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Presidential Documents

Title 3—

The President

Proclamation 8763 of December 2, 2011

International Day of Persons With Disabilities, 2011

By the President of the United States of America

A Proclamation

On International Day of Persons with Disabilities, we recommit to ensuring people living with disabilities enjoy full equality and unhindered participation in all facets of our national life. We recognize the myriad contributions that persons with disabilities make at home and abroad, and we remember that disability rights are universal rights to be recognized and promoted around the world.

For decades, America has been a global leader in advancing the rights of people with disabilities. From the Americans with Disabilities Act of 1990 to the Twenty-First Century Communications and Video Accessibility Act, which I signed last year, we have striven to bring the American dream and comprehensive opportunities in education, health care, and employment within reach for every individual. These actions—made possible only through the tireless and ongoing efforts of the disability community—affirm our commitment to an equitable and just society where every American can play a part in securing a prosperous future for our Nation.

To fulfill this promise not only in America, but around the world, my Administration is putting disability rights at the heart of our Nation's foreign policy. With leadership from the Department of State and the United States Agency for International Development, we are collaborating across governments and in close consultation with the global disability community to expand access to education, health care, HIV/AIDS prevention and treatment, and other development programs. In 2009, we signed the Convention on the Rights of Persons with Disabilities, which seeks to ensure persons with disabilities enjoy the same rights and opportunities as all people. If ratified, the Convention would provide a platform to encourage other countries to join and implement the Convention, laying a foundation for enhanced benefits and greater protections for the millions of Americans with disabilities who spend time abroad.

We know from the historic struggle for disability rights in the United States that disability inclusion is an ongoing effort, and many challenges remain in securing fundamental human rights for all persons with disabilities around the world. On International Day of Persons with Disabilities, we press forward, renewing our dedication to embrace diversity, end discrimination, remove barriers, and uphold the rights, dignity, and equal opportunity of all people.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 3, 2011, as International Day of Persons with Disabilities. I call on all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of December, 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. 2011–31620
Filed 12–7–11; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Executive Order 13592 of December 2, 2011

Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. *Policy*. The United States has a unique political and legal relationship with the federally recognized American Indian and Alaska Native (AI/AN) tribes across the country, as set forth in the Constitution of the United States, treaties, Executive Orders, and court decisions. For centuries, the Federal Government's relationship with these tribes has been guided by a trust responsibility—a long-standing commitment on the part of our Government to protect the unique rights and ensure the well-being of our Nation's tribes, while respecting their tribal sovereignty. In recognition of that special commitment—and in fulfillment of the solemn obligations it entails—Federal agencies must help improve educational opportunities provided to all AI/AN students, including students attending public schools in cities and in rural areas, students attending schools operated and funded by the Department of the Interior's Bureau of Indian Education (BIE), and students attending postsecondary institutions, including Tribal Colleges and Universities (TCUs). This is an urgent need. Recent studies show that AI/AN students are dropping out of school at an alarming rate, that our Nation has made little or no progress in closing the achievement gap between AI/AN students and their non-AI/AN student counterparts, and that many Native languages are on the verge of extinction.

It is the policy of my Administration to support activities that will strengthen the Nation by expanding educational opportunities and improving educational outcomes for all AI/AN students in order to fulfill our commitment to furthering tribal self-determination and to help ensure that AI/AN students have an opportunity to learn their Native languages and histories and receive complete and competitive educations that prepare them for college, careers, and productive and satisfying lives.

My Administration is also committed to improving educational opportunities for students attending TCUs. TCUs maintain, preserve, and restore Native languages and cultural traditions; offer a high-quality college education; provide career and technical education, job training, and other career-building programs; and often serve as anchors in some of the country's poorest and most remote areas.

Sec. 2. *Definitions*. (a) ''Agency'' means any executive department or agency designated by the Secretary of Education and the Secretary of the Interior to participate in this order.

(b) ''Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) ''American Indian and Alaska Native'' means a member of an Indian tribe, as membership is defined by the tribe.

(d) ''Public school'' means a Head Start center or a pre-kindergarten, elementary, or secondary school that is predominantly funded by public means through the Federal Government, a State, a local educational agency,

or an Indian tribal government, including a school operated directly by or through contract or grant with the BIE, an Indian tribe, or a State, county, or local government.

(e) ''Tribal Colleges and Universities'' are those institutions that are chartered by their respective Indian tribes through the sovereign authority of the tribes or by the Federal Government, and defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c).

Sec. 3. *White House Initiative on American Indian and Alaska Native Education.*

(a) *Establishment.* There is hereby established the White House Initiative on American Indian and Alaska Native Education (Initiative). The Secretary of Education and the Secretary of the Interior will co-chair the Initiative. The Secretary of Education shall appoint an Executive Director who shall be responsible for overseeing implementation of the Initiative. This individual shall be a senior-level, Department of Education official who shall serve as the Secretary of Education's senior policy advisor on Federal policies affecting AI/AN education.

The Executive Director shall work closely with the BIE Director and shall provide periodic reports to the Secretaries of Education and the Interior regarding progress achieved under the Initiative. The Executive Director shall coordinate frequent consultations with tribal officials and shall provide staff support for the National Advisory Council on Indian Education (NACIE), authorized by section 7141 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 7471).

(b) *Mission and Functions.* (1) The Initiative shall help expand educational opportunities and improve educational outcomes for all AI/AN students, including opportunities to learn their Native languages, cultures, and histories and receive complete and competitive educations that prepare them for college, careers, and productive and satisfying lives, by:

(i) working closely with the Executive Office of the President to help ensure AI/AN participation in the development and implementation of key Administration priorities;

(ii) strengthening the relationship between the Department of Education, which has substantial expertise and resources to help improve Indian education, and the Department of the Interior and its BIE, which directly operates or provides grants to tribes to operate an extensive primary, secondary, and college level school system for AI/AN children and young adults;

(iii) coordinating, in consultation with the Department of Education's Director of Indian Education, programs administered by the Department of Education and other executive branch agencies regarding AI/AN education;

(iv) serving as a liaison with other executive branch agencies on AI/AN issues and advising those agencies on how they might help to promote AI/AN educational opportunities;

(v) reporting on the development, implementation, and coordination of education policy and programs that affect AI/AN students;

(vi) furthering tribal sovereignty by supporting efforts, consistent with applicable law, to build the capacity of tribal educational agencies and TCUs to provide high-quality education services to AI/AN children;

(vii) developing in partnership with tribal educational agencies a more routine and streamlined process for entering into agreements for educational studies conducted on tribal lands;

(viii) developing sufficient data resources to inform progress on Federal performance indicators, in close collaboration with the Department of Education's National Center for Educational Statistics;

(ix) encouraging and coordinating Federal partnerships with public, private, philanthropic, and nonprofit entities to help increase the readiness of AI/AN students for school, college, and careers, and to help increase the number and percentage of AI/AN students completing college; and

(x) developing a national network of individuals, organizations, and communities to share best practices in AI/AN education and encouraging them to implement these practices.

(2) In order to help expand educational opportunities and improve education outcomes for AI/AN students, the Initiative shall promote, encourage, and undertake efforts, consistent with applicable law, to meet the following objectives:

(i) increasing the number and percentage of AI/AN children who enter kindergarten ready for success through improved access to high-quality early learning programs and services, including Native language immersion programs, that encourage the learning and development of AI/AN children from birth through age five;

(ii) supporting the expanded implementation of education reform strategies that have shown evidence of success in enabling AI/AN students to acquire a rigorous and well-rounded education and increasing their access to the support services that prepare them for college, careers, and civic involvement;

(iii) increasing the number and percentage of AI/AN students who have access to excellent teachers and school leaders, including effective science, technology, engineering, and mathematics (STEM), language, and special education teachers, in part by supporting efforts to improve the recruitment, development, and retention of effective AI/AN teachers and other effective teachers and school leaders, particularly through TCUs;

(iv) reducing the AI/AN student dropout rate and helping a greater number and percentage of those students who stay in high school to be ready for college and careers by the time of their graduation and college completion, in part by promoting a positive school climate and supporting successful and innovative dropout-prevention and recovery strategies that better engage AI/AN youths in their learning and help them catch up academically;

(v) providing pathways that enable those who have dropped out to reenter educational or training programs and acquire degrees, certificates, or industry-recognized credentials and obtain quality jobs, and expanding access to high-quality education programs leading to career advancement, especially in the STEM fields, by supporting adult, career, and technical education;

(vi) increasing college access and completion for AI/AN students through strategies to strengthen the capacity of postsecondary institutions, particularly TCUs; and

(vii) helping to ensure that the unique cultural, educational, and language needs of AI/AN students are met.

(3) To facilitate a new partnership between the Department of Education and the Department of the Interior, to improve AI/AN education, the Executive Director shall work with the BIE Director and develop a Memorandum of Understanding (MOU) between the two Departments that will take advantage of both Departments' expertise, resources, and facilities. The MOU shall be completed within 120 days of the date of this order. Among other things, the MOU shall address how the Departments will collaborate in carrying out the policy set out in section 1 of this order.

(c) Funding and Administrative Support. Subject to the availability of appropriations, the Department of Education shall fund the Initiative, including NACIE. The Department shall also provide administrative support for the Initiative to the extent permitted by law and within existing appropriations.

(d) Interagency Working Group. There is established the Interagency Working Group on AI/AN education and TCUs, which shall be convened by the Initiative's Executive Director. The Working Group shall consist of senior officials from the Department of Education and the Department of the Interior and officials from the Departments of Justice, Agriculture, Labor, Health and Human Services, and Energy, the Environmental Protection Agency, and the White House Domestic Policy Council, as well as such additional agencies and offices as the Secretaries of Education and the Interior may

designate. Senior officials shall be designated by the heads of their respective agencies and offices. The Secretaries of Education and the Interior shall serve as the co-chairs of the Interagency Working Group.

(e) Federal Agency Plans. (1) Each agency designated by the co-chairs as a member of the Interagency Working Group shall develop and implement a two-part, 4-year plan of the agency's efforts to fulfill the purposes of this order, with part one of the plan focusing on all AI/AN students except for those attending TCUs, and part two focusing on AI/AN students attending TCUs. Each agency plan shall include:

(i) annual performance indicators and appropriate measurable objectives with which the agency will measure its success in meeting the goals of this order;

(ii) information on how the agency intends to increase the capacity of educational agencies and institutions, including our Nation's public schools and TCUs, to deliver high-quality education and related social services to all AI/AN students; and

(iii) agency efforts to enhance the ability of these educational agencies and institutions serving AI/AN students to compete effectively for grants, contracts, cooperative agreements, and other Federal resources with which to serve the education needs of AI/AN students, and to encourage eligible schools and colleges serving those students to apply for Federal grants and participate in Federal education programs, as appropriate. Agency plans may also emphasize access to high-quality educational opportunities for AI/AN students, consistent with requirements of the ESEA, the Individuals with Disabilities Education Act, and other applicable Federal education statutes; the preservation and revitalization of tribal languages and cultural traditions; and innovative approaches to more seamlessly align early learning, elementary, and secondary education programs with the work of TCUs.

(2) *Submission*. Each agency shall submit its plan to the Initiative by a deadline established by the co-chairs. In consultation with NACIE, the Initiative shall then review agency plans and develop, for submission to the President, a synthesized interagency plan to achieve the aims of this order.

(3) *Annual Performance Reports*. Each agency shall submit to the Initiative an Annual Performance Report that measures the agency's performance against the objectives set forth in its plan. In consultation with NACIE, the Initiative shall review and combine Annual Performance Reports from the various agencies into one annual report, which shall be submitted to the Secretaries of Education and the Interior for review.

