pilot Symbols. For complex orders in these same symbols, the Exchange currently charges a ''make'' fee of: (i) $0.10 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a ''make'' fee for complex orders in any of the symbols that are in the Penny Pilot program. The Exchange proposes only to create a table in the Schedule of Fees to identify these fees more clearly.

The Exchange also proposes to amend the heading of its fee schedule to clarify that the fees in this section of the Schedule of Fees apply to Select Symbols and complex orders for symbols that are in the Penny Pilot program. Additionally, the Exchange is proposing to amend the headers in the table to reflect the changes discussed herein and to add additional columns to reflect the fees for adding and removing liquidity in complex orders for Non-Select Penny Pilot Symbols. Further, the Exchange proposes to clarify that the term ''Symbols'' in fact refers to ''Select Symbols'' where appropriate throughout this section of the Schedule of Fees.

The Exchange has designated this proposal to be operative on November 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [12] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to interact with and respond to certain types of orders.

The Exchange believes that its proposal to assess a $0.32 per contract ''take'' fee for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders in the Select Symbols that are subject to the Exchange's maker/taker fees is reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower that the fees assessed by other exchanges. For example, NASDAQ OMX PHLX, Inc. (''PHLX'') recently announced a fee increase for removing liquidity in complex orders from $0.29 to $0.32 per contract for Specialist orders and from $0.30 to $0.35 per contract for Firm and Professional orders.[13] Therefore, while ISE is proposing a fee increase, the resulting fee remains lower than the fee change proposed by PHLX for similar orders. Finally, ISE's proposed increase for Non-ISE Market Maker orders to $0.36 per contract is a nominal increase over the rate currently in place at PHLX. PHLX currently charges $0.35 per contract for these orders.[14]

The Exchange believes that it is reasonable and equitable to provide a rebate for Priority Customer complex

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* OTA #63—PHLX and NOM Update Pricing Effective Tuesday, November 1, 2011, available at *http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2011-63.*

[14] *Id.*

orders when these orders trade with non-customer orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides this rebate and is now proposing to increase the rebate. The Exchange believes that the proposed rebate for options overlying the symbols that are subject to the Exchange's maker/taker fees is competitive with fees charged by other exchanges and is therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The proposed increased rebate of $0.30 per contract for Priority Customer complex orders is identical to the rebate level recently announced by PHLX.[15]

The Exchange notes that PHLX currently assesses a fee for complex orders for certain symbols that are preferenced to market makers at that exchange at a rate of $0.27 per contract. For complex orders that are not preferenced to market makers that remove liquidity in those symbols, PHLX charges a take fee of $0.29 per contract. In its recent announcement, PHLX proposes to increase the fee for preferenced market makers from $0.27 per contract to $0.30 per contract and, for non-preferenced market makers, from $0.29 per contract to $0.32 per contract.[16] ISE notes that with this proposed fee change, the Exchange, while increasing this fee, will maintain the same two cent differential that is currently in place at PHLX.[17]

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that changing certain aspects of its maker/taker fees and rebates will attract additional complex order business while at the same time creating standardization in complex order pricing across symbols that make up the majority of the daily volume in options trading.

The Exchange further believes that the Exchange's maker/taker fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other option exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. With this proposed fee change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[18] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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 email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–72 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29672 Filed 11–16–11; 8:45 am]

BILLING CODE 8011–01–P

[15] *Id.*

[16] *Id.*

[17] *See* PHLX Fee Schedule at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65723; File No. SR–ISE–2011–73]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Orders Executed on the Exchange

November 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 28, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend transaction fees for certain orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses a per contract transaction charge to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a number of options classes (the ''Select Symbols'').[3] For removing liquidity in the Select Symbols, the Exchange currently charges a ''take'' fee of: (i) $0.26 per contract for Market Maker[4] and Market Maker Plus orders,[5] and (ii) $0.28 per contract for Firm Proprietary and Customer (Professional)[6] orders. The Exchange now proposes to increase the ''take'' fee for Market Maker and Market Maker Plus orders in the Select Symbols from $0.26 per contract to $0.28 per contract, and for Firm Proprietary and Customer (Professional) orders in the Select Symbols from $0.28 per contract to $0.29 per contract.

The Exchange has designated this proposal to be operative on November 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Act'')[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols.

The Exchange believes that its proposal to assess a $0.28 per contract ''take'' fee for Market Maker and Market Maker Plus orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, NASDAQ OMX PHLX, Inc. (''PHLX'') currently charges Specialists $0.33 per contract for removing liquidity in symbols that are subject to that exchange's maker/taker fees.[9] Further, the proposed increase will bring this fee closer to the fee the Exchange currently charges to other market participants that employ a similar trading strategy. The Exchange also notes that with this proposed rule change, the fee charged to Market Maker and Market Maker Plus orders will remain lower than the fee currently charged by the Exchange to certain other market participants.

The Exchange also believes that its proposal to assess a $0.29 per contract ''take'' fee for Firm Proprietary and Customer (Professional) orders in the Select Symbols is reasonable and equitably allocated because the fee is also within the range of fees assessed by other exchanges employing similar pricing schemes. By comparison, the proposed fees assessed to Firm Proprietary and Customer (Professional) orders are lower than the rates assessed by PHLX for similar orders. PHLX currently charges a ''take'' fee of $0.45 for Firm and Broker-Dealer orders and $0.40 for Professional orders in its regular order book.[10]

The Exchange believes that the price differentiation between the various market participants is justified because Market Makers have obligations to the market that the other market participants do not. The Exchange believes that it is equitable to assess a higher fee to market participants that do not have the quoting requirements that Exchange Market Makers do. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the Select Symbols as its fees are competitive with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[5] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[6] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* PHLX Fee Schedule at *http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[10] *Id.*

those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[11] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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 email to *rule-comments@sec.gov.* Please include File Number SR–ISE–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–ISE–2011–73. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–73 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–29671 Filed 11–16–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0070]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Law Enforcement Agencies (LEA)) Match Number 5001

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on April 9, 2012.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with LEA.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies

involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register;**

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Daniel F. Callahan,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Law Enforcement Agency (LEA)

A. Participating Agencies

SSA and LEA

B. Purpose of the Matching Program

The purpose of this matching program is to establish terms, conditions, and safeguards under which we will conduct a computer matching program with law enforcement agencies and source jurisdictions (LEA or Source Jurisdiction) in accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a), and the regulations and guidance promulgated thereunder, to identify individuals in the Source Jurisdiction who are (1) Fugitive felons, parole violators, or probation violators, as defined by the Social Security Act (Act), who are also (2) Supplemental Security Income (SSI) recipients, Retirement, Survivors and Disability Insurance (RSDI) beneficiaries, Special Veterans Benefit (SVB) beneficiaries, or representative payees for SSI recipients, RSDI beneficiaries, or SVB beneficiaries.

C. Authority for Conducting the Matching Program

The legal authority for the matching program conducted under this agreement is: Sections 1611(e)(4)(A), 202(x)(l)(A)(iv) and (v) and 804(a)(2) and (3) of the Act (42 U.S.C. 1382(e)(4)(A), 402(x)(l)(A)(iv) and (v), and 1004(a)(2) and (3)), which prohibit SSI payments, or RSDI or SVB benefits to an SSI recipient, RSDI beneficiary, or SVB beneficiary for any month during which such individual flees to avoid prosecution, or custody or confinement after conviction, under the applicable laws of the jurisdiction from which the person flees, for a crime or attempt to commit a crime considered to be a felony under the laws of said jurisdiction. These sections of the Act also prohibit SSI payments, or RSDI or SVB benefits to a recipient/beneficiary in jurisdictions that do not define such crimes as felonies, but as crimes punishable by death or imprisonment for a term exceeding 1 year (regardless of the actual sentence imposed), and to an individual who violates a condition of probation or parole imposed under Federal or state law. As a result of a settlement of a nationwide class action in *Martinez* v. *Astrue,* No. 08–4735 (N.D. Cal. September 24, 2009), SSA's nonpayment of benefits under these sections of the Act is limited to individuals with certain flight- or escape-coded warrants.

Sections 1631(a)(2)(B)(iii)(V), 205(j)(2)(C)(i)(V), and 807(d)(1)(E) of the Act (42 U.S.C. 1383(a)(2)(B)(iii)(V), 405(j)(2)(C)(i)(V), 1007(d)(1)(E)), which prohibit SSA from using a person as a representative payee when such person is a person described in sections 1611(e)(4)(A), 202(x)(1)(A)(iv), or 804(a)(2) of the Act.