(f) *Private Sector*. In consultation with NACIE, and consistent with applicable law, the Interagency Working Group, led by the Executive Director, shall encourage the private sector to assist State- and locally-operated public schools that serve large numbers of AI/AN students, including those attending our Nation's public schools, publicly-funded preschools, and TCUs, through increased use of such strategies as:

(1) Providing funds to support the preservation and revitalization of Native languages and cultures;

(2) Providing funds to support increased institutional endowments;

(3) Helping these schools develop expertise in financial and facilities management, information systems, and curricula; and

(4) Providing resources for the hiring and training of effective teachers and administrators.

Sec. 4. *Study*. In carrying out this order, the Secretaries of Education and the Interior shall study and collect information on the education of AI/AN students.

Sec. 5. *General Provisions*. (a) NACIE shall serve as the Initiative's advisory committee.

(b) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Initiative, any functions of the President under that Act, except for those of reporting to the Congress, shall be performed by the Secretary of Education, in consultation with the Secretary of the Interior, in accordance with the guidelines issued by the Administrator of General Services.

(c) This order revokes Executive Order 13270 of July 3, 2002, Executive Order 13336 of April 30, 2004, and section 1(n) of Executive Order 13585 of September 30, 2011.

(d) The heads of agencies shall assist and provide such information to the Initiative as may be necessary to carry out its functions, consistent with applicable law.

(e) Nothing in this order shall be construed to impair or otherwise affect:

(1) authority granted by law to an executive department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
December 2, 2011.

[FR Doc. 2011–31624
Filed 12–7–11; 8:45 am]
Billing code 3295–F2–P

Rules and Regulations

Federal Register
Vol. 76, No. 236
Thursday, December 8, 2011

DEPARTMENT OF AGRICULTURE

Office of the Secretary

2 CFR Part 421

7 CFR Part 3021

RIN 0505AA14

Implementation of Office of Management and Budget Guidance on Drug-Free Workplace Requirements

AGENCY: Office of the Secretary, USDA.

ACTION: Direct final rule.

SUMMARY: The Department of Agriculture (USDA) is removing its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance, currently located within part 3021 of Title 7 of the Code of Federal Regulations (CFR), and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance at 2 CFR part 182. This regulatory action implements OMB's initiative to streamline and consolidate into one title of the CFR all Federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that would make no substantive change in USDA's policy or procedures for drug-free workplace.

DATES: This direct final rule is effective on February 6, 2012 without further action. Submit comments by January 9, 2012 on any unintended changes this action makes in USDA's policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, USDA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and/or RIN Number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: james.mcstay@cfo.usda.gov.* Include [docket number and/or RIN number] in the subject line of the message.
- *Fax:* James McStay at (202) 690–1529.
- *Mail:* OCFO/CTGPD, Room 3409–A, Stop 9010, 1400 Independence Avenue SW., Washington, DC 20250–9010.
- *Hand Delivery/Courier:* OCFO/CTGPD, Room 3409–A, 1400 Independence Avenue SW., Washington, DC 20250.

All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: James McStay, (202) 720–0589, *Email: james.mcstay@cfo.usda.gov;* or Steve Lowery, (202) 720–1568, *Email: steve.lowery@osec.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*) as a part of omnibus drug legislation. Federal agencies issued an interim final common rule to implement the Act as it applied to grants (53 FR 4946, January 31, 1989). The rule was a subpart of the Governmentwide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments (55 FR 21681, May 25, 1990).

The agencies proposed an update to the drug-free workplace common rule in 2002 (67 FR 3266, January 23, 2002) and finalized it in 2003 (68 FR 66534, November 26, 2003). The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on nonprocurement suspension and debarment. Based on an amendment to the drug-free workplace requirements in 41 U.S.C. 702 (Pub. L. 105–85, div. A, title VIII, Sec. 809, Nov. 18, 1997, 111 Stat. 1838), the update also allowed multiple enforcement options from which agencies could select, rather than requiring use of a certification in all cases.

When it established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements (69 FR 26276, May 11, 2004), OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing (70 FR 51863, August 31, 2005) and finalizing (71 FR 66431, November 15, 2006) Governmentwide guidance on nonprocurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment (73 FR 55776, September 26, 2008) and finalized (74 FR 28149, June 15, 2009) Governmentwide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the Governmentwide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it collocates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

The Current Regulatory Actions

As the OMB guidance requires, USDA is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 7 CFR part 3021. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 421 to adopt the Governmentwide policies and procedures in the OMB guidance.

Invitation To Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR

would make relative to the common rule at 7 CFR part 3021.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the ''Background'' section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by federal agencies as a common rule in 2002 and a second time by OMB as guidance in 2008—and adopted each time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in the USDA policy or procedures for drug-free workplace. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that ''good cause'' exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on February 6, 2012 without further action, unless we receive adverse comment by January 9, 2012. If we receive any comment on unintended changes is received, we will consider it and, if warranted, we will publish a timely revision of the rule.

Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects

2 CFR Part 421

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

7 CFR Part 3021

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, the Department of Agriculture amends the Code of Federal Regulations, Title 2, Subtitle B, chapter IV, and Title 7, chapter XXX, part 3021, as follows:

Title 2—Grants and Agreements

Chapter IV—Department of Agriculture

■ 1. Add part 421 in Subtitle B, Chapter IV, to read as follows:

PART 421—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.

Authority: 41 U.S.C. 701–707.

§ 421.10 What does this part do?

This part requires that the award and administration of USDA grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for USDA's grants and cooperative agreements; and

(b) Establishes USDA policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

§ 421.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a USDA grant or cooperative agreement; or

(b) USDA awarding official.

§ 421.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 421.225	Whom in the USDA a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§ 421.300	Whom in the USDA a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500	§ 421.500	Who in the USDA is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505	§ 421.505	Who in the USDA is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, USDA policies and procedures are the same as those in the OMB guidance.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 421.225 Whom in the USDA does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the awarding official for each USDA agency from which the recipient currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§ 421.300 Whom in the USDA does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual that is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the awarding official for each USDA agency from which the recipient currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 421.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 421, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 421.500 Who in the USDA determines that a recipient other than an individual violated the requirements of this part?

The Secretary of Agriculture and the Secretary's designee or designees are authorized to make the determination under 2 CFR 182.500.

§ 421.505 Who in the USDA determines that a recipient who is an individual violated the requirements of this part?

The Secretary of Agriculture and the Secretary's designee or designees are authorized to make the determination under 2 CFR 182.505.

Title 7—Agriculture

Chapter XXX—Office of the Chief Financial Officer, Department of Agriculture

PART 3021—[REMOVED]

■ 2. Remove Part 3021.

Approved: October 26, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration.

[FR Doc. 2011–31467 Filed 12–7–11; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Interference With a Crewmember via Laser

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interpretation.

SUMMARY: On June 1, 2011, the Assistant Chief Counsel for Regulations, Federal Aviation Administration (''FAA''), issued an interpretation of 14 CFR 91.11. Section 91.11 provides that ''[n]o person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.'' The FAA is aware of an increasing number of incidents involving the use of lasers being directed toward aircraft operating on the ground or in the air. Such conduct has the potential to adversely affect safety by interfering with flight crewmembers in the performance of their duties. The FAA considers a situation in which a laser beam is aimed at an aircraft by a person on the ground or from any other location including from another aircraft so that it interferes with a crewmember in the performance of the crewmember's duties as a violation of 14 CFR 91.11.

FOR FURTHER INFORMATION CONTACT: Dean E. Griffith, Attorney, Regulations Division, Chief Counsel's Office, AGC–220, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC; *telephone:* (202) 267–3073; *email: dean.griffith@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA published its June 1, 2011 interpretation of section 91.11 on its Web site, which is available to the public at: *http://www.faa.gov/news/press_releases/news_story.cfm?newsId=12765.* It is also available on the FAA's Laser Incident Information and Reporting Web site: *http://www.faa.gov/go/laserinfo.* In addition, the FAA and the Department of Transportation have issued press releases with regard to publicizing the dangers of interfering with flight crew operations by using lasers directed at aircraft. With this notice published in the **Federal Register**, the FAA is again advising the public of the FAA's June 1, 2011 interpretation of section 91.11 in an effort to increase awareness that: (1) Directing laser beams towards aircraft operating on the ground or in the air so that it interferes with a crewmember in the performance of the crewmember's duties is a violation of section 91.11; and, (2) persons violating section 91.11 are subject to a substantial civil penalty.

The text of the interpretation issued by the Assistant Chief Counsel for Regulations, FAA, on June 1, 2011, follows:

This memorandum is in response to your request for legal interpretation on whether directing a laser at an aircraft from the ground could constitute interference with a crewmember under 14 CFR 91.11. The FAA's understanding of the plain language of § 91.11, and the purpose of the regulation, indicate that the answer to this question is ''yes.''

Section 91.11 establishes that ''[n]o person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.''

This regulation was initially adopted in 1961 in reaction to increased hijackings of aircraft. *See* 26 FR 7009 (Aug. 4, 1961). The FAA intended to ''provide additional controls over the conduct of passengers in order to avoid a serious threat to the safety of flights and persons aboard them.'' *Id.* In a later amendment to the rule, the FAA stated that this section was ''clearly intended to apply to passengers * * * and any other 'person' on board the aircraft.'' 64 FR 1076, 1077 (Jan. 7, 1999).

Although the primary focus of the regulation, as explained in the 1999 amendments to the rule, was persons on board the aircraft, the plain language of the regulation does not specify that the person interfering with a crewmember must be on board the aircraft. We note that the FAA has successfully invoked this section to assess a civil penalty against a pilot who walked up to a helicopter that was on the ground preparing for takeoff, reached into the helicopter and physically assaulted the pilot. *See Adm'r* v. *Siegel,* NTSB Order No. EA–3804 (Feb. 10, 1993), 1993 WL 56200. Accordingly, the rule, and prior FAA interpretation, as evidenced by the *Siegel* case, support a finding that an individual does not need to be on board the aircraft to violate § 91.11.

The FAA is aware of an increasing number of incidents of lasers being pointed at aircraft, a scenario that could not have been contemplated by the drafters of the initial rule. The FAA has recognized ''that the exposure of air crews to laser illumination may cause hazardous effects (e.g., distraction, glare, afterimage flash blindness, and, in extreme circumstances, persistent or permanent visual impairment), which could adversely affect the ability of air crews to carry out their responsibilities.'' FAA Advisory Circular 70–2 (Jan. 11, 2005). Distracting or impairing a crewmember's vision during operation of an aircraft could reasonably be construed to constitute interference with a crewmember's duties aboard an aircraft.

Therefore, the FAA would consider a situation in which a laser beam, aimed at an aircraft by a person who is not on board the aircraft, interferes with a crewmember's performance of his or her duties aboard the aircraft to be a violation of § 91.11. We note that this interpretation would apply equally to the similarly worded provisions of §§ 121.580, 125.328, 135.120.

This response was prepared by Dean E. Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation, Flight Technologies and Procedures, and General Aviation and Commercial Divisions of Flight Standards Service. It was also coordinated with Airspace Services in the Air Traffic Organization's Office of Mission Support Services. Please contact us at (202) 267–3073 if we can be of additional assistance.

Issued in Washington, DC, on November 30, 2011.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2011–31446 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1206, 1210, 1218, 1220, 1227, 1228, and 1243

[Docket No. ONRR 2011–0016]

RIN 1012–AA07

Amendments to OMB Control Numbers and Certain Forms

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Direct final rule.

SUMMARY: On May 19, 2010, the Secretary of the Interior separated the responsibilities previously performed by the former Minerals Management Service (MMS) and reassigned those responsibilities to three separate organizations. As part of this reorganization, the Secretary renamed MMS's Minerals Revenue Management Program (MRM) the Office of Natural Resources Revenue (ONRR) and directed that ONRR transition to the Office of the Assistant Secretary—Policy, Management and Budget (PMB). This change required ONRR to reorganize its regulations and repromulgate them in chapter XII, title 30 of the *Code of Federal Regulations* (CFR). This direct final rule amends the Office of Management and Budget (OMB) control numbers for information collection requirements, certain form numbers, and corresponding technical corrections to part and position titles, agency names, and acronyms listed in chapter XII of 30 CFR.

DATES: This rule is effective on December 8, 2011.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Armand Southall, Regulatory Specialist, ONRR, telephone (303) 231–3221; or email *armand.southall@onrr.gov.* You may obtain a paper copy of this rule by contacting Mr. Southall by phone or email.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 2010, by Secretarial Order No. 3299, the Secretary of the Department of the Interior (Secretary) announced the restructuring of MMS. On June 18, 2010, by Secretarial Order No. 3302, the Secretary announced the name change of MMS to the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE). By these orders, the Secretary separated the responsibilities previously performed by MMS and reassigned those responsibilities to three separate organizations: the Office of Natural Resources Revenue (ONRR); the Bureau of Ocean Energy Management (BOEM); and the Bureau of Safety and Environmental Enforcement (BSEE). The ONRR is responsible for the former MRM royalty and revenue functions.

II. Explanation of Proposed Amendments

In this direct final rule, ONRR amends the approved OMB control numbers for information collection requests and certain form numbers listed in certain parts of title 30 CFR, chapter XII. This direct final rule does not make any substantive changes to the regulations or requirements in chapter XII. It merely amends ONRR's OMB control and certain form numbers in the new chapter XII of 30 CFR and makes any necessary corresponding technical corrections to part and position titles, agency names, and acronyms. This rule will not have any effect on the rights, obligations, or interests of any affected parties. Thus, under 5 U.S.C. 553(b)(B), ONRR, for good cause, finds that notice and comment on this rule are unnecessary and contrary to the public interest. Additionally, because this document is a ''rule[] of agency organization, procedure or practice'' under 5 U.S.C. 553(b)(A), this document

is in any event exempt from the notice and comment requirements of 5 U.S.C. 553(b). Lastly, because this non-substantive rule makes no changes to the legal obligations or rights of any affected parties, and because it is in the public interest to have this rule be effective just as soon as possible, ONRR finds that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register** rather than 30 days after publication.

In the near future, ONRR will make additional technical corrections to its regulations as required by the restructuring of the former MMS into the three separate organizations. As noted, this direct final rule amends the following 30 CFR parts and the related existing subparts:

- Part 1206—Product Valuation.
- Part 1210—Forms and Reports.
- Part 1218—Collection of Monies and Provision for Geothermal Credits and Incentives.
- Part 1220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases.
- Part 1227—Delegation to States.
- Part 1228—Cooperative Activities with States and Indian Tribes.
- Part 1243—Suspensions Pending Appeal and Bonding—Minerals Revenue Management.

These amendments to the regulations are explained further in the following sections:

A. Part 1206—Product Valuation

We are revising part 1206, subpart H.

In § 1206.356(a)(2), we are correcting the thermal energy displaced equation. Prior to the enactment of the Energy Policy Act of 2005 (EPAct, Pub. L. 109–5, 119 Stat. 1092, Aug. 8, 2005), the then Minerals Management Service's (MMS) regulations at 30 CFR 206.255(c)(1)(ii) (pertaining to the calculation of royalties due on geothermal resources used for direct utilization purposes) employed a thermal energy displaced equation with a conversion factor of 0.133681. With the enactment of the EPAct, the then MMS amended its regulations regarding the calculation of royalties due for geothermal steam resources (72 FR 24448, May 2, 2007). When it amended these regulations, at 30 CFR 206.356(a)(2) (now 30 CFR 1206.356(a)(2)), the then MMS inadvertently and erroneously changed the above-described conversion factor from 0.133681 (the correct number) to 0.113681. The ONRR now desires to make this technical correction and change the incorrectly described conversion factor of 0.113681 back to the correct conversion factor of 0.133681.

B. Part 1210—Forms And Reports

We are revising part 1210, subparts A, B, C, D, E, and H.

1. *OMB Control and Form Numbers.* Currently, 30 CFR 1210.10 contains a list of information collections approved by OMB prior to ONRR's separation from BOEMRE. In this rule, we are providing, under 30 CFR 1210.10, an updated information collection requests (ICR) table showing OMB control and certain form numbers approved by OMB for current ICRs. We will update the remaining form numbers to replace ''MMS'' with ''ONRR'' as we complete our form update process.

2. *Agency information.* In part 1210, we also are amending agency names, mail stops, street addresses, Web site addresses, and form names.

C. Part 1218—Collection of Monies and Provision for Geothermal Credits and Incentives

We are amending the title of part 1218 to reflect ONRR's royalty and revenue functions.

D. Part 1220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases

1. In § 1220.003(a), we are removing the first sentence and adding sentences stating that OMB has approved the information collection requirements and the OMB control number.

2. In § 1220.003(b), we are revising the paragraph, including the agency addresses and OMB control number.

E. Part 1227—Delegation to States

1. In § 1227.10(a), we are removing the first sentence and adding sentences stating that OMB has approved the information collection requirements and the OMB control number.

2. In § 1227.10(b), we are revising the paragraph, including the agency addresses and OMB control number.

F. Part 1228—Cooperative Activities With States and Indian Tribes

1. In § 1228.10(a), we are removing the first sentence and adding sentences stating that OMB has approved the information collection requirements and the OMB control number.

2. In § 1228.10(b), we are revising the paragraph, including the agency addresses and OMB control number.

G. Part 1243—Suspensions Pending Appeal and Bonding—Minerals Revenue Management

1. We are amending the title of part 1243 to reflect the reorganization.

2. In § 1243.200(a)(1) and (a)(2), we are revising the mailing addresses and courier or overnight delivery address.

III. Procedural Matters

1. Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule, and the Office of Management and Budget (OMB) will not review this rule under Executive Order 12866.

a. This direct final rule does not have an effect of $100 million or more per year on the economy. It does not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

b. This direct final rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This direct final rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This direct final rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this direct final rule does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This direct final rule will impact large and small entities but will not have a significant economic effect on either because this is a technical rule to renumber already approved OMB control numbers, rename certain forms, and correct corresponding part and position titles, agency names, and acronyms for ONRR's ICRs listed in title 30 CFR, chapter XII, regulations.

3. Small Business Regulatory Enforcement Fairness Act

This direct final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This direct final rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This direct final rule does not impose an unfunded mandate on state, local, or tribal governments, or the private sector of more than $100 million per year. This direct final rule does not have a significant or unique effect on state, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this direct final rule does not have any significant takings implications. This direct final rule applies to Outer Continental Shelf (OCS) and Federal and Indian onshore leases. It does not apply to private property. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this direct final rule does not have sufficient federalism implications that warrant the preparation of a Federalism Assessment. This is a technical rule to renumber already approved OMB control numbers, rename certain forms, and correct corresponding part and position titles, agency names, and acronyms for ONRR's ICRs listed in title 30 CFR, chapter XII, regulations. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This direct final rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this direct final rule and determined that it has no effects on federally recognized Indian tribes.

9. Paperwork Reduction Act

This direct final rule does not contain any new information collection requirements, and a submission to OMB is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is categorically excluded under: ''(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature.'' See 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D. We have also determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments have no consequences with respect to the physical environment. No activity bearing on natural resource exploration, production, or transportation will be altered in any material way.

11. Data Quality Act

In developing this direct final rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

12. Information Quality Act

In accordance with the Information Quality Act, the Department of the Interior has issued guidance regarding the quality of information that it relies on for regulatory decisions. This guidance is available on DOI's Web site at *http://www.doi.gov/ocio/iq.html.*

13. Effects on the Energy Supply (E.O. 13211)

This direct final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

14. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) Use the active voice to address readers directly; (c) Use clear language rather than jargon; (d) Be divided into short sections and sentences; and (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send your remarks to *armand.southall@onrr.gov.* To better help us revise the rule, your remarks should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

30 CFR Part 1206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1210

Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Sulfur.

30 CFR Part 1218

Continental shelf, Electronic funds transfers, Geothermal energy, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1220

Accounting, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1227

Administrative practice and procedure, Mineral royalties, Reporting and recordkeeping requirements.

30 CFR Part 1228

Accounting, Administrative practice and procedure, Indians—lands, Intergovernmental relations, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1243

Administrative practice and procedure, Government contracts, Mineral royalties, Public lands—mineral resources.

Dated: November 9, 2011.

Rhea Suh,

Assistant Secretary, Policy, Management and Budget.

Authority and Issuance

For the reasons discussed in the preamble, under the authority provided by the Reorganization Plan No. 3 of 1950 (64 Stat. 1262) and Secretarial Order Nos. 3299 and 3302, ONRR amends parts 1206, 1210, 1218, 1220,

1227, 1228, and 1243 of title 30 CFR, chapter XII, subchapter A, as follows:

PART 1206—PRODUCT VALUATION

■ 1. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* 1801 *et seq.*

§ 1206.356 [Amended]

■ 2. Amend § 1206.356 in the *thermal energy displaced* equation in paragraph (a)(2) by removing ''0.113681'' and adding in its place ''0.133681''.

PART 1210—FORMS AND REPORTS

■ 3. The authority citation for part 1210 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.;* and 44 U.S.C. 3506(a).

■ 4. In § 1210.10, revise the table to read as follows:

§ 1210.10 What are the OMB-approved information collections?

* * * * *

OMB control number and short title	Form or information collected
1012–0001, CFO Act of 1992, Accounts Receivable Confirmations.	No form for the following collection: • Accounts receivable confirmations.
1012–0002, 30 CFR Parts 1202, 1206, and 1207, Indian Oil and Gas Valuation.	Form MMS–4109, Gas Processing Allowance Summary Report. Form MMS–4110, Oil Transportation Allowance Report. Form MMS–4295, Gas Transportation Allowance Report. Form MMS–4393, Request to Exceed Regulatory Allowance Limitation.[1] Form MMS–4410, Accounting for Comparison [Dual Accounting]. Form MMS–4411, Safety Net Report.
1012–0003, 30 CFR Parts 1227, 1228, and 1229, Delegation to States and Cooperative Activities with States and Indian Tribes.	No forms for the following collections: • Written delegation proposal to perform auditing and investigative activities. • Request for cooperative agreement and subsequent requirements.
1012–0004, 30 CFR Parts 1210 and 1212, Royalty and Production Accounting.	Form MMS–2014, Report of Sales and Royalty Remittance. Form MMS–4054 (Parts A, B, and C), Oil and Gas Operations Report. Form MMS–4058, Production Allocation Schedule Report.
1012–0005, 30 CFR Parts 1202, 1204, 1206, and 1210, Federal Oil and Gas Valuation.	Form MMS–4377, Stripper Royalty Rate Reduction Notification. Form MMS–4393, Request to Exceed Regulatory Allowance Limitation.[1] No form for the following collection: • Federal oil valuation support information.
1012–0006, 30 CFR Part 1243, Suspensions Pending Appeal and Bonding.	Form ONRR–4435, Administrative Appeal Bond. Form ONRR–4436, Letter of Credit. Form ONRR–4437, Assignment of Certificate of Deposit. No forms for the following collections: • Self bonding. • U.S. Treasury securities.
1012–0007, 30 CFR Part 1208, Royalty in Kind (RIK) Oil and Gas.	Form MMS–4070, Application for the Purchase of Royalty Oil. Form MMS–4071, Letter of Credit (RIK). Form MMS–4072, Royalty-in-Kind Contract Surety Bond. No form for the following collection: • Royalty oil sales to eligible refiners.
1012–0008, 30 CFR Part 1218, Collection of Monies Due the Federal Government.	Form ONRR–4425, Designation Form for Royalty Payment Responsibility. No forms for the following collections: • Cross-lease netting documentation. • Indian recoupment approval.
1012–0009, 30 CFR Part 1220, OCS Net Profit Share Payment Reporting.	No form for the following collection: • Net profit share payment information.
1012–0010, 30 CFR Parts 1202, 1206, 1210, 1212, 1217, and 1218, Solid Minerals and Geothermal Collections.	Form MMS–4430, Solid Minerals Production and Royalty Report. Form MMS–4292, Coal Washing Allowance Report. Form MMS–4293, Coal Transportation Allowance Report. No forms for the following collections: • Facility data—solid minerals. • Sales contracts—solid minerals. • Sales summaries—solid minerals.