The legal authority for SSA's disclosure of information to the Source Jurisdiction is: Sections 1106(a), 1611(e)(5), 1631(a)(2)(B)(xiv), 202(x)(3)(C), 205(j)(2)(B)(iii) and 807(b)(3) of the Act; the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a(b)(3)); and SSA's disclosure regulations promulgated at 20 CFR 401.150.

D. Categories of Records and Persons Covered by the Matching Program

The Source Jurisdiction will identify individuals who are fugitive felons, parole violators, or probation violators in its records originating from various databases. The Source Jurisdiction will prepare and disclose its records electronically with clear identification of the record source. We will match the following systems of records with the incoming Source Jurisdiction records to determine individuals who receive SSI, RSDI, SVB benefits, or individuals serving as representative payees: Our Supplemental Security Income Record/Special Veterans Benefits SSA/ODSSIS (60–0103), the Master Beneficiary Record SSA/ORSIS (60–0090), the Master Representative Payee File System SSA/OISP (60–0222), and the Master Files of Social Security Number Holders and SSN Applications (the Enumeration System) SSA/OSR (60–0058).

E. Inclusive Dates of the Matching Program

The effective date of this matching program is April 10, 2012 provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2011–29681 Filed 11–16–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7688]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program with Algeria

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C/PY–12–09.

Catalog of Federal Domestic Assistance Number: 19.415.

Application Deadline: January 4, 2012.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Youth Leadership Program with Algeria. Public and private nonprofit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to provide youth and adult participants from Algeria with an approximately four-week U.S.-based exchange program in summer 2012 focused on civic education, youth leadership development, respect for diversity, and community engagement, and to support follow-on community service projects in their home communities. The U.S. Embassy in Algiers will recruit, screen, and select Algerian participants. The award recipient will be required to recruit, screen, and select American

participants, and collaborate with an in-country partner on logistical arrangements and follow-on activities.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Youth Leadership Program with Algeria provides approximately 24 secondary school students and three adult participants from Algeria the opportunity to engage in an intensive, thematic exchange in the United States focusing broadly on the primary themes of civic education, youth leadership development, respect for diversity, and community engagement. One of the following two subthemes, to be selected by the applicant, will be used as tools to illustrate these concepts: Business/entrepreneurship or applied communications.

Approximately six to twelve competitively selected American high school students will join the Algerian participants in U.S.-based exchange activities. Participants will engage in a variety of activities, such as workshops on leadership and service, community site visits related to the program themes and selected subtheme, interactive training and discussion groups, small group work, presentations, visits to high schools, local cultural activities, homestays, and other activities designed to achieve the program's stated goals. Follow-on activities with the Algerian and American participants are an integral part of the program, as the students apply the knowledge and skills they have acquired by planning service projects in their home communities. Activities should therefore be geared toward preparing participants to conduct projects at home that serve a community need.

The goals of the programs are to:

(1) Promote mutual understanding between the people of the United States and the people of Algeria;

(2) Inspire a sense of civic responsibility and commitment to community development among youth;

(3) Develop a cadre of community leaders who will share their knowledge and skills with their peers through positive action; and

(4) Foster relationships among youth from different ethnic, religious, and national groups.

The objectives of the program are for participants to:

(1) Demonstrate a better understanding of the elements of a participatory democracy as practiced in the United States;

(2) Demonstrate critical thinking and leadership skills; and

(3) Demonstrate skill at developing project ideas and planning a course of action to bring the projects to fruition.

The primary themes of the programs are:

(1) Civic Education (citizen participation, grassroots democracy, and rule of law);

(2) Youth Leadership Development (team building, public speaking, negotiation, goal setting and project planning);

(3) Respect for Diversity (ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities); and

(4) Community Engagement (volunteerism, philanthropy, and social/corporate responsibility).

The exchange format will be intensive and interactive. Applicants must present an exchange that allows the participants to thoroughly explore the primary themes and selected subtheme in a creative, memorable, and practical way. All activities should be designed to be replicable and provide practical knowledge and skills that the participants can apply to school and civic activities at home. Opportunities for the youth and adult participants to interact with their American peers in a sustained, substantive, and in-depth manner must be prominently integrated into the exchange.

Using these goals, objectives, and themes, applicant organizations should identify their own specific and measurable outputs and outcomes based on the project specifications provided in this solicitation. Proposals should indicate how recipients will achieve the short-term program objectives, and how these objectives will contribute to the achievement of the stated long-term goals.

Participants

The participants will be secondary school students between the ages of 15 and 17 who have demonstrated leadership abilities in their schools and/or communities, and have at least one semester of high school remaining. Adult participants will be community leaders or educators who work with youth and who have demonstrated support of youth and community activities and have an interest in youth leadership. The adult participants will have the role of exchange participant, chaperone, and post-exchange mentor. Participants must be proficient in the English language.

The exchange will be composed of approximately 24 secondary school students and three adult participants from Algeria and approximately 6–12 competitively selected American secondary school students who will participate in the U.S.-based activities with the Algerian students.

Organizational Capacity

Applicants must demonstrate their capacity for doing programs of this nature, focusing on three areas of competency: (1) Provision of projects that address the goals, objectives, and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience in working with individuals from Algeria or other countries in North Africa.

The program will be implemented by a team consisting of the U.S. Embassy, the U.S. award recipient, and an in-country partner organization. The award recipient will collaborate with the partner organization in Algeria in arranging logistics, developing content for and implementing a pre-departure orientation in Algiers, and organizing and managing follow-on activities. The applicant may elect to work with an organization of the embassy's choosing (to be identified after the cooperative agreement has been awarded), or may propose to collaborate with an organization with which it already has an established, long-standing partnership. If the latter, applicants must provide a detailed description of the partnership, including information on activities that have been conducted jointly to date, as well a description of the partner's role and responsibilities. The proposed partner must be based in Algiers, have the demonstrated ability to conduct the specified project activities in Algeria, and must either have its own secure facilities (*i.e.* conference space), or access to such facilities for program activities in Algiers.

U.S. Embassy Involvement

The Public Affairs Section of the U.S. Embassy in Algiers will recruit, screen, and select the Algerian participants, as well as provide advice and assistance in the execution of program components. If applicable, the embassy will identify a partner organization in Algiers that will collaborate closely with the award recipient on program components.

Guidelines

The total amount of funding is $250,000, pending the availability of funds. The Bureau intends to award one cooperative agreement. It is anticipated that the period of the cooperative agreement will begin in spring 2012. The award period will be 12 to 18 months in duration and will cover all aspects of project planning, exchange activities in Algeria and the United States, and follow-on activities in Algeria.

The total length of the exchange program should be approximately four weeks and be inclusive of a three- to five-day pre-departure orientation in Algiers, and all of the U.S.-based exchange activities. The U.S.-based exchange should take place between the first week of June and the third week of July 2012 to allow participants to complete the exchange and return home before the start of Ramadan, which is estimated to begin on July 20, 2012. Applicants should propose specific exchange dates in their proposals, but the exact timing may be altered through the mutual agreement of the Department of State and the award recipient.

The Bureau reserves the right to reduce, revise, or increase proposal project configurations, budgets, and participant numbers in accordance with the needs of the program and the availability of funds.

In pursuit of the goals outlined above, the award recipient will be responsible for the following:

(1) Conducting open recruitment and competitive selection of a diverse group of American youth to join Algerian participants in U.S.-based exchange activities.

(2) Planning and implementing a pre-departure orientation in Algiers for Algerian participants, in collaboration with the in-country partner.

(3) Conducting an orientation(s) for staff, American participants and their families, and those individuals participating from the U.S. host communities, including host families, prior to the start of the program.

(4) Designing and planning exchange activities with American peers that provide a creative and substantive program on the specified themes. Opportunities for the adult participants to work with their peers must also be included to help them foster youth leadership, civic education, and community service programs at home.

(5) Conducting a welcome orientation for participants upon their arrival in the United States to review program goals, objectives, and expectations with American peers.

(6) Managing logistical arrangements, including international and domestic travel, ground transportation, accommodations, group meals, and disbursement of pocket money.

(7) Arranging homestays with properly screened and briefed host families for a significant portion of the exchange period. Criminal background checks must be conducted for members of host families and others living in the home who are 18 years or older.