[1] Form MMS–4393 is used for both Federal and Indian oil and gas leases. The form resides with ICR 1012–0005, but the burden hours for Indian leases are included in ICR 1012–0002.

§§ 1210.10, 1210.20, 1210.21, 1210.56, 1210.106, 1210.151, 1210.152, 1210.153, 1210.155, 1210.157, 1210.158, 1210.202, 1210.205, 1210.354 [Amended]

■ 5. In the following table, amend part 1210 in the sections indicated in the left column by removing the text in the center column and adding in its place the text in the right column.

Amend	By removing:	And adding in its place:
§ 1210.10	http://www.mrm.boemre.gov/Laws_R_D/FRNotices/FRNotices.htm.	http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm.
§ 1210.20	http://www.mrm.boemre.gov/Laws_R_D/FRNotices/FRNotices.htm.	http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm.

Amend	By removing:	And adding in its place:
§ 1210.20	Bureau of Ocean Energy Management, Regulation, and Enforcement.	Office of Natural Resources Revenue.
§ 1210.20	Attention: Information Collection Clearance Officer	Attention: Rules & Regs Team.
§ 1210.20	1010–XXXX 381 Elden Street, Herndon, VA 20170	1012–XXXX P.O. Box 25165, Denver, CO 80225–0165.
§ 1210.21(a)	http://www.mrm.boemre.gov/ReportingServices/PDFDocs/RevenueHandbook.pdf.	http://www.onrr.gov/FM/Handbooks/default.htm.
§ 1210.56(a)	http://www.mrm.boemre.gov/ReportingServices/Handbooks/Handbks.htm.	http://www.onrr.gov/FM/Handbooks/default.htm.
§ 1210.56(c)	http://www.mrm.boemre.gov/ReportingServices/Forms/AFSOil_Gas.htm.	http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm.
§ 1210.106(a)	http://www.mrm.mms.gov/ReportingServices/Handbooks/Handbks.htm.	http://www.onrr.gov/FM/Handbooks/default.htm.
§ 1210.106(c)	http://www.mrm.mms.gov/ReportingServices/Forms/PAASOff.htm.	http://www.onrr.gov/FM/Forms/PAASOff.htm.
§ 1210.151(b)	http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm.	http://www.onrr.gov/FM/Forms/AFSoil_Gas.htm.
§ 1210.152(b)	http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm.	http://www.onrr.gov/FM/Forms/AFSoil_Gas.htm.
§ 1210.153(b)	http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm.	http://www.onrr.gov/FM/Forms/AFSoil_Gas.htm.
§ 1210.155(b) introductory text.	http://www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm.	http://www.onrr.gov/FM/Forms/AFSoil_Gas.htm.
§ 1210.157(a)	Form MMS–4435	Form ONRR–4435.
	Form MMS–4436	Form ONRR–4436.
	Form MMS–4437	Form ONRR–4437.
§ 1210.157(b)	http://www.mrm.mms.gov/Laws_R_D/FRNotices/ICR0122.htm.	http://www.onrr.gov/Laws_R_D/FRNotices/ICR0122.htm.
§ 1210.157(c)(1)	MS 370B2	MS 64220.
§ 1210.157(c)(2)	MS 370B2	MS 64220.
§ 1210.158(b)	http://www.mrm.boemre.gov/ReportingServices/Forms/AFSOil_Gas.htm.	http://www.onrr.gov/FM/Forms/AFSOil_Gas.htm.
§ 1210.202(c)(2)(i)	Solids Minerals and Geothermal Compliance and Asset Management, MS 390G1.	Solid Minerals and Geothermal (A&C), MS 62530B.
§ 1210.202(c)(2)(ii)	Solids Minerals and Geothermal Compliance and Asset Management, 12600 West Colfax Avenue, Suite C–100, Lakewood, Colorado 80215.	Solid Minerals and Geothermal (A&C), MS 62530B, Room A–614, Bldg 85, DFC, Denver, Colorado 80225.
§ 1210.205(b)	http://www.mrm.mms.gov/ReportingServices/Forms/AFSSOL_Min.htm.	http://www.onrr.gov/FM/Forms/AFSSol_Min.htm.
§ 1210.354	http://www.mrm.mms.gov/	http://www.onrr.gov/FM/Handbooks/default.htm.

PART 1218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

■ 6. The authority citation for part 1218 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 3335; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

■ 7. Revise the heading for part 1218 to read as set forth above.

PART 1220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES

■ 8. The authority citation for part 1220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95–372, 92 Stat. 643 (43 U.S.C. 1337).

■ 9. Amend § 1220.003 by revising the first sentence in paragraph (a) and revise paragraph (b) to read as follows:

§ 1220.003 Information collection.

(a) The Office of Management and Budget (OMB) approved the information collection requirements contained in this part under 44 U.S.C. 3501 *et seq.* The approved OMB control number is identified in 30 CFR 1210.10. * * *

(b) Send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reducing burden, to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, OMB Control Number 1012–0009, P.O. Box 25165, Denver, CO 80225–0165.

PART 1227—DELEGATION TO STATES

■ 10. The authority citation for part 1227 continues to read as follows:

Authority: 30 U.S.C. 1735; 30 U.S.C. 196; Pub L. 102–154.

■ 11. Amend § 1227.10 by revising the first sentence in paragraph (a) and revising paragraph (b) to read as follows:

§ 1227.10 What is the authority for information collection.

(a) The Office of Management and Budget (OMB) approved the information collection requirements contained in this part under 44 U.S.C. 3501 *et seq.* The approved OMB control number is identified in 30 CFR 1210.10. * * *

(b) The Federal Government will reimburse some costs, as provided by statute, for delegated functions that each state performs. However, states could incur additional start-up costs, such as purchasing equipment necessary to perform a delegated function that may not be reimbursable. The ONRR estimates that each payor or reporter will coordinate their interactions and communications among the several states and with ONRR. Send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reducing burden, to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, OMB Control Number 1012–0003, P.O. Box 25165, Denver, CO 80225–0165.

PART 1228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

■ 12. The authority citation for 30 CFR part 1228 continues to read as follows:

Authority: Sec. 202, Pub. L. 97–451, 96 Stat. 2457 (30 U.S.C. 1732).

■ 12. Amend § 1228.10 by removing the first sentence in paragraph (a) and adding two new sentences in its placy and by revising paragraph (b) to read as follows:

§ 1228.10 Information collection.

(a) The Office of Management and Budget (OMB) approved the information collection requirements contained in this part under 44 U.S.C. 3501 *et seq.* The approved OMB control number is identified in 30 CFR 1210.10. * * *

(b) Send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reducing burden, to the Office of Natural Resources Revenue, Attention: Rules & Regs Team, OMB Control Number 1012–0003, P.O. Box 25165, Denver, CO 80225–0165.

PART 1243—SUSPENSIONS PENDING APPEAL AND BONDING—OFFICE OF NATURAL RESOURCES REVENUE

■ 13. The authority citation for part 1243 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.,* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

■ 14. Revise the heading for part 1243 to read as set forth above.

§ 1243.200 [Amended]

■ 15. In the following table, amend § 1243.200 in the paragraphs indicated in the left column by removing the text in the center column and adding in its place the text in the right column.

Amend	By removing:	And adding in its place:
§ 1243.200(a)(1)	P.O. Box 5760, MS 3031, Denver, CO 80217–5760	Office of Natural Resources Revenue, Office of Enforcement, P.O. Box 25165, MS 64200B, Denver, Colorado 80225–0165.
§ 1243.200(a)(2)	MS 3031, Denver Federal Center, Bldg 85, Room A–212, Denver CO 80225–0165.	Office of Natural Resources Revenue, MS 64200B, Document Processing Team, Room A–614, Bldg 85, DFC, Denver, Colorado 80225–0165.

[FR Doc. 2011–31500 Filed 12–7–11; 8:45 am]
BILLING CODE 4310–T2–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 538

Sudanese Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending the Sudanese Sanctions Regulations by issuing two general licenses that authorize all activities and transactions relating to the petroleum and petrochemical industries in the Republic of South Sudan and related financial transactions and the transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan and related financial transactions. OFAC also is amending an existing general license to broaden its authorization with respect to the importation of certain Sudanese-origin services and to add an authorization for activities related to Sudanese persons' travel to the United States. Lastly, OFAC is making technical changes to the Sudanese Sanctions Regulations, including changes to reflect the formation by Southern Sudan of the independent state of the Republic of South Sudan on July 9, 2011.

DATES: *Effective Date:* December 8, 2011.

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

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

The Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), were promulgated to implement Executive Order 13067 of November 3, 1997 (62 FR 59989, November 5, 1997) (''E.O. 13067''), in which the President declared a national emergency with respect to the policies and actions of the Government of Sudan. To deal with that emergency, E.O. 13067 imposed comprehensive trade sanctions with respect to Sudan and blocked all property and interests in property of the Government of Sudan in the United States or within the possession or control of United States persons.

Subsequently, on October 13, 2006, the President signed the Darfur Peace and Accountability Act of 2006 (Pub. L. 109–344, 120 Stat. 1869) (the ''DPAA'') and issued Executive Order 13412 of October 13, 2006 (71 FR 61369, October 17, 2006) (''E.O. 13412''). The DPAA and E.O. 13412, *inter alia,* exempted the Specified Areas of Sudan from certain prohibitions set forth in E.O. 13067, and defined the term *Specified Areas of Sudan* to include Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum. While E.O. 13412 exempted the Specified Areas of Sudan from certain prohibitions in E.O. 13067, it continued the country-wide blocking of the Government of Sudan's property and interests in property and imposed a new country-wide prohibition on transactions relating to Sudan's petroleum or petrochemical industries. E.O. 13412 also removed the regional Government of Southern Sudan from the definition of the term *Government of Sudan* set forth in E.O. 13067. OFAC issued amendments to the SSR implementing E.O. 13412 on October 31, 2007 (72 FR 61513, October 31, 2007).

On January 9, 2011, in a popular referendum, the people of Southern Sudan voted in favor of independence. On July 9, 2011, Southern Sudan gained its independence, becoming the new Republic of South Sudan, and was

formally recognized by the United States Government. Since July 9, 2011, the Republic of South Sudan has been an independent state. As such, it is no longer subject to the SSR.

While the Republic of South Sudan is no longer subject to the SSR, certain activities in or involving the Republic of South Sudan continue to be prohibited by the SSR, absent authorization from OFAC, given the interdependence between certain sectors of the economies of the Republic of South Sudan and Sudan. For example, the SSR continue to prohibit U.S. persons from engaging in transactions relating to the petroleum or petrochemical industry in the Republic of South Sudan if such transactions also relate to the petroleum or petrochemical industry in Sudan, and from exporting goods, technology, or services to, or importing goods or services from, the Republic of South Sudan that transit through Sudan (*see* SSR §§ 538.406, 538.210, and 538.417).

OFAC today is amending the SSR by issuing two general licenses that authorize, to the extent otherwise prohibited by the SSR, (1) all activities involving the petroleum and petrochemical industries in the Republic of South Sudan and related financial transactions and (2) the transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan and related financial transactions. OFAC also is amending an existing general license to broaden its authorization with respect to the importation of certain Sudanese-origin services and to add an authorization for activities related to Sudanese persons' travel to the United States. Finally, OFAC is making certain technical changes to the SSR, including changes to reflect the establishment of the independent state of the Republic of South Sudan and the separation of the Government of the Republic of South Sudan from the Government of Sudan.