(8) Developing and implementing a plan to monitor the participants' safety and well-being while on the exchange, and to create opportunities for participants to share potential issues and resolve them promptly. The award recipient will be required to provide proper staff supervision and facilitation to ensure that the teenagers have a safe and pedagogically rich program. Staff, along with mentors, will assist the youth with cultural adjustments, provide societal context to enhance learning, and counsel students as needed. Criminal background checks must be conducted for all program staff.

(9) Making proper arrangements for participants' religious observances.

(10) Providing a closing session to summarize the delegation's activities, prepare participants for their return home, and to further prepare for follow-on activities and projects.

(11) Arranging a short, substantive visit to Washington, DC for Algerian and American participants at the beginning or conclusion of the exchange that will include a meeting at the U.S. Department of State, cultural field trips, and additional skill building exercises.

(12) Planning and organizing follow-on activities for American and Algerian alumni in their home communities designed to reinforce the ideas and skills imparted during the exchange program.

(13) Arranging international travel to Algeria for program staff, trainers, or educators to provide further training for alumni and their peers.

(14) Designing and implementing an evaluation plan that assesses the short- and medium-term impact of the project on the participants as well as on U.S. host and home communities.

Please Note: The ECA award for this program will take the form of a cooperative agreement with the award recipient. In a cooperative agreement, the Department of State is substantially involved in program activities above and beyond routine award monitoring. The Department's activities and responsibilities for the Youth Leadership Program with Algeria are as follows:

(1) Manage the recruitment and selection of Algerian participants.

(2) Provide advice and collaboration in the execution of all program components.

(3) Approve the final candidate selection of American participants and alternates.

(4) Issue DS–2019 forms and J–1 visas. All foreign participants will travel on a U.S. Government designation for the J Exchange Visitor Program.

(5) Facilitate interaction within the Department of State, to include ECA, the regional bureaus, and overseas posts.

(6) Arrange meetings with Department of State officials in Washington, DC.

(7) Approve publicity materials and calendar of exchange activities.

Additional Information

The award recipient will retain the name ''Youth Leadership Program with Algeria'' (or Algeria Youth Leadership Program) to identify its project. All materials, publicity, and correspondence related to the program will acknowledge this as a program of the Bureau of Educational and Cultural Affairs of the U.S. Department of State. The Bureau will retain copyright use of and be allowed to distribute materials related to this program as it sees fit.

The organization must inform the ECA Program Officer and the U.S. Embassy in Algiers of its progress at each stage of the project's implementation in a timely fashion, and will be required to obtain approval of any significant program changes in advance of their implementation.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major project activities, and applicants should explain and justify their programmatic choices. Projects must comply with J–1 visa regulations for the International Visitor and Government Visitor categories. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement

in this program is listed under number I above.

Fiscal Year Funds: FY2012, pending availability of funds.

Approximate Total Funding: $250,000.

Approximate Number of Awards: One.

Anticipated Award Date: Pending availability of funds, March 15, 2012.

Anticipated Project Completion Date: 12 to 18 months after the onset of the award, to be determined by the applicant according to its program design.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant or cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private nonprofit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(1) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making an award in an amount exceeding $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(2) Proposed sub-award recipients are also limited to grant funding of $60,000 or less if they do not have four years of experience in conducting international exchanges.

(3) The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(4) Organizations may submit only one proposal (total) under this competition. If more than one proposal is received from the same applicant, all submissions will be declared technically ineligible and will receive no further consideration in the review process.

Please note: Applicant organizations are defined by their legal name, and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Youth Programs Division, ECA/PE/C/PY, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street NW., Washington, DC 20037, by telephone (202) 632–9261 or *Email: ShieldsSD@State.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–12–09 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Sarah Shields and refer to the Funding Opportunity Number ECA/PE/C/PY–12–09 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–(866) 705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. All federal award recipients must maintain current registrations in the Central Contractor Registration (CCR) database. Recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. Recipients must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted.

Failure to register in the CCR will render applicants ineligible to receive funding.

You must have nonprofit status with the IRS at the time of application.

Please note: Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please Take Into Consideration the Following Information When Preparing Your Proposal Narrative

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et. seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street NW., Washington, DC 20037.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the

results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

Outcomes

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

(1) *Participant satisfaction* with the program and exchange experience.

(2) *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

(3) *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

(4) *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. Budget requests may not exceed $250,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package (POGI and PSI) for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: Wednesday, January 4, 2012.

Reference Number: ECA/PE/C/PY–12–09.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* FedEx, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and six (6) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/PY–12–09, SA–5, Floor 4, Department of State, 2200 C Street NW., Washington, DC 20037.

With the submission of the proposal package, please also email the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word, Excel, and/or PDF, to *YLP@state.gov.* The Bureau will provide these files electronically to the Public Affairs Section at the U.S. Embassy in Algiers for its review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

Please note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of

the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support.

Contact Center Phone: (800) 518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

Email: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation.

Applicants will receive a validation email from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) *Quality of the program idea:* Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be creative, age-appropriate, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should also include a plan to support participants' community activities upon their return home.

(2) *Program planning and ability to achieve program objectives:* A detailed agenda and work plan should clearly demonstrate how project objectives will be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail.

(3) *Support of diversity:* The proposal should demonstrate the applicant's commitment to promoting the awareness and understanding of diversity in participant recruitment and selection and in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

(4) *Institutional capacity and track record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(5) *Program evaluation:* The proposal should include a plan to evaluate the program's success in meeting its goals, both as the activities unfold and after they have been completed. The proposal should include a draft survey questionnaire or other technique, plus a description of a methodology to link outcomes to original project objectives. The award recipient will be expected to submit intermediate reports after each project component is concluded.

(6) *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with

Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Nonprofit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants, http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports, including the SF–PPR–E and SF–PPR–F.

(4) Quarterly or interim reports, as required in the Bureau cooperative agreement.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Sarah Shields, Youth Programs Division, ECA/PE/C/PY/T, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street NW., Washington, DC 20522–0503, by telephone (202) 632–9261 or email *ShieldsSD@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–12–09.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 9, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–29643 Filed 11–16–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7689]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Study of the United States Institutes for Student Leaders on U.S. History and Government

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS–12–21.

Catalog of Federal Domestic Assistance Number: 19.009.

Dates: Key Dates: July–August, 2012 and January–February, 2013.

Application Deadline: January 13, 2012.

Summary: Executive Summary: The Branch for the Study of the United States, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs (ECA), invites proposal submissions for the design and implementation of six (6) Study of the U.S. Institutes for Student Leaders on U.S. History and Government, pending the availability of funds. Participants will be drawn from countries throughout Central and South America and the Caribbean. Three institutes will be conducted entirely in Spanish, and the remaining three in English. Each academic institute will be five weeks in duration, including a one-week integrated study tour.

I. Funding Opportunity Description

I. 1. Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

I. 2. Purpose and Overview

The Study of the U.S. Institutes for Student Leaders on U.S. History and Government are intensive academic programs whose purpose is to provide groups of undergraduate students from the Western Hemisphere with a deeper understanding of the United States.

The principal objective of the Institutes is to enhance participants' knowledge of U.S. history, government, institutions, society, and culture. In this context, the Institutes should incorporate a focus on American historical events as well as contemporary American life including current political, social, and economic debates. The role and influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, and diversity and tolerance should be addressed.

All Institutes should take place at U.S. academic institutions whose interpretation of U.S. history, government, institutions, society, and culture could be presented through the lens of their location, academic mission, and expertise. The Institutes should address topics such as: civil rights, minority rights, politics, religion, economics, and U.S. relations with Latin America.

In addition to promoting a better understanding of the United States and of U.S. history and government, an important objective of the Institutes is to

develop the participants' leadership skills. In this context, the academic programs should include seminars, workshops, and activities that focus on topics such as leadership, teambuilding, collective problem solving skills, effective communication, and management skills. The Institutes should include a community service component, in which the students experience civic engagement as a core American value firsthand.

Throughout the course of the Institutes, participants should have ample opportunities to interact with Americans. Such interactions could take place in the classroom, dormitories, local community, or a home-stay experience. In addition to exposing the participants to various aspects of American life and culture, these activities should aim to allow the participants to share their culture and experiences with Americans.

This award will support up to 120 undergraduate participants. Three institutes for twenty participants each will take place in summer 2012 while an additional three institutes will take place in winter 2013. Please refer to the Project Objectives, Goals, and Implementation (POGI) document for programmatic details.