Public Participation

Because the amendment of 31 CFR part 538 involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to 31 CFR part 538 are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 538

Administrative practice and procedure, Banking, Banks, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Penalties, Petroleum, Reporting and recordkeeping requirements, Specially designated nationals, Sudan, Transportation.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR Part 538 as follows:

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 1. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

Subpart C—General Definitions

■ 2. Amend § 538.305 by redesignating paragraph (a) as introductory text of the section and republishing it, removing paragraph (b), redesignating paragraphs (1) through (4) as (a) through (d), respectively, redesignating the Note to § 538.305 as Note 2 to § 538.305, and adding new Note 1 to § 538.305 to read as follows:

§ 538.305 Government of Sudan.

The term *Government of Sudan* includes:

* * * * *

NOTE 1 TO § 538.305: The term *Government of Sudan* does not include the Government of the Republic of South Sudan or the central bank of the Republic of South Sudan.

* * * * *

■ 3. Amend § 538.312 by adding new paragraph (e) to read as follows:

§ 538.312 Sudanese origin.

* * * * *

(e) The term *goods or services of Sudanese origin* does not include goods or services that have transshipped through Sudan to or from the Republic of South Sudan pursuant to the authorization in § 538.537 of this part.

■ 4. Amend § 538.320 by revising paragraph (a) to read as follows:

§ 538.320 Specified Areas of Sudan.

(a) The term *Specified Areas of Sudan* means Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum.

* * * * *

Subpart D—Interpretations

■ 5. Amend § 538.405 by revising paragraphs (b), (c), and (d), and adding new paragraph (e) to read as follows:

§ 538.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(b) Provision of any transportation services to or from Sudan not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there;

(c) Distribution or leasing in Sudan of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Sudan;

(d) Financing of licensed sales for exportation or reexportation of the excluded food items specified in § 538.523(a)(3)(iii), other agricultural commodities not included in the definition of *food* set forth in § 538.523(a)(3)(ii), food (as defined in § 538.523(a)(3)(ii)) intended for military or law enforcement purchasers or importers, medicine, and medical devices to the Government of Sudan, to an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing. *See* § 538.525; and

(e) All financial transactions ordinarily incident to the activities authorized by §§ 538.536 and 538.537 of this part.

* * * * *

■ 6. Amend § 538.417 by redesignating the Note to § 538.417 as Note 2 to § 538.417, adding new Note 1 to § 538.417, and revising redesignated Note 2 to § 538.417 to read as follows:

§ 538.417 Transshipments through Sudan.

* * * * *

NOTE 1 TO § 538.417: See § 538.537 for a general license authorizing the transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan, and related transactions.

NOTE 2 TO § 538.417: See § 538.532 for a general license authorizing humanitarian transshipments through areas of Sudan other than the Specified Areas of Sudan to or from the Specified Areas of Sudan.

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

■ 7. Revise § 538.509 to read as follows:

§ 538.509 Importation of certain Sudanese-origin services authorized; activities related to travel to the United States by Sudanese persons authorized.

(a) The importation of Sudanese-origin services into the United States or other dealing in such services is authorized where such services are performed in the United States by a Sudanese citizen or national and either are for the purpose of or directly relate to participating in a public conference, performance, exhibition or similar event.

(b) Persons otherwise qualified for a non-immigrant visa under categories A–3 and G–5 (attendants, servants, and personal employees of aliens in the United States on diplomatic status), D (crewmen), F (students), I (information media representatives), J (exchange visitors), M (non-academic students), O and P (aliens with extraordinary ability, athletes, artists and entertainers), Q (international cultural exchange visitors), R (religious workers), or S (witnesses) are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department.

(c) Persons otherwise qualified for a visa under categories E–2 (treaty investor), H (temporary worker), or L (intra-company transferee) and all immigrant visa categories are authorized to carry out in the United States those activities for which such a visa has been granted by the U.S. State Department, provided that the persons are not coming to the United States to work as an agent, employee or contractor of the Government of Sudan or a business entity or other organization in Sudan.

(d) U.S. persons are authorized to provide services to persons in Sudan in connection with the filing of visa applications with the U.S. Department of State or the Department of Homeland Security's U.S. Citizenship and Immigration Services for the visa categories listed in paragraphs (b) and (c) of this section.

■ 8. Amend § 538.515 by removing paragraph (c), redesignating the Note to paragraph (c) of § 538.515 as Note to § 538.515, and revising the redesignated Note to § 538.515 to read as follows:

§ 538.515 Sudanese diplomatic missions in the United States.

* * * * *

NOTE TO § 538.515: The importation of goods and services into the United States by the Government of the Republic of South Sudan not involving transit or transshipment through Sudan is not prohibited and therefore requires no authorization. Similarly, the provision of goods, technology, and services in the United States to the Government of the Republic of South Sudan and its employees is not prohibited and also requires no authorization. See § 538.537 for a general license authorizing the transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan, and related transactions.

■ 9. Revise § 538.532 to read as follows:

§ 538.532 Humanitarian transshipments to or from the Specified Areas of Sudan.

The transit or transshipment to or from the Specified Areas of Sudan of goods, technology, or services intended for humanitarian purposes, through areas of Sudan other than the Specified Areas of Sudan, is authorized.

■ 10. Add new § 538.536 to read as follows:

§ 538.536 Activities relating to the petroleum and petrochemical industries in the Republic of South Sudan.

(a) To the extent they are not exempt from the prohibitions of this part, all activities and transactions relating to the petroleum and petrochemical industries in the Republic of South Sudan are authorized, including but not limited to the transshipment of goods, technology, and services to or from the Republic of South Sudan through Sudan; exploration; development; production; field auditing services; oilfield services; activities related to oil and gas pipelines; investment; payment to the Government of Sudan or to entities owned or controlled by the Government of Sudan of pipeline, port, and other fees; and downstream activities such as refining, sale, and transport of petroleum from the Republic of South Sudan, except for the refining in Sudan of petroleum from the Republic of South Sudan.

(b) All financial transactions ordinarily incident to the activities authorized by paragraph (a) of this section also are authorized, including but not limited to financial transactions with a depository institution owned or controlled by the Government of Sudan or located in Sudan, provided that any transaction between a U.S. depository institution and a depository institution owned or controlled by the Government of Sudan must first transit through a depository institution not owned or controlled by the Government of Sudan.

(c) This section does not authorize exports of goods, services, or technology that are not used in connection with the Republic of South Sudan's petroleum or petrochemical industries.

■ 11. Add new § 538.537 to read as follows:

§ 538.537 Transshipment of goods, technology, and services to or from the Republic of South Sudan.

(a) To the extent they are not exempt from the prohibitions of this part, the transit or transshipment of goods, technology, and services through Sudan to or from the Republic of South Sudan are authorized.

(b) All financial transactions ordinarily incident to the activities authorized by paragraph (a) of this section also are authorized, including but not limited to financial transactions with a depository institution owned or controlled by the Government of Sudan or located in Sudan, provided that any transaction between a U.S. depository institution and a depository institution owned or controlled by the Government of Sudan must first transit through a depository institution not owned or controlled by the Government of Sudan.

Dated: December 5, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–31557 Filed 12–7–11; 8:45 am]

BILLING CODE 4810–AL–P

POSTAL SERVICE

39 CFR Part 20

International Mail: New Prices and Fee Changes—Mailing Services

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) throughout various Individual Country Listings (ICLs) to reflect price adjustments for First-Class Mail International® and extra services.

DATES: Effective January 22, 2012.

FOR FURTHER INFORMATION CONTACT: Rick Klutts at (813) 877–0372.

SUPPLEMENTARY INFORMATION: In October 2011, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective on January 22, 2012. On October 24, 2011, the USPS published a proposed rule in the **Federal Register** (76 FR 65639–65640) with changes that

coincide with the price adjustments. This final rule conveys the comments received on the proposal, and the final mailing standards.

Prices are available under Docket Number R2012–3 on the Postal Regulatory Commission's Web site at *http://www.prc.gov.* Prices are also available on the Postal Explorer® Web site at *http://pe.usps.com.*

Comments

We received comments from two submitters, both of whom supported the proposed changes.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM) as follows:

* * * * *

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

Individual Country Listings

* * * * *

First-Class Mail International (240)

[For each country that offers First-Class Mail International service, retain the country's Price Group designation (which appears in the ''First-Class Mail International'' heading), but remove the three price tables for letters, large envelopes (flats), and packages (small packets), and insert text to read as follows:]

For the prices and maximum weights for postcards, letters, large envelopes (flats), packages (small packets), and postcards, see Notice 123—Price List.

* * * * *

[Delete the entry ''Postcards (241.22)'' and the price for postcards in their entirety.]

* * * * *

Extra Services

Certificate of Mailing (*313*)

[For each country that offers certificate of mailing service, revise the fees to read as follows:]

	Fee
Individual pieces:	
Individual article (PS Form 3817)	$1.15
Firm mailing books (PS Form 3877), per article listed (minimum 3)	0.44
Duplicate copy of PS Form 3817 or PS Form 3877 (per page)	1.15
Bulk Quantities:	
First 1,000 pieces (or fraction thereof)	6.70
Each additional 1,000 pieces (or fraction thereof)	0.80
Duplicate copy of PS Form 3606	1.15

* * * * *

International Business Reply Service (382)

[For each country that offers International Business Reply Service, revise the fees to read as follows:]

Fee: Envelopes up to 2 ounces $1.50; Cards $1.00

* * * * *

International Reply Coupons (381)

[For each country that offers international reply coupons, revise the fee to read as follows:]

Fee: $2.20

Registered Mail (*330*)

[For each country that offers international Registered Mail service, revise the fee to read as follows:]

Fee: $11.75

* * * * *

Restricted Delivery (*350*)

[For each country that offers international restricted delivery service, revise the fee to read as follows:]

Fee: $4.55

* * * * *

Return Receipt (*340*)

[For each country that offers international return receipt service, revise the fee to read as follows:]

Fee: $2.35

* * * * *

We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–31327 Filed 12–7–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0604–201160; FRL–9496–3]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Atlanta; Determination of Attaining Data for the 1997 Annual Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Atlanta, Georgia, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as the ''Atlanta Area'' or ''Area'') has attained the 1997 annual average $PM_{2.5}$ national ambient air quality standards (NAAQS) and, additionally, that the Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. The Atlanta Area is comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties, and portions of Heard and Putnam Counties. First, the determination that the Atlanta Area has attained the 1997 annual $PM_{2.5}$ NAAQS is based on upon quality-assured and certified ambient air monitoring data for the 2008–2010 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. The requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the standard shall be suspended so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. Second, the determination that the Atlanta Area has attained the 1997 $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010, is based upon

quality-assured and certified ambient air monitoring data for the 2007–2009 period showing that the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS during that period. Additionally, in this action EPA is addressing a typographical error found in the proposed approval for these actions.

DATES: *Effective Date:* This final rule is effective on January 9, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2010–0604. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Madolyn Dominy, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Ms. Dominy may be reached by phone at (404) 562–9644 or via electronic mail at *dominy.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking?

EPA is determining that the Atlanta Area (comprised of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties and portions of Heard and Putnam Counties) has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination is based upon quality-assured, quality-controlled and certified ambient air monitoring data that shows the Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS based on the 2008–2010 data. Preliminary monitoring data for the 2009–2011 period indicates that this area is continuing to attain the 1997 annual $PM_{2.5}$ NAAQS. EPA is also determining, in accordance with EPA's $PM_{2.5}$ Implementation Rule of April 25, 2007 (72 FR 20664), that the Atlanta Area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010.

Other specific requirements of the determinations and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on September 14, 2011 (76 FR 56701) and will not be restated here. The comment period closed on October 14, 2011. No comments, adverse or otherwise, were received in response to the NPR.