Please note: This award will be in the form of a Cooperative Agreement. In a Cooperative Agreement, ECA is substantially involved in the management and oversight of the Institutes.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY 2012.

Approximate Total Funding: $1,440,000.

Approximate Number of Awards: One.

Floor of Award Range: $1,440,000.

Ceiling of Award Range: $1,440,000.

Anticipated Award Date: Pending availability of funds, April 1, 2012.

Anticipated Project Completion Date: August, 2013.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, ECA may choose to renew this Cooperative Agreement for up to two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1 Eligible applicants

ECA is seeking detailed proposals from accredited post-secondary U.S. institutions (community colleges, liberal arts colleges, public and private universities), consortia of organizations, and/or from public and private non-profit organizations meeting the eligibility requirements outlined below.

ECA intends to issue one award and is seeking proposals from organizations with the ability to administer, support, and oversee the six academic Institutes. Recipients may be public or private organizations that provide sub-awards to up to six institutions of higher education to implement the institutes. Or, higher education institutions may apply to administer and implement the institutes working with branch campuses, other colleges in a consortium, or partnering with any other institution of higher education.

Institutions of higher education may host no more than one institute at a time (for up to 20 students), but may host up to two institutes under this award (e.g. a summer and a winter institute).

The recipient will serve as the lead organization and will be responsible for the oversight of all six institutes and must appoint a project director who will be the main point of contact and liaison with ECA.

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

An applicant organization is defined by the DUNS number of the organization and by the signature of the authorized representative contained on the ''Application for Federal Assistance Form'' (SF–424) submitted under this competition.

III.2 Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, ECA encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, the recipient must maintain written records to support all costs that are claimed as a contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the recipient institution does not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. ECA anticipates that the award under this competition will be up to $1,440,000. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. ECA encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

All applicants are strongly encouraged to read this RFGP thoroughly, prior to developing and submitting a proposal, to ensure that proposed activities are appropriate and responsive to the goals, objectives, and criteria outlined in the solicitation.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, ECA staff may not discuss this competition with applicants until the proposal review process has been completed. If you have any questions prior to the deadline stated on the RFGP, please address your questions to José Marrero at *MarreroJA@state.gov* or (202) 632–3337.

IV.1 Contact Information To Request an Application Package

Please contact the Branch for the Study of the United States, ECA/A/E/USS; SA–5, Fourth Floor; U.S. Department of State; Washington, DC 20037, (202) 632–3337 to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS–12–21 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals, and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify José Marrero and refer to the Funding Opportunity Number

ECA/A/E/USS–12–21 on all inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from ECA's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under section IV.6 Application Deadline and Methods of Submission, indicated below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–(866) 705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative, and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals, and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. All federal award recipients must maintain current registrations in the Central Contractor Registration (CCR) database. Recipients must maintain accurate and up-to-date information in the CCR until all program and financial activity and reporting have been completed. Recipients must review and update the information at least annually after the initial registration and more frequently if required information changes or another award is granted. Failure to register in the CCR will render applicants ineligible to receive funding.

You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting, and other requirements.

ECA prefers that the award recipient issue DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office Designation, Private Sector Programs Division, ECA/EC/D/PS, SA–5, 5th Floor, Department of State, Washington, DC 20037.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom, and Democracy Guidelines

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' ECA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. ECA recommends that proposals include a draft survey questionnaire or other technique plus a description of a methodology used to link outcomes to original project objectives. ECA expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program,

changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. An evaluation plan should include a description of project's objectives, anticipated project outcomes, and how and when outcomes will be measured (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. Applicants should also show how project objectives link to the goals of the program described in this RFGP.

Monitoring and evaluation plans should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage applicants to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of a monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipients will be required to provide reports analyzing their evaluation findings to ECA in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to ECA upon request.

IV.3e. Budget

IV.3e.1 Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2 Allowable costs for the program include the following:

(1) Institute staff salary and benefits.

(2) Participant housing and meals.

(3) Participant U.S. travel and per diem.

(4) Textbooks, educational materials, and admissions fees.

(5) Honoraria for guest speakers.

(6) Follow-on programming for alumni of Study of the United States programs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: January 13, 2012.

Reference Number: ECA/A/E/USS–12–21.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.* Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM.''

The original and six (6) copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/A/E/USS–12–21, SA–5, Floor 4, Department of State, 2200 C Street NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a CD–ROM.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

Please Note: Due to Recovery Act related opportunities, there has been a higher than

usual volume of grant proposals submitted through Grants.gov. Potential applicants are advised that the increased volume may affect the Grants.gov proposal submission process. As stated in this RFGP, ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support

Contact Center Phone: (800) 518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

Email: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation email from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.* ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

ECA will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and ECA regulations and guidelines and forwarded to ECA grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for Cooperative Agreements resides with ECA's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Plan and Ability To Achieve Program Objectives:* Proposals should exhibit originality, substance, precision, and relevance to ECA's mission. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Objectives should be reasonable, feasible, and flexible. Proposals should demonstrate clearly how the institution will meet the program's objectives and plan.

2. *Support for Diversity:* Proposals should demonstrate substantive support of ECA's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, presenters, and resource materials).

3. *Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. ECA recommends that the proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives.

4. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

5. *Institutional Track Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past ECA grants as determined by ECA Grants Staff. ECA will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the project's goals.

6. *Follow Up and Follow-on Activities:* Proposals should discuss provisions made for follow-up with returned participants as a means of establishing longer-term individual and institutional linkages. Proposals should also provide a plan for continued follow-on activity (without ECA support) ensuring that ECA supported programs are not isolated events.

VI. Award Administration Information

VI.1 Award Notices

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal ECA procedures. Successful applicants will receive a Federal Assistance Award (FAA) from ECA's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S.

Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.''

OMB Circular No. A–102, ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.''

OMB Circular No. A–133, ''Audits of States, Local Government, and Non-profit Organizations.''

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://fa.statebuy.state.gov.

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) An interim program report no more than 30 days after the conclusion of the Institute;

(2) Quarterly financial reports;

(3) A final program and financial report no more than 90 days after the expiration of the award;

(4) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's *USAspending.gov* Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.;

(5) A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to ECA in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to ECA upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: José Marrero, Study of the U.S. Branch, ECA/A/E/USS, U.S. Department of State, Fourth Floor, SA–5, 2200 C Street NW., Washington, DC 20522–0504, *phone:* (202) 632–3337, *email: MarreroJA@state.gov.*

All correspondence with ECA concerning this RFGP should reference the above title and number ECA/A/E/USS–12–21.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. ECA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. In addition, it reserves the right to accept proposals in whole or in part and to make an award or awards in the best interest of the program. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 10, 2011.

Adam Ereli,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–29788 Filed 11–16–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Automatic Dependent Surveillance Broadcast (ADS–B)

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of availability—Recommendations from the ADS–B In Aviation Rulemaking Committee.

SUMMARY: This notice announces the availability of a Report from the ADS–B In Aviation Rulemaking Committee, Recommendations to Define a Strategy for Incorporating ADS–B In Technologies into the National Airspace System. This committee was convened at the FAA's request to provide a forum for the U.S. and international aviation community to provide recommendations on a global strategy to proceed with ADS–B In while ensuring compatibility with the standards adopted for ADS–B Out. The FAA is currently reviewing the report to evaluate the appropriate course of action.

FOR FURTHER INFORMATION CONTACT: Doug Arbuckle, Chief Scientist, Surveillance & Broadcast Services Pgm, Sr Advisor for Surveillance & PNT, NextGen JPDO, (757)–846–4225.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2010, the FAA chartered the ADS–B In Aviation Rulemaking Committee (ARC) to provide a forum for the U.S. and international aviation community to define a strategy for incorporating ADS–B In technologies into the National Airspace System. The ARC specifically was tasked to provide recommendations for proceeding with ADS–B In while ensuring compatibility with the ADS–B Out aviation standards set forth in Title 14 of the Code of Federal Regulations § 91.225, ADS–B Out equipment and use and § 91.227, ADS–B Out equipment performance requirements.

Notice of Availability

The ADS–B In Aviation Rulemaking Committee, Recommendations to Define a Strategy for Incorporating ADS–B In Technologies into the National Airspace System, submitted to the FAA on September 30, 2011, is available for review and downloading from the FAA Web site at: *http://www.faa.gov/nextgen/portfolio/trans_support_progs/adsb/*

Issued in Washington, DC on November 9, 2011.