Finally, EPA also found a typographical error in the NPR. On page 56702 of the NPR, EPA stated ''On November 13, 2009, EPA designated the Atlanta Area as *nonattainment* for the 2006 24-hour NAAQS (74 FR 58688). In that action, EPA also clarified the designations for the NAAQS promulgated in 1997, stating that the Atlanta Area was designated as nonattainment for the annual NAAQS but attainment for the 24-hour NAAQS.'' In EPA's November 13, 2009, action to designate areas for the 2006 24-hour NAAQS, EPA actually designated the Atlanta Area as *attainment/unclassifiable* for the 2006 24-hour NAAQS. See 74 FR 58688. Additionally, EPA is taking the opportunity through this action to clarify that that only a portion of Heard and Putnam Counties are included in the 1997 annual $PM_{2.5}$ nonattainment area for Atlanta.

II. What are the effects of these actions?

The determination of attaining data action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as this Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. Finalizing this action does not constitute a redesignation of the Atlanta Area to attainment for the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Clean Air Act (CAA). Further, finalizing this action does not involve approving maintenance plans for the Area as required under section 175A of the CAA, nor does it involve a determination that the Area has met all requirements for a redesignation.

In addition, EPA is making a separate and independent determination that the Area has attained the 1997 annual $PM_{2.5}$ standard by its applicable attainment date (April 5, 2010), thereby satisfying EPA's requirement pursuant to section 179(c)(1) of the CAA to make such determination based on the Area's air quality data as of the attainment date.

III. What are EPA's final actions?

EPA is determining that the Atlanta Area has data indicating it has attained the 1997 annual $PM_{2.5}$ NAAQS and, additionally, that the Area has attained the standard by its applicable attainment date (April 5, 2010). These determinations are based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing that this Area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS during the periods of 2008–2010, and 2007–2009. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this Area to submit attainment demonstrations, associated RACM, RFP plans, contingency measures, and other planning SIPs related to attainment of the 1997 annual $PM_{2.5}$ NAAQS as long as the Area continues to meet the 1997 annual $PM_{2.5}$ NAAQS. These actions are being taken pursuant to section 179(c)(1) of the CAA and are consistent with the CAA and its implementing regulations.

Further, EPA is correcting a typographical error in EPA's proposed approval for these actions where EPA stated that the Atlanta Area was previously designated nonattainment for the 2006 $PM_{2.5}$ NAAQS. EPA has determined that the correction in today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this correction is unnecessary because it is merely to correct a typographical error where EPA stated that in a previous action that the Atlanta Area was designated nonattainment for the 2006 $PM_{2.5}$ NAAQS, whereas the Area was actually designated as attainment/unclassifiable for the 2006 $PM_{2.5}$ NAAQS. This correction has no substantive impact on EPA's September 14, 2011, proposed action. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction, or in having the opportunity to comment on

the correction prior to this action being finalized, since this correction action does not change the determinations of attainment for the Atlanta Area.

IV. What are statutory and executive order reviews?

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 6, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to the determination of attaining data for the 2006 24-hour fine particulate matter standard for the Atlanta Area, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 10, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

■ 2. Section 52.578 is amended by adding paragraph (e) to read as follows:

§ 52.578 Control strategy: Sulfur oxides and particulate matter.

* * * * *

(e) *Determination of Attaining Data.* EPA has determined, as of April 5, 2011, the Atlanta, Georgia, nonattainment area has attaining data for the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 annual $PM_{2.5}$ NAAQS.

[FR Doc. 2011–30364 Filed 12–7–11; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–34

[FMR Change 2011–03; FMR Case 2011–102–2; Docket 2011–0011; Sequence 2]

RIN 3090–AJ14

Federal Management Regulation; Motor Vehicle Management

AGENCY: Office of Governmentwide Policy, (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) by revising current policy on the definitions relating to the rental versus the lease of motor vehicles. The rule increases the less than 60 continuous day rental timeframe to less than 120 continuous days and adjust the definition of the term ''commercial lease or lease commercially'' accordingly to allow for the instances when agencies have a valid temporary mission requirement for a motor vehicle of 60 continuous days or more in duration but of significantly fewer days in duration than is typically available under commercial leases, which commonly require a minimum lease period of one year.

DATES: *Effective Date:* December 8, 2011.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. James Vogelsinger, Director, Motor Vehicle Management Policy Division, at (202) 501–1764 or email at *james.vogelsinger@gsa.gov.* Please contact the Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FMR Change 2011–03, FMR Case 2011–102–2.

SUPPLEMENTARY INFORMATION:

A. Background

Currently, as provided in 41 CFR 102–34.35, a motor vehicle rental is limited to less than 60 continuous days. If an agency obtains a motor vehicle for 60 continuous days or more, then it is a commercial lease under current regulations. Agencies, however, often have a valid temporary mission requirement for a motor vehicle of 60 continuous days or more in duration but of significantly fewer days in duration than is typically available under commercial leases, which commonly require a minimum lease period of one year. Also, some agencies have requirements from time to time for additional vehicles for relatively short periods of time. As a result, agencies are turning to short-term rentals to meet these motor vehicle needs but have encountered impediments when those needs meet or exceed 60 continuous days but are less than a year (for which commercial leases are commonly available).

A proposed rule to amend section 102–34.35 of the FMR (41 CFR 102–34.35) to redefine the term ''motor vehicle rental'' to increase the less than 60 continuous day rental timeframe to less than 120 continuous days and adjust the definition of the term ''commercial lease or lease commercially'' accordingly was published in the **Federal Register** on June 1, 2011 (76 FR 31545). There were no comments. This regulatory amendment will provide greater flexibility to Federal agencies in meeting their motor vehicle needs.

B. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–34

Energy conservation, Government property management, Motor vehicles, Reporting and recordkeeping requirements.

Dated: October 31, 2011.

Martha Johnson,

Administrator.

For the reasons set forth in the preamble, GSA amends 41 CFR part 102–34 as set forth below:

PART 102–34—MOTOR VEHICLE MANAGEMENT

■ 1. The authority citation for 41 CFR part 102–34 continues to read as follows:

Authority: 40 U.S.C. 121(c); 40 U.S.C. 17503; 31 U.S.C. 1344; 49 U.S.C. 32917; E.O. 12375.

■ 2. In § 102–34.35, revise the definitions of the terms ''Commercial lease or lease commercially'' and ''Motor vehicle rental'' to read as follows:

§ 102–34.35 What definitions apply to this part?

* * * * *

Commercial lease or lease commercially means obtaining a motor vehicle by contract or other arrangement from a commercial source for 120 continuous days or more. (Procedures for purchasing and leasing motor vehicles through GSA can be found in 41 CFR subpart 101–26.5).

* * * * *

Motor vehicle rental means obtaining a motor vehicle by contract or other arrangement from a commercial source for less than 120 continuous days.

* * * * *

[FR Doc. 2011–31470 Filed 12–7–11; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51, CC Docket Nos. 01–92, 96–45, WT Docket No. 10–208, FCC 11–161]

Connect America Fund; Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Connect America Fund,* Report and Order (*Order*)'s access stimulation rules. This notice is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules. The Commission received OMB pre-approval for the proposed requirements on April 19, 2011 and final approval for the final requirements on December 1, 2011. Therefore, the information collection requirements were adopted as proposed.

DATES: The amendments to 47 CFR 61.3, 61.26, 61.39, and 69.3 published at 76 FR 73830, November 29, 2011, are effective December 29, 2011.

FOR FURTHER INFORMATION CONTACT: John Hunter, Pricing Policy Division, Wireline Competition Bureau, at (202) 418–1520, or email: *john.hunter@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on April 19, 2011 (preapproval) and on December 1, 2011 (final approval), OMB approved, for a period of three years, the information collection requirements relating to the access stimulation rules contained in the Commission's *Order,* FCC 11–161, published at 76 FR 73830, November 29, 2011. The OMB Control Number is 3060–0298. The Commission publishes this notice as an announcement of the effective date of

the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0298, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB pre-approval on April 19, 2011, for the information collection requirements contained in the proposed modifications to the Commission's rules in 47 CFR parts 61 and 69.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0298.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0298.

OMB Approval Dates: April 19, 2011 and December 1, 2011.

OMB Expiration Date: June 30, 2014.

Title: Part 61, Tariffs (Other than Tariff Review Plan).

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 630 respondents; 1,210 responses.

Estimated Time per Response: 50 hours.

Frequency of Response: One-time, biennial and on-occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 1–5, 201–205, 208, 251–271, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 201–205, 208, 251–271, 403, 502 and 503.

Total Annual Burden: 63,000 hours.

Total Annual Cost: $986,150.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Needs and Uses: Sections 201, 202, 203, 204 and 205 of the Communications Act of 1934, (''Act'') as amended, 47 U.S.C. 201, 202, 203, 204 and 205, require that common carriers establish just and reasonable charges, practices and regulations which must be filed with the Commission which is required to determine whether such schedules are just, reasonable and not unduly discriminatory. On November 18, 2011, the Commission released the Order, FCC 11–161, published at 76 FR 73830, November 29, 2011, adopting final rules—containing information collection requirements—designed to address arbitrage activities known as access stimulation. The rules generally require competitive carriers and rate-of-return incumbent local exchange carriers (LECs) to refile their interstate switched access tariffs at lower rates if the following two conditions are met: (1) A LEC has a revenue sharing agreement and (2) the LEC either (a) has a three-to-one ratio of terminating-to-originating traffic in any month or (b) experiences more than a 100 percent increase in traffic volume in any month measured against the same month during the previous year.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–31519 Filed 12–7–11; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 76, No. 236
Thursday, December 8, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

[Docket No. PRM–32–6; NRC–2009–0547]

Association of State and Territorial Solid Waste Management Officials; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–32–6) submitted by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO or the petitioner). The ASTSWMO requested that the NRC amend its regulations to improve the labeling and accountability of tritium exit signs. The ASTSWMO believes the majority of unaccounted tritium exit signs are disposed of in solid waste landfills where they become potential sources of groundwater and surface water contamination. The ASTSWMO requested that the NRC revise its regulations or guidance to require that: the labeling be in several locations on the sign and printed with larger font; an expiration date should be distinctly legible to a fire or building inspector without taking down the sign; and the radiation trefoil should be displayed on the front and back of advertisements. Although not a specific request for rulemaking, the petitioner recommended that a national collection effort with distinct milestones and goals be undertaken to consolidate all expired and disused tritium exit signs. The petitioner requested that the NRC organize a meeting with ASTSWMO and all interested stakeholders to set a new path forward on this issue. The NRC is denying PRM–32–6 for the reasons stated in this document.

DATES: The docket for PRM–32–6 is closed as of December 8, 2011.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

- *NRC'S Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Document 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 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.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this document can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0547. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Gregory Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–6445, email: *Gregory.Trussell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

More than 2 million tritium exit signs are estimated to have been sold in the United States. Tritium powered self luminous exit signs do not require electricity or batteries, and are commonly installed in areas where electrical power is not conveniently accessible or its use may be hazardous. The tritium exit sign remains lit during power outages and thus serve their intended purposes in emergencies. As tritium exit signs age, they do not glow as brightly and at some point will not meet the luminosity requirement of applicable building or fire safety codes and are replaced. A self-luminous exit sign is a non-electrical product that uses radioactive tritium gas to produce light. Specifically, the signs contain light sources that consist of glass tubes, internally coated with phosphor, and filled with tritium gas. Tritium (H–3) is an isotope of hydrogen that emits low-energy beta radiation in the form of electrons. These electrons excite the phosphor, causing the glass tubes to continuously emit light. This low-energy beta radiation cannot penetrate the glass tube. If the tubes in the exit signs are severely damaged, tritium may escape and disperse by diffusion in the air.

On January 12, 2010 (75 FR 1559), the NRC published a notice of receipt of a petition for rulemaking filed by ASTSWMO. The ASTSWMO requested that the NRC amend its regulations to improve the labeling and accountability of tritium exit signs.