James Eck,

Director, Air Traffic Organization, Federal Aviation Administration (FAA).

[FR Doc. 2011–29668 Filed 11–16–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Civil Penalty Calculation Methodology

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: FMCSA is currently evaluating its civil penalty methodology. Part of this evaluation includes a forthcoming explanation of the Uniform Fine Assessment (UFA) algorithm, which FMCSA currently uses for calculation of civil penalties. UFA takes into account the statutory penalty factors under 49 U.S.C. 521(b)(2)(D). The evaluation will also consider penalties for small businesses, including the effect of the Small Business Regulatory Enforcement Fairness Act (SBREFA) on those penalties. The purpose of this notice is to clarify the FMCSA methodology for calculation of certain civil penalties. To induce compliance with federal regulations, FMCSA will impose a minimum civil penalty that is calculated by UFA. In many cases involving small businesses, the penalty will be lower than a large business under similar circumstances.

DATES: This clarification of penalty methodology is effective for all Notices of Claim issued on or after November 17, 2011.

FOR FURTHER INFORMATION CONTACT: Charles Fromm, Office of Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–3551 or via email at *charles.fromm@dot.gov.* Office hours are from 9 a.m. to 5 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: In determining the amount of civil penalties for violations of the Federal regulations it administers, FMCSA must take into account ''the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require.'' 49 U.S.C. 521(b)(2)(D). Significantly, overlaying the nine factors, section 521(b)(2)(D) also requires that the assessed penalty be ''calculated to induce further compliance.'' Id. The Agency may consider certain additional factors, pursuant to the SBREFA, Public Law 104–121, § 201 (Mar. 29, 1996).

To take into account the nine statutory factors under § 521(b)(2)(D) in a manner that results in penalties consistent between carriers of similar circumstances, FMCSA uses an automated policy tool called the UFA. The UFA policy has been in effect since 1994. Under a long line of administrative rulings, starting with *Alfred Chew & Martha Chew, dba Alfred & Martha Chew Trucking,* FHWA–1996–5323 (Final Order, Feb. 7 1996), FMCSA and its predecessor agency have held that UFA ''is presumed to comply with the requirement of 49 U.S.C. 521.''

One feature of the UFA program, which takes into account ability to pay and ability to continue to do business, is the Gross Revenue Cap. The Gross Revenue Cap is determined by multiplying the motor carrier's adjusted gross revenue by a statutory criteria adjustment score. This score is based on the Agency assessment of the violations and the statutory factors.

In *Paul Michels dba Paul Michels Trucking,* (Jan. 27, 2001), the Acting Chief Safety Officer took official notice of UFA. In the Final Order on reconsideration in *Paul Michels,* the Acting Chief Safety Officer found that UFA considered SBREFA by virtue of the Gross Revenue Cap. In a recent administrative review of a proposed civil penalty, the FMCSA Assistant Administrator held that the calculated penalty for a small business in that case, $1,980, could not exceed the Gross Revenue Cap calculated by UFA, which was $490. *Pioneer Drum & Bugle Corps & Color Guard, Inc.,* FMCSA–2008–0012 (Final Order Oct. 4, 2011).

UFA is not, and never was, intended for use where the total proposed penalty is less than $2,000, however. In such cases, the UFA algorithm may generate a gross revenue cap that is too low to effectively induce compliance with the Federal Motor Carrier Safety Regulations, Federal Hazardous Materials Regulations, and the Federal Motor Carrier Commercial Regulations. Moreover, the administrative burden on the Agency of issuing, settling or adjudicating, and monitoring payment of such low penalty amounts renders this activity contrary to the public interest.

FMCSA therefore will issue a penalty that is equal to the UFA-calculated penalty in all civil enforcement actions when the Gross Revenue cap is $2,000 or less, even if the Gross Revenue Cap is lower than the calculated penalty. So more precisely, if the UFA per-count calculated penalty and the Gross Revenue Cap are both less than $2,000, then the penalty will be the lower of (a) $2,000, or (b) the total of all the per count penalties. In addition, UFA provides a range within which enforcement personnel may exercise discretion over the penalty to be issued, taking into account the statutory factors.

In recognition of SBREFA, FMCSA will impose a penalty that is 20 percent higher against for-hire motor carriers of property with annual gross revenue equal to or greater than $25.5 million, which is the Small Business Administration's current threshold for small businesses in the trucking industry. FMCSA may continue to reduce the calculated penalty, in its discretion, pursuant to the requirement in section 521(b)(2)(D) that it take into consideration the violator's ability to pay and effect of the penalty on the violator's ability to continue to do business.

If the Gross Revenue Cap is greater than $2,000 and the calculated penalty is greater than the Gross Revenue Cap, the penalty will continue to be limited to the Gross Revenue Cap, subject to the possible adjustment above and any discretionary reduction based on the motor carrier's ability to pay and ability to continue to do business. For cases where the Gross Revenue Cap is at or above $2,000, UFA appropriately takes SBREFA into account, and the Gross Revenue Cap will apply. In addition to the above, in all cases, FMCSA may increase or decrease the calculated penalty based on other matters as justice and public safety may require, which is consistent with 49 U.S.C. 521(b)(2)(D).

SBREFA generally requires agencies to provide for the reduction or waiver of civil penalties for violations of a statutory or regulatory requirement by a small business. SBREFA includes several exceptions to such reductions or waivers, including where the small business has been subject to multiple enforcement actions, where there has been willful or criminal conduct or in cases where the violations pose a serious health, safety, or environmental threat. SBREFA provides agencies with the flexibility to determine how it will reduce or waive penalties for small businesses. FMCSA believes that a 20 percent difference in penalties between large and small businesses of similar circumstances is a reasonable exercise of the Agency's discretion and balances the principles of SBREFA with the requirement of 49 U.S.C. 521 to calculate penalties that are designed to induce further compliance with federal laws and regulations. FMCSA also notes that, pursuant to 49 U.S.C. 113(b), safety must be the Agency's highest priority, and FMCSA's mission to reduce highway deaths and injuries will often require it to refrain from reducing

penalties for small businesses where one of the exceptions to SBREFA applies. Consistent with past practice and the Agency's position in *Paul Michels* regarding SBREFA, FMCSA will continue to limit penalties to the UFA-generated Gross Revenue Cap where that cap exceeds $2,000. In no case will an assessed penalty exceed a statutory maximum.

Issued on: November 10, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–29783 Filed 11–16–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0001–N–18]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than January 17, 2012.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0526.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Toone at *kimberly.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Abstract: The information collection requirements contained in pre-employment and ''for cause'' testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident.

Form Number(s): FRA F 6180.73; FRA F 6180.74.

Affected Public: Businesses.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.7—Waivers	100,000 employees	2 letters	2 hours	4
219.9(b)(2)—Responsibility for compliance	450 railroads	2 requests	1 hour	2
219.9(c)—Responsibility for compliance	450 railroads	10 contracts/docs	2 hours	20
219.11(d)—General conditions for chemical tests.	450 railroads	30 forms	2 minutes	1
219.11(g) Training—Alcohol and Drug —Programs: New Railroads.	5 railroads	5 programs	3 hours	15