The ASTSWMO believes the majority of unaccounted for tritium exit signs are disposed of in solid waste landfills where they become potential sources of groundwater and surface water contamination. The ASTSWMO specifically requested that the NRC revise its regulations or guidance to state that: The labeling should be in several locations on the sign and printed with larger font; an expiration date should be distinctly legible to a fire or building inspector without taking down the sign; and the radiation trefoil should be displayed on the front and back of advertisements. Also, the petitioner recommended that a national collection effort with distinct milestones and goals should be undertaken to consolidate all expired and disused tritium exit signs. The petitioner requested that the NRC organize a meeting with ASTSWMO and all interested stakeholders to set a new path forward on this issue. The petitioner stated that it would ideally like to see tritium exit sign technology immediately replaced by alternative technologies.

The ASTSWMO, after an evaluation of a case history of landfill leachate sampling, asserted that the majority of unaccounted for tritium exit signs are disposed of in solid waste landfills where they become potential sources of groundwater and surface water contamination. The petitioner also claimed that a minority of tritium exit signs are returned to the manufacturer for recycling or disposed of as low-level radioactive waste.

The ASTSWMO also made the assertion that advances in photo-luminescent technology over the past decade have demonstrated that effective alternate technology exists for places without electricity, replacing the need for tritium self-luminescent exit signs.

Petitioner's Requests

The petitioner made several requests for rulemaking that would require revision to Title 10 of the Code of Federal Regulations (10 CFR) Part 32, as well as requests that are outside the rulemaking process. The petitioner requested the following:

(1) Labeling should be in several locations on the sign with larger font. The basis for this request is the petitioner's belief that an increased number of labels on tritium exit signs will improve the ability to recognize the signs, which in turn will improve the accountability of the signs.

(2) An expiration date should be distinctly legible to a fire or building inspector without taking down the sign. As with adding labels in several locations on the sign, the basis for this request is the petitioner's belief that an expiration date that is legible without the need to remove the sign from where it is installed will improve the ability to recognize tritium exit signs, which in turn, will improve the accountability of the signs.

(3) The radiation trefoil should be displayed on the front and back of advertisements. The petitioner communicated several concerns as the basis for this request: (a) Manufacturers do not always demonstrate accountability in distributing tritium exit signs to the proper recipients; (b) recipients of signs are not informed of the proper ownership and regulatory requirements provided in NRC guidance documents and regulations (*i.e.,* NUREG–1556, Vol. 16, Appendix L, and 10 CFR 31.5); and (c) online vendors do not always highlight the fact that tritium is radioactive and has special general licensing requirements. The petitioner believes that requiring the display of the radiation trefoil in advertisements is a way to make potential customers fully aware that tritium in exit signs is radioactive material. The petitioner believes trefoils in advertisements would act as a safeguard against customers unknowingly acquiring exit signs that require regulatory controls.

(4) Replacement of tritium exit signs with an alternative technology. The petitioner believes that the state of current photo-luminescent technology and other alternatives can effectively replace tritium exit signs.

(5) A national collection effort to prevent the improper disposal of tritium exit signs.

(6) Organize a meeting with ASTSWMO and interested stakeholders outside of the rulemaking process. The petitioner offered to provide input to the NRC on approaches to cease this improper disposal of tritium exit signs.

Because item 4 is outside the NRC's regulatory authority and mission, and items 5 and 6 are not specific requests to change NRC regulations, comments on these proposals are not being addressed further in this response. The NRC will respond to the petitioner on these issues via separate correspondence.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking (75 FR 1559) invited interested persons to submit comments. The petition was also shared with 37 Agreement States that regulate the manufacture and use of tritium exit signs within their States, under agreement with the NRC. The comment period closed on March 29, 2010. The NRC received responses from 13 commenters including 2 manufacturers, 6 Agreement States, 1 Federal agency, and other industry representatives. The following provides a summary of the comments received on the petition.

Public Comments on Petitioner Requests Involving Rulemaking

The petitioner requested improving the labeling of tritium exit signs by requiring the placement of labels in several locations on the sign, in larger font to improve recognition, and thus accountability. The majority of commenters agreed that labeling should be improved and no commenter specifically disagreed with this request.

The petitioner requested requiring the placement of an expiration date on tritium exit signs, and making the date distinctly legible to a fire or building inspector without the need to take down the sign. The rationale is that the fire or building inspector will be aware of an expired sign and request the replacement. Four commenters agreed. Two vendors commented that their exit signs already clearly show the expiration date and further noted this issue does not fall under the jurisdiction of the NRC.

The petitioner requested placement of the radiation trefoil prominently on the front and back of advertisements for the exit signs to ensure that general licensees understand that these signs contain radioactive byproduct material and are subject to regulatory controls. Five commenters agreed with this request.

One commenter who disagreed questioned, in general, the effectiveness of this action. Another commenter stated that the assertion that customers are not properly sensitized to the fact that the signs contain radioactive material is ''completely unwarranted.'' This commenter also stated that given that NRC regulations provide for the use of the trefoil where radioactive material is present, the placement of the trefoil in advertisements is inappropriate. Similarly, another commenter stated that placing the radiation trefoil on advertisements is not appropriate as advertisements do not contain radioactive material.

Public Comments on Petitioner's Claims Concerning Tritium Exit Signs in Landfills

Three commenters disagreed with the petitioner's assertion that unaccounted for tritium exit signs disposed of in solid waste landfills are a potential source of groundwater and surface water contamination. One commenter stated it did not believe that the inadvertent disposal of tritium exit signs poses a significant public health and safety issue, even if the relatively large numbers suggested by ASTSWMO are accurate. Another commenter stated that while it is true that sampling of raw, untreated leachate from landfills in Pennsylvania and California confirmed above background levels of tritium, it has been determined that, considering the treatment, dilution, and discharge processes to which this leachate is subjected, there is currently no risk to drinking water supplies or possible human exposure.

Reasons for Denial

After reviewing the information provided in the petition, and the comments received in response to the petition, the NRC has decided to deny PRM–32–6. In reaching this decision, the NRC reviewed the radiological risks presented by tritium exit signs and from the levels of tritium reported in landfill leachate and determined that there is a lack of significant radiological risk to the public health and safety related to the petitioner's assertions. The NRC determined that the existing NRC regulations adequately direct the proper methods of use, disposal, labeling, and information disclosure for tritium exit signs and that there is no significant risk to the public health and safety. However, the NRC believes that general licensee accountability may be strengthened by enhancing regulatory guidance and improving

communications between the NRC (and Agreement States) and manufacturers. The NRC periodically revises its licensing guidance and will evaluate the need for additional guidance in areas raised by the petitioner during this process.

Users of tritium exit signs are regulated under the general license provisions in 10 CFR 31.5. The general license in 10 CFR 31.5 requires users: Not to remove the labeling from the sign; to follow instructions and precautions on the label; not to abandon a sign; to properly dispose of signs by transferring them to a distributor or radioactive waste broker specifically licensed by the NRC or an Agreement State; to report any lost, stolen or broken sign(s) to the NRC; and not to give away or sell the sign to another individual, company, or institution unless it is to remain in use at a particular location, *e.g.,* in a transfer of ownership of a building. In this latter case, under 10 CFR 31.5(c)(9)(i), the user of a tritium exit sign is required to provide a copy of the regulatory requirements governing the use of such signs to the new user and must notify the NRC of the transfer. The user is also required to inform the NRC of a company name change or change of address; and to make certain other reports to the NRC.

The petitioner raised questions about the requirements placed on distributors related to whether users and others who come into contact with the sign are properly informed of the fact that the sign contains radioactive material and is subject to certain controls, in particular controls for disposal. Vendors of these products must obtain a license from the NRC or an Agreement State to distribute the signs to the general licensees, under 10 CFR 32.51 or equivalent provision of an Agreement State. The NRC and Agreement State regulations include requirements for labeling and safety instructions which require providing certain information to customers prior to transfer of the signs, including copies of applicable regulations and information on options for and estimated costs of disposal.

The petitioner stated that there needs to be multiple labels in several locations and that the labels need to be printed in larger font. The petitioner also requested that the expiration date be distinctly legible to a fire or building inspector without taking down the sign. To obtain a license to distribute tritium exit signs, an applicant must submit sufficient information related to its labeling of the exit signs. Specifically, under 10 CFR 32.51(a)(3), the applicant for a license to distribute tritium exit signs must ensure that the label on the signs be durable, legible, clearly visible, and include certain information including that use of the sign is subject to a general license and the regulations of the NRC or equivalent provisions of an Agreement State and that the label must be maintained in legible condition. The NRC or an Agreement State must approve the applicant's proposed labeling when authorizing distribution to users, at which time the regulator can address the appropriateness of fonts and proper placement on the sign. The expiration date (*i.e.,* the date the sign should be replaced in order to meet fire safety standards), is not a matter of NRC regulation because it focuses on the visibility of the sign, not the safe use of the radioactive material and is more appropriately addressed by other agencies responsible for fire safety.

The petitioner requested that the radiation trefoil be displayed on the front and back of advertisements. The NRC agrees with some of the commenters that the use of the trefoil on advertisements is not appropriate since use of the trefoil is utilized where radioactive material is actually present. The NRC has emphasized the importance of notifying end users of requirements for the use of generally licensed devices. For example, in an earlier NRC action related to misleading advertising, the NRC issued Information Notice (IN) 99–26, ''Safety and Economic Consequences of Misleading Marketing Information,'' dated August 24, 1999. The IN 99–26 highlighted that misleading marketing information and inadequate explanation of end-user regulatory requirements can lead to mishandling of devices used under the general license and encouraged manufacturers and distributors to market to users of the general license in such a way that the radioactive nature of the product is clearly understood and the regulatory requirements associated with the product are clearly explained. Under 10 CFR 32.51a(a)–(c) or equivalent Agreement State regulation, distributors are required to supply to customers prior to the actual transfer of the sign(s), copies of relevant regulations, information on acceptable disposal options including estimated costs of disposal, and indication of the NRC's policy of issuing high civil penalties for improper disposal.

Prior to NRC receiving this petition, the State of Pennsylvania contacted the NRC in 2006, relaying its concerns regarding possible improper disposal of tritium exit signs. The Conference of Radiation Control Program Directors also brought this issue to the attention of the NRC, via a 2007 resolution.

The NRC has previously implemented several measures to address this issue. The NRC implemented regulations to improve accountability of devices used under a 10 CFR 31.5 general license or an equivalent Agreement State provision (65 FR 79162; December 18, 2000, as amended at 65 FR 80991; December 22, 2000). Although disposal by transfer to a properly authorized specific licensee was always required, the previous regulatory framework did not require NRC or Agreement State notification of the transfer and disposal of tritium exit signs. Under current regulations, NRC and Agreement States users or general licensees are required to report transfer or disposal of devices containing byproduct material.

The NRC, in an effort to improve compliance with the regulatory requirements for tritium exit signs, issued Regulatory Issue Summary (RIS) 2006–25, ''Requirements for the Distribution and Possession of Tritium Exit Signs and the Requirements in 10 CFR 31.5 and 32.51a,'' dated December 7, 2006, which reiterated the requirements that distributors of tritium exit signs must follow when transferring them to general licensees. These requirements deal primarily with information that must be provided to customers. In addition, the RIS 2006–25 reiterated the requirements for general licensees regarding transfer and disposal of the tritium exit signs, with the intent of minimizing the chance that tritium exit signs will be disposed of incorrectly.

The NRC issued a Demand for Information (DFI) on January 16, 2009, which required that general licensees who possessed at least 500 tritium exit signs perform an inventory and report the results to the NRC. The results of the DFI demonstrated there is still some lack of awareness among users of tritium exit signs concerning their regulatory responsibilities which could, and in some cases did, result in the improper disposal of tritium exit signs. The NRC considered enforcement action against general licensees that were found not to have complied with the regulatory requirements. In one case in which one entity using the general licensee provisions failed to appoint an individual responsible for ensuring compliance with NRC requirements pertaining to tritium exit signs and improperly transferred signs, the NRC determined that a civil penalty of $369,300 could be appropriate for improper transfer or disposal of large numbers of tritium exit signs.