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Training	50 railroads	50 training class	3 hours	150
219.23(d)—Notice to Employee Organizations	5 railroads	5 notices	1 hour	5
219.104/219.107—Removal from Covered Svc.	450 railroads	500 form letters	2 minutes	17
—Hearing Procedures	450 railroads	50 requests	2 minutes	2
219.201(c) Good Faith Determination	450 railroads	2 reports	30 minutes	1
219.203/207/209—Notifications by Phone to FRA.	450 railroads	104 phone calls	10 minutes	17
219.205—Sample Collection and Handling	450 railroads	400 forms	15 minutes	100
—Form covering accidents/incidents	450 railroads	100 forms	10 minutes	17
219.209(a)—Reports of Tests and Refusals	450 railroads	80 phone rpts	2 minutes	3
219.209(c)—Records—Tests Not Promptly Conducted.	450 railroads	40 records	30 minutes	20
219.211(b) & (c)—Analysis and follow-up—MRO.	450 railroads	8 reports	15 minutes	2
219.401/403/405—Voluntary referral and Co-worker report policies.	5 railroads	5 report policies	20 hours	100
219.405(c)(1)—Report by Co-worker	450 railroads	450 reports	5 minutes	38
219.403/405—SAP Counselor Evaluation	450 railroads	700 reports	30 minutes	350
219.601(a)—RR Random Drug Testing Programs.	5 railroads	5 programs	1 hour	5
—Amendments	450 railroads	20 amendments	1 hour	20
219.601(b)(1)—Random Selection Proc.—Drug	450 railroads	5,400 documents	4 hours	21,600
219.601(b)(4); 219.601(d)—Notices to Employees.	5 railroads	100 notices	30 seconds	1
—New Railroads	5 railroads	5 notices	10 hours	50
—Employee Notices—Tests	450 railroads	25,000 notices	1 minute	417
219.603(a)—Specimen Security—Notice By Employee Asking to be Excused from Urine Testing.	20,000 employees	20 doc. excuses	15 minutes	5
219.607(a)—RR Random Alcohol Testing Programs.	5 new railroads	5 programs	8 hours	40
—Amendments to Approved Program	450 railroads	20 amendments	1 hour	20
219.901/903—Retention of Breath Alcohol Testing Records; Retention of Urine Drug Testing.	450 railroads	100,500 records	5 minutes	8,375
—Summary Report of Breath Alcohol/Drug Test.	450 railroads	200 reports	2 hours	400

Respondent Universe: 450 railroads.

Frequency of Submission: On occasion.

Total Responses: 133,818.

Estimated Total Annual Burden: 31,797 hours.

Status: Extension without Change of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

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

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–29738 Filed 11–16–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0001–N–19]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking reinstatement of previously approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than January 17, 2012.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0563.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via email to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Toone at *kimberly.toone@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and

Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (*telephone:* (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Railroad Trespasser Death Study.

OMB Control Number: 2130–0563.

Abstract: Trespasser deaths on railroad rights-of-way and other railroad property are the leading cause of fatalities attributable to railroad operations in the United States. In order to address this serious issue, interest groups, the railroad industry, and government (Federal, State, and local) must know more about the individuals who trespass. With such knowledge, specific educational programs, materials, and messages regarding the hazards and consequences of trespassing on railroad property can be developed and effectively distributed. Due to the lack of available demographic data, FRA proposes to conduct a follow-up study to the one released in 2008 titled, Rail Trespasser Fatalities; Developing Demographic Profile. That study used a private contractor to obtain additional demographic data for the time period of 2003–2005 from local county medical examiners so as to develop a general, regional profile of ''typical'' trespassers in order to target audiences with appropriate education and enforcement campaigns that will reduce the annual number of injuries and fatalities.

Form Number(s): FRA F 6180.117.

Affected Public: Businesses.

REPORTING BURDEN

Form	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Form FRA F 6180.117	100 County (Regional) Medical Examiners.	2,750 forms	4 minutes	183 hours.

Respondent Universe: 100 County (Regional) Medical Examiners.

Frequency of Submission: On occasion.

Total Responses: 2,750.

Estimated Total Annual Burden: 183 hours.

Status: Extension without Change of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on November 14, 2011.

Michael Logue,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–29736 Filed 11–16–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0024; Notice 2]

Continental Tire North America, Inc., 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: Continental Tire North America, Inc., (Continental), has determined that certain passenger car tires manufactured between March of 2007 and June of 2009 did not fully comply with paragraphs S5.5(e) and S5.5(f) of Federal Motor Vehicle Safety Standards (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Continental has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* (dated June 30, 2009).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Continental 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 Continental's petition was published, with a 30-day public comment period, on April 7, 2010, in the **Federal Register** (75 FR 17830). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2010–0024.''

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Affected are approximately 28,169 size 235/55R18 100V SL Continental brand CrossContact UHP model passenger car tires manufactured between March of 2007 and June of 2009 at Continental's plant located in Otrokovice, Czech Republic. A total of 8,858 of these tires have been delivered to Continental's customers. The remaining tires (approximately 19,311) are being held in Continental's possession until they can be correctly relabeled.

Continental explains that the noncompliance is that, due to a mold stamping anomaly, the sidewall marking on the tires incorrectly describes the actual generic name and number of the body plies. Specifically, the tires in question were inadvertently manufactured with ''TREAD 6 PLIES: 2 POLYESTER + 2 STEEL + 2 NYLON; SIDEWALL 2 PLY POLYESTER.'' The labeling should have been ''TREAD 5 PLIES: 1 RAYON + 2 STEEL + 2 NYLON; SIDEWALL 1 PLY RAYON.'' Continental states that all other sidewall identification markings and safety information are correct.

Continental argues that this non-compliant sidewall marking is inconsequential to motor vehicle safety as it ''does not affect the safety, performance and durability of the tire; the tires were built as designed.'' In addition, Continental states that the tires comply with all other NHTSA requirements.

Continental said that it performs ongoing compliance testing ''to assure tire performance'' and that ''all tires included in this petition will meet or exceed the performance requirements of FMVSS 139.'' Continental further states that ''there will be no operational impact on the performance or safety of vehicles on which these tires are mounted.''

Continental points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

Continental also stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Continental states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA Decision: The agency agrees with Continental that the noncompliances are inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

The agency also believes the noncompliance will have no measureable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tire sidewalls do not contain steel plies, this potential safety concern does not exist.

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 8,858 [1] tires that Continental 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 Continental has met its burden of persuasion that the subject FMVSS No. 139 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, Continental'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: November 7, 2011.

Claude H. Harris,

Director, Acting Associate Administrator for Enforcement.

[FR Doc. 2011–29740 Filed 11–16–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 10, 2011.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submission may be obtained by calling the Bureau Information Clearance Officer listed. Comments regarding this information collection 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 December 19, 2011 to be assured of consideration.

Office of Financial Education and Financial Access

OMB Number: 1505–XXXX.

[1] Continental's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Continental as a manufacturer from the notification and recall responsibilities of 49 CFR part 573 for 8,858 of the affected tires. However, the agency 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 tires under their control after Continental notified them that the subject noncompliance existed.

Type of Review: New collection.

Title: Assessing Financial Capability Outcomes.

Abstract: Pursuant to the Title XII of the Dodd-Frank Wall Street Reform and Financial Protection Act (Pub. L. 111–203), the Department of the Treasury is implementing an Assessing Financial Capability Outcomes pilot to determine whether the close integration of financial access (access to an account at a financial institution) and financial education delivered in a timely, relevant, and actionable manner, will create significant impact on the financial behaviors and/or outcomes of participants. The information collected will be used for research, to promote the Treasury's understanding of likely outcomes of financial capability interventions.

Respondents: Individuals or households, non-profit organizations, state, tribal or local government entities, businesses or other for-profit entities.

Estimated Total Annual Burden Hours: 4,400.

Treasury Clearance Officer:: Louisa M. Quittman, Director, Community Programs, Office of Financial Education and Financial Access, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. (202) 622–5770.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2011–29686 Filed 11–16–11; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities Proposed Information Collection; Submission for OMB Review

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled ''Debt Cancellation Contracts and Debt Suspension Agreements—12 CFR 37.'' In addition, the OCC is giving notice that it has submitted the collection to OMB for review.

DATES: You should submit written comments by: December 19, 2011.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mail Stop 2–3, Attention: 1557–0224, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to OCC Desk Officer, 1557–0224, by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Ira L. Mills or Mary H. Gottlieb, OCC Clearance Officers, (202) 874–6055 or (202) 874–5090, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Debt Cancellation Contracts and Debt Suspension Agreements.

OMB Control No.: 1557–0224.

Description: This submission covers an existing regulation and involves no change to the regulation or the information collection. The OCC requests that OMB approve its revised estimates and renew its approval of the information collection. The estimates have been revised to reflect the current number of national banks.

The regulation requires national banks to disclose information about a Debt Cancellation Contract (DCC) or Debt Suspension Agreement (DSA). The short form disclosure usually is made orally and is issued at the time the bank firsts solicits the purchase of a contract. The long form disclosure usually is made in writing and is issued before the customer completes the purchase of the contract. There are special rules for transactions by telephone, solicitations using written mail inserts or ''take one'' applications, and electronic transactions. Part 37 provides two forms of disclosure that serve as models for satisfying the requirements of the rule. Use of the forms is not mandatory. A bank may adjust the form and wording of its disclosures so long as the requirements of the regulation are met.

12 U.S.C. 24 (Seventh) authorizes national banks to enter into DCCs and DSAs. The requirements of part 37 enhance consumer protections for customers who buy DCCs and DSAs from national banks and ensure that national banks provide these products in a safe and sound manner by requiring them to effectively manage their risk exposure.

Section 37.6

Section 37.6 and Appendices A and B to part 37 require a bank to provide the following disclosures, as appropriate:

- Anti-tying—A bank must inform the customer that purchase of the product is optional and neither its decision whether to approve the loan nor the terms and conditions of the loan are conditioned on the purchase of a DCC or DSA.
- Explanation of debt suspension agreement—A bank must disclose that if a customer activates the agreement, the customer's duty to pay the loan principal and interest is only suspended and the customer must fully repay the loan after the period of suspension has expired.
- Amount of the fee—A bank must make disclosures regarding the amount of the fee. The disclosure must differ depending on whether the credit is open-end or closed-end. In the case of closed-end credit, the bank must disclose the total fee. In the case of open-end credit, the bank must either disclose that the periodic fee is based on the account balance multiplied by a unit cost and provide the unit cost, or disclose the formula used to compute the fee.
- Lump sum payment of fee—A bank must disclose, where appropriate, that a customer has the option to pay the fee in a single payment or in periodic payments. This disclosure is not appropriate in the case of a DCC or DSA provided in connection with a home mortgage loan since the option to pay the fee in a single payment is not available in that case. Banks are also required to disclose that adding the fee to the amount borrowed will increase the cost of the contract.
- Lump sum payment of fee with no refund—A bank must disclose that the customer has the option to choose a contract with or without a refund

provision. This disclosure also states that prices of refund and no-refund products are likely to differ.

• Refund of fee paid in lump sum—If a bank permits a customer to pay the fee in a single payment and to add the fee to the amount borrowed, the bank must disclose the bank's cancellation policy. The disclosure informs the customer of the bank's refund policy, as applicable, *i.e.,* that the DCC or DSA: (i) may be canceled at any time for a refund; (ii) may be cancelled within a specified number of days for a full refund; or (iii) may be cancelled at any time with no refund.

• Whether use of credit line is restricted—A bank must inform a customer if the customer's activation of the contract would prohibit the customer from incurring additional charges or using the credit line.

• Termination of a DCC or DSA— If termination is permitted during the life of the loan, a bank must explain the circumstances under which a customer or the bank could terminate the contract.

• Additional disclosures—A bank must inform consumers that it will provide additional information before the customer is required to pay for the product.

• Eligibility requirements, conditions, and exclusions—A bank must describe any material limitations relating to the DCC or DSA.

The content of the short and long form may vary, depending on whether a bank elects to provide a summary of the conditions and exclusions in the long form disclosures or refer the customer to the pertinent paragraphs in the contract. The short form requires a bank to instruct the customer to read carefully both the long form disclosures and the contract for a full explanation of the terms of the contract. The long form gives a bank the option of either separately summarizing the limitations or advising the customer that a complete explanation of the eligibility requirements, conditions, and exclusions is available in the contract and identifying the paragraphs where a customer may find that information.

Section 37.7

Section 37.7 requires a bank to obtain a customer's written affirmative election to purchase a contract and written acknowledgment of receipt of the disclosures required by § 37.6. If the sale of the contract occurs by telephone, the customer's affirmative election to purchase and acknowledgment of receipt of the required short form may be made orally, provided the bank maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract; mails the affirmative written election and written acknowledgment, together with the long form disclosures required by section 37.6, to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and permits the customer to cancel the purchase of the contract without penalty within 30 days after it mailed the long form disclosures to the customer.

If the contract is solicited through written materials such as mail inserts or ''take one'' applications and the bank provides only the short form disclosures in the written materials, then the bank shall mail the acknowledgment, together with the long form disclosures, to the customer. The bank may not obligate the customer to pay for the contract until after the bank has received the customer's written acknowledgment of receipt of disclosures, unless the bank takes certain steps, maintains certain documentation, and permits the customer to cancel the purchase within 30 days after mailing the long form disclosures to the customer. The affirmative election and acknowledgment may also be made electronically.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Number of Respondents: 1,650.

Total Annual Responses: 1,650.

Frequency of Response: On occasion.

Total Annual Burden Hours: 39,600.

A 60-day **Federal Register** notice was issued on June 28, 2011 regarding renewal of this collection. 76 FR 37889. One comment was received from a service provide, which supported the renewal of the information collection. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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: November 8, 2011.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 2011–29688 Filed 11–16–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2011–0025]

Mutual Savings Association Advisory Committee

AGENCY: Department of the Treasury, Office of the Comptroller of the Currency.

ACTION: Request for nominations.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has determined to carry on the work of the Mutual Savings Association Advisory Committee (MSAAC or Committee) formerly administered by the Office of Thrift Supervision, as it is necessary and in the public interest in order for the OCC to study the needs of and challenges facing mutual savings associations. The OCC is seeking nominations of individuals who are officers and/or directors of mutual savings associations to be considered for selection as MSAAC members.

DATES: Nominations must be received on or before January 17, 2012.

ADDRESSES: Nominations should be sent to *msaac.nominations@occ.treas.gov* or mailed to: Timothy T. Ward, Deputy Comptroller for Thrift Supervision, 250 E Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Kristin Merritt, Special Counsel, Administrative & Internal Law, (202) 874–4681, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC has determined that the continuation of the MSAAC under the OCC's administration is necessary and in the public interest. The Committee will be administered by the OCC in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 1, section 9(c). The Committee will advise the OCC on ways to meet the goals established by section 5(a) of the Home Owners' Loan Act (HOLA), 12 USC 1464. The Committee will advise the OCC with regard to mutual associations on means to:
(1) Provide for the organization, incorporation, examination, operation

and regulation of associations to be known as federal savings associations (including federal savings banks); and (2) issue charters therefore, giving primary consideration of the best practices of thrift institutions in the United States. The MSAAC will help meet those goals by providing OCC with informed advice and recommendations regarding the current and future circumstances and needs of mutual savings associations.

Nominations should describe and document the proposed member's qualifications for MSAAC membership. Committee members are not compensated for their time, but are eligible for reimbursement of travel expenses in accordance with applicable federal law and regulations.

Dated: November 10, 2011.

By the Office of the Comptroller of the Currency.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–29707 Filed 11–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2011–0026]

Minority Depository Institutions Advisory Committee

AGENCY: Department of the Treasury, Office of the Comptroller of the Currency.

ACTION: Request for nominations.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has determined to carry on the work of the Minority Depository Institutions Advisory Committee (MDIAC or Committee) formerly administered by the Office of Thrift Supervision, as it is necessary and in the public interest in order for the OCC to preserve the present number of minority depository institutions and encourage the creation of new minority depository institutions. The OCC is seeking nominations of individuals who are officers and/or directors of minority depository institutions, or officers and/or directors of other depository institutions with a commitment to supporting minority depository institutions.

DATES: Nominations must be received on or before January 17, 2012.

ADDRESSES: Nominations should be sent to *mdiac.nominations@occ.treas.gov* or mailed to: Beverly Cole, Senior Advisor to the Senior Deputy Comptroller for Midsize and Community Bank Supervision, 250 E Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Kristin Merritt, Special Counsel, Administrative & Internal Law, (202) 874–4681, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC has determined that the continuation of the MDIAC under the OCC's administration is necessary and in the public interest. The Committee will be administered by the OCC in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 1, section 9(c). The Committee will advise the OCC on ways to meet the goals established by section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, Title III, 103 Stat. 353, 12 USCA. 1463 note. The goals of section 308 are to preserve the present number of minority institutions, preserve the minority character of minority owned institutions in cases involving mergers or acquisitions, provide technical assistance, and encourage the creation of new minority institutions. The MDIAC will help OCC meet those goals by providing informed advice and recommendations regarding a range of issues involving minority depository institutions.

Nominations should describe and document the proposed member's qualifications for MDIAC membership. Committee members are not compensated for their time, but are eligible for reimbursement of travel expenses in accordance with applicable federal law and regulations.

Dated: November 10, 2011.

By the Office of the Comptroller of the Currency.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–29706 Filed 11–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 13768

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 13768, Electronic Tax Administration Advisory Committee (ETACC) Membership Application.

DATES: Written comments should be received on or before January 17, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at (202) 622–3634, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Tax Administration Advisory Committee (ETACC) Membership Application.

OMB Number: 1545–XXXX.

Form Numbers: 13768.

Abstract: The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) authorized the creation of the Electronic Tax Administration Advisory Committee (ETAAC). ETAAC has a primary duty of providing input to the Internal Revenue Service (IRS) on its strategic plan for electronic tax administration. Accordingly, ETAAC's responsibilities involve researching, analyzing and making recommendations on a wide range of electronic tax administration issues.

Current Actions: New Approval.

Type of Review: Existing IC in use that does not contain an OMB control number.

Affected Public: Individuals or households, and businesses or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Response: 60 min.

Estimated Total Annual Burden Hours: 600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 3, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–29647 Filed 11–16–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Amendment to an Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of Permanent Housing in Battle Creek, MI

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an amendment to an existing EUL on an approximately 5.1-acre parcel of land at the Battle Creek VA Medical Center in Michigan. The existing lessee will finance, design, develop, construct, manage, maintain and operate the additional EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain a permanent housing facility; provide preference and priority placement for homeless Veterans and Veterans at risk of homelessness and their families; and provide a supportive services program that guides resident Veterans toward attaining long-term self-sufficiency.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29752 Filed 11–16–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Housing Facility in Vancouver, WA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 1.35 acre parcel of land at the Portland VA Medical Center—Vancouver Campus in Vancouver, Washington. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain a permanent housing facility; provide preference and priority placement for homeless and/or at-risk Veterans and their families; and provide a supportive services program.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29754 Filed 11–16–11; 8:45 am]

BILLING CODE ;P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Supportive Housing Facility in Tuscaloosa, AL

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL for Building 33 at the Tuscaloosa VA Medical Center (VAMC) in Tuscaloosa, Alabama. The selected lessee will finance, design, develop, renovate, manage, maintain and operate the EUL development as an affordable permanent housing facility; provide preference and priority placement for homeless Veterans and Veterans at risk of homelessness and their families; and provide a supportive services program that guides resident Veterans toward attaining long-term independence and self-sufficiency.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29756 Filed 11–16–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Housing Facility in Spokane, WA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 3.0-acre parcel of land at the Spokane VA Medical Center in Spokane, Washington. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development as a permanent housing facility; provide preference and priority placement for Veterans and their families; and provide a supportive services program.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29760 Filed 11–16–11; 8:45 am]

BILLING CODE; P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Housing Facility in Hines, IL

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 5.2-acre parcel of land at the Edward Hines, Jr. VA Hospital in Hines, Illinois. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate and maintain a permanent housing facility and provide preference and priority placement for Veterans, as well as a supportive services program.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29768 Filed 11–16–11; 8:45 am]

BILLING CODE; P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Housing Facility in Minneapolis, MN

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on two parcels totaling approximately 6 acres of land at the Minneapolis VA Health Care System in Minnesota. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate and maintain a permanent supportive housing facility with priority placement for homeless Veterans and their families.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29763 Filed 11–16–11; 8:45 am]

BILLING CODE; P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Housing Facility in Brockton, MA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximate 0.8 acre of land at the VA Boston Healthcare System—Brockton Division in Brockton, Massachusetts. The selected lessee will finance, design, develop, construct, renovate, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain a permanent housing facility, provide preference and priority

placement for homeless Veterans, and provide a supportive services program.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29778 Filed 11–16–11; 8:45 am]

BILLING CODE; P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Housing Facility in Fort Harrison, MT

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximate 2-acre parcel of land and 11 buildings at the VA Montana Health Care System in Fort Harrison, Montana. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain a permanent housing facility; provide preference and priority placement for Veterans and their families; and provide a supportive services program.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29775 Filed 11–16–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of Permanent Housing Facilities in Augusta, ME

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into a EUL on two parcels of land totaling approximately 20.0 acres at the VA Maine Healthcare System—Togus in Augusta, Maine. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain permanent housing facilities; provide preference and priority placement for senior Veterans, homeless Veterans and Veterans at risk of homelessness and their families; and provide a supportive services program that guides resident Veterans toward attaining long-term self-sufficiency.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29774 Filed 11–16–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of Permanent Housing Facilities in Northport, NY

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into a EUL on two parcels of land totaling approximately 20.7 acres at the Northport VA Medical Center in Northport, New York. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain permanent housing facilities; provide preference and priority placement for senior and non-senior disabled Veterans and their families; and provide a supportive services program that guides resident Veterans toward attaining long-term self-sufficiency.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29770 Filed 11–16–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Transitional and Permanent Housing Facility in Bath, NY

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 2.6-acre parcel of land that includes three buildings at the Bath VA Medical Center in Bath, New York. The selected lessee will finance, design, develop, construct, renovate, manage, operate and maintain the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain a transitional and permanent housing facility, provide preference and priority placement for Veterans and their families, and provide a supportive services program for resident Veterans.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29765 Filed 11–16–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Housing Facility in Bedford, MA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 4.0-acre parcel at the Edith Nourse Rogers Memorial Veterans Hospital in Bedford, Massachusetts. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, operate, and maintain a permanent housing facility; provide preference and priority placement for homeless and at-risk Veterans and their families; and provide a supportive services program.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29761 Filed 11–16–11; 8:45 am]

BILLING CODE; P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Skilled and Intermediate Nursing Home Care Facility in Mather, CA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 2.5-acre parcel of land at the VA Northern California Health Care System—Valley Division—Sacramento VA Medical Center in Mather, California. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain a permanent long-term care facility (skilled nursing home and assisted living services); provide preference and priority placement for Veterans. Additionally, the lessee will be required to provide supportive services.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29759 Filed 11–16–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of Permanent Supportive Housing Facility in St. Cloud, MN

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 6.0-acre parcel of land at the VA St. Cloud Health Care System in Minnesota. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate and maintain a permanent supportive housing facility with priority placement for homeless Veterans.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC

20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29755 Filed 11–16–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Housing Facility in Menlo Park, CA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease.

SUMMARY: The Secretary of VA intends to enter into an EUL on a 1.9-acre parcel of land at the VA Palo Alto Health Care System (Menlo Park Division) in Menlo Park, California. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain a permanent housing facility; provide preference and priority placement for homeless and/or at-risk Veterans and their families; and provide a supportive services program.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: November 10, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–29753 Filed 11–16–11; 8:45 am]

BILLING CODE; P

FEDERAL REGISTER

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Part II

The President

Proclamation 8753—American Education Week, 2011

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Presidential Documents

Title 3—

The President

Proclamation 8753 of November 14, 2011

American Education Week, 2011

By the President of the United States of America

A Proclamation

Ensuring our future leaders and innovators receive a complete and competitive education is fundamental to our Nation's economic prosperity and our role as a thriving democracy. During American Education Week, we acknowledge the central role education plays in our society and resolve to make rigorous and lasting investments in our education system so the American dream remains within reach of each of our children.

From small towns to our largest cities, schools serve as laboratories where students test new ideas and kindle new academic interests. In the classroom, young people cultivate scholarship, discover talents they never knew they had, and build the skills they need to pursue careers of their choosing. And with every step they take toward their future, our students are guided by men and women who work tirelessly to help them realize their full potential. Teachers, administrators, and other education professionals are unfaltering in their dedication to giving children the education they deserve, and it is essential we do our part to help them succeed. To secure a bright future for our students and our Nation, we must support educators by strengthening our schools, creating better opportunities for professional development, and recruiting top college graduates to be our next generation of devoted teachers.

The task of preparing our children for a lifetime of scholarship and achievement rests not only in the classroom, but also in our homes and neighborhoods. Parents, community leaders, and mentors play a vital role in cultivating a love of learning and instilling in our children the self-confidence, creativity, and discipline that serve as a foundation for success. Together, our families, schools, and communities carry a profound responsibility to do right by our children. This week and throughout the year, let us strive to fulfill that promise.

By working toward thoughtful education reform and making every classroom a place of high expectations and high performance, we can take steps to ensure our future generations are prepared to uphold our founding promise of opportunity, and to make great discoveries and develop groundbreaking ideas here in America. During American Education Week, we renew our promise to give our children the chance to achieve their dreams and to write the next proud chapter in the American story.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 13 through November 19, 2011, as American Education Week. I call upon all Americans to observe this week by supporting their local schools through appropriate activities, events, and programs designed to help create opportunities for every school and student in America.

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

[FR Doc. 2011–29938
Filed 11–16–11; 11:15 am]
Billing code 3295–F2–P

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