In response to the DFI findings, the NRC contacted seven distributors of tritium exit signs in an effort to improve

compliance with the reporting requirements of 10 CFR 32.52 and equivalent Agreement State provisions. The NRC initiated this contact with the goal of assisting distributors in their efforts to consistently provide the NRC with information that satisfies the reporting requirements in 10 CFR 32.52. This information reported under 10 CFR 32.52 pertains to the general licensees to whom distributors have transferred signs.

The petitioner asserted that ''the majority'' of unaccounted for tritium exit signs are disposed of in solid waste landfills where they may become potential sources of groundwater and surface water contamination. The NRC concludes that the petitioner did not demonstrate that the excess tritium being found in landfill leachate, even if resulting from improper disposal of tritium exit signs, could result in hazardous levels of tritium in drinking water. Published reports such as ''Radiological Investigation Results for Pennsylvania Landfill Leachate: 2009 Tritium Update,'' Safety and Ecology Corporation, Knoxville, TN, March 31, 2010, support this conclusion. The study incorporated the use of site-specific dilution factors based on factors such as discharge rates and known distances between leachate effluent release points and downstream water supply intakes to convert observed leachate tritium concentrations into diluted tritium concentrations assumed to be available for human consumption. The report concluded not only that the resulting concentrations of tritium were well below the U.S. Environmental Protection Agency (EPA) maximum contaminant level (MCL) of 20,000 pCi/L for tritium in drinking water, but that ''average drinking water intake tritium concentrations * * * were more than 200 times less than the EPA 20,000 pCi/L MCL, ranging from 0–99 pCi/L.''

The petitioner also expressed concern that samples collected from leachate collection systems exceeded 20,000 pCi/L. It should be noted that 20,000 pCi/L is the EPA's MCL for tritium in drinking water and not leachate. Landfill monitoring reports show that despite high tritium concentrations in leachate, drinking water samples collected downstream of landfills maintain tritium concentrations well below the EPA's MCL. For example, the ''Radiological Investigation Results for Pennsylvania Landfill Leachate: 2009 Tritium Update'' report, referenced above, shows that ''maximum drinking water [tritium] intake concentrations were over 100 times less than the EPA 20,000 pCi/L MCL ranging from 0 to 146 pCi/L.''

While the NRC does not regulate solid waste landfills, the NRC staff also concluded that current landfill practices would mitigate the impacts from tritium released from any exit signs that may be disposed in landfills. These include: Cover systems that minimize rainfall penetration and limit the migration of tritium due to erosion or interaction with animals; cell liners that prevent leachate from leaking into the groundwater; gaseous extraction wells that remove gases building up within the landfill; and leachate collection systems that collect, process, and treat leachate.

In addition to reviewing these previously published reports and comparing tritium concentrations measured in leachate and drinking water to regulatory standards, the NRC reviewed the possible risks to landfill workers and the general public from exposure to tritium associated with landfill disposals. The NRC determined that tritium contamination involves such low levels of tritium that it would not pose a health and safety threat to the landfill worker or the general public.

Conclusion

The NRC is denying the petition for rulemaking because the NRC's current regulations in this area are adequate to protect public health and safety. In conclusion, the petitioner has not submitted any new information that indicates a health and safety issue that warrants rulemaking or calls into question the existing regulatory requirements. Existing NRC regulations provide reasonable assurance that public health and safety are adequately protected. For the reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland this 2nd day of December, 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–31523 Filed 12–7–11; 8:45 am]

BILLING CODE 7590–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2011–0040]

Disclosure of Certain Credit Card Complaint Data

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed policy statement with request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (the ''CFPB'') is requesting comment on a proposed policy statement (the ''Policy Statement'') that addresses the CFPB's proactive disclosure of credit card complaint data. The CFPB receives credit card complaints from consumers under the terms of the Consumer Financial Protection Act of 2010. The proposed Policy Statement sets forth the CFPB's proposed initial disclosure of credit card complaint data. It also identifies additional ways that the CFPB may disclose credit card complaint data but as to which the CFPB will conduct further study before finalizing its position. The proposed Policy Statement does not address complaint data about any other consumer financial product or service. The CFPB invites comment on all aspects of the proposed Policy Statement.

DATES: Comments must be submitted on or before January 30, 2012.

ADDRESSES: You may submit comments, identified by Docket No. *CFPB–2011–0040,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Consumer Financial Protection Bureau, 1500 Pennsylvania Avenue 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.

All submissions must include the agency name and docket number of this proposed Policy Statement. 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: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, at (202) 435–7275; Scott Pluta, Office of Consumer

Response, Consumer Financial Protection Bureau, at (202) 435–7306; or Will Wade-Gery, Division of Research, Markets and Regulations, Consumer Financial Protection Bureau, at (202) 435–7700.

Authority: 12 U.S.C. 5492(a), 5493(b)(3)(C), 5496(c)(4), 5511(b)(1), (5), 5512(c)(3)(B).

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2011, the CFPB launched a system for accepting credit card complaints. The CFPB developed this system pursuant to several provisions of the Consumer Financial Protection Act of 2010 (the ''Consumer Financial Protection Act'' or the ''Act''), including sections 1013(b)(3), 1025, 1034(a), and 1034(b), 12 U.S.C. 5493(b)(3), 5515 & 5534(a)–(b). Under this new system, consumers submit credit card complaints to the CFPB in several ways including via the CFPB's Web site, *http://www.consumerfinance.gov.* The system is presently limited to accepting credit card complaints from consumers.[1] The CFPB is developing plans to roll out parallel systems for other consumer financial products and services.

As the system is presently configured, a consumer who submits a credit card complaint completes several non-narrative data fields. These include the consumer's name and address, the name of the issuing bank, and fields relating to the type of the complaint and claimed loss.[2] Credit card consumers can also populate two narrative fields. These cover the consumer's description of ''what happened'' and the consumer's assessment of a ''fair resolution.''

If the resulting complaint concerns a credit card issuer subject to the CFPB's supervision and primary enforcement under section 1025 of the Consumer Financial Protection Act, 12 U.S.C. 5515, the CFPB's Office of Consumer Response (''Consumer Response'') forwards the complaint to that identified issuer.[3] If the receiving issuer indicates that it did not issue the relevant credit card, Consumer Response will attempt to forward the complaint to the correct issuer. Once the correct issuer has the complaint, the issuer investigates the complaint, communicates with the consumer as the issuer deems appropriate, and determines what action, if any, to take with respect to the complaint. At the end of this process, the issuer reports to Consumer Response how it has addressed the complaint.[4] Once Consumer Response receives a response from the issuer, Consumer Response invites the consumer to review the response. The CFPB prioritizes for further action complaints where the consumer expresses dissatisfaction with the issuer's response or where the issuer fails to respond.

II. Disclosure Authority

The Act requires the CFPB to provide certain information to Congress about complaints and responses. In particular, section 1013(b)(3)(C) requires the CFPB to report annually to Congress information and analysis about complaint numbers, types, and, when applicable, resolution.[5] *See* 12 U.S.C. 5493(b)(3)(C). Additionally, the Act permits the CFPB to exercise its authority for purposes of ensuring that ''consumers are provided with timely and understandable information to make responsible decisions about financial transactions'' and that ''markets for consumer financial products operate transparently and efficiently.'' 12 U.S.C. 5511(b)(1), (5).

The CFPB has broad authority to make public information that is not required to be given confidential treatment. *See, e.g.,* 12 U.S.C. 5492(a); 12 U.S.C. 5512(c)(3)(B), (c)(8). On July 22, 2011, the CFPB issued an interim final rule governing disclosure of records and information, including treatment of confidential information. *See* 76 FR 45372 (July 28, 2011) (to be codified at 12 CFR Part 1070). The rule defines ''confidential consumer complaint information'' as ''information received or generated by the CFPB, pursuant to 12 U.S.C. 5493 and 5534, that comprises or documents consumer complaints or inquiries concerning financial institutions or consumer financial products and services and responses thereto, to the extent that such information is exempt from disclosure pursuant to [the Freedom of Information Act (''FOIA''),] 5 U.S.C. 552(b).''[6] The rule generally prohibits the disclosure of confidential consumer complaint information, except in certain limited circumstances.[7] However, the rule does not limit the CFPB's discretion to disclose materials that it derives from confidential information, including confidential consumer complaint information, to the extent that such materials do not identify, either directly or indirectly, any particular individual to whom the confidential information pertains. *See* 12 CFR 1070.41(c).

The proposed Policy Statement does not contemplate the disclosure of confidential consumer complaint information. Under the proposed Policy Statement, the CFPB would not disclose information contained in consumer credit card complaints (and responses to such complaints) that is exempt from disclosure under the FOIA, 5 U.S.C. 552(b). The CFPB will not publish the name, full address, or credit card account number associated with any given credit card complaint. In addition, as discussed further below, our policy will be not to publish credit card complaint information that could enable the consumer to be identified by any party other than the issuer of the credit card in question. Further, the CFPB will not disclose confidential and proprietary business information that issuers provide in response to complaints. Because of these limitations, the CFPB's proposed publication of consumer complaint information pursuant to the Policy Statement does not rely upon any of the exceptions to the general prohibition on disclosure of confidential consumer complaint information.

[1] ''Whistleblower'' complaints are not within the scope of the present Policy Statement. *See* 12 U.S.C. 5567(a)(1).

[2] The consumer must affirm that the submitted information is true to the best of his or her knowledge and belief. The system will accept complaints submitted on behalf of a consumer. These complaints may be subject to proof of signed, written permission from the consumer.

[3] The CFPB forwards to the relevant prudential regulator any credit card complaint involving an issuer that is not subject to supervision and primary enforcement by the CFPB under section 1025.

[4] Initially, Consumer Response requested an issuer to categorize its response as ''full resolution,'' ''partial resolution'' or ''no resolution,'' but experience showed that issuers were not using these terms consistently. Under the current approach, in addition to any narrative material that the issuer provides the consumer, the issuer is asked to categorize its response as closing the complaint with relief or without relief.

[5] Section 1016 also requires that the CFPB submit semi-annual reports to congressional oversight committees covering a range of topics, including ''an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year.'' 12 U.S.C. 5496(c)(4).

[6] 12 CFR 1070.2(f).

[7] *See* 12 CFR 1070.41 (general prohibition on disclosure of confidential information except as required by law or pursuant to the CFPB's rules); 12 CFR 1070.43 (permitting the CFPB to disclose confidential consumer complaint information to certain Federal and state agencies, provided the agencies protect the confidentiality of the information); 12 CFR 1070.44 (permitting the CFPB to ''disclose confidential consumer complaint information as it deems necessary to investigate, resolve, or otherwise respond to consumer complaints or inquiries concerning financial institutions or consumer financial products and services''); 12 CFR 1070.45 (permitting the CFPB to disclose confidential consumer complaint information in certain circumstances in the course of law enforcement investigations and proceedings); 12 CFR 1070.46 (permitting the Director to personally authorize the disclosure of confidential consumer complaint information, provided such disclosure is consistent with applicable law, including the Privacy Act of 1974).

FOIA requires general public disclosure of records that have been disclosed in response to a FOIA request and which the CFPB ''determines have become or are likely to become the subject of subsequent requests for substantially the same records.'' 5 U.S.C. 552(a)(2)(D). The CFPB's interim final rule regarding this provision of FOIA states that:

> Subject to the application of the FOIA exemptions and exclusions * * * the CFPB shall make publicly available * * * all records * * * which have been released previously to any person under [FOIA and 12 CFR part 1070], and which the CFPB determines have become or are likely to become the subject of subsequent requests for substantially the same records because they are clearly of interest to the public at large. When the CFPB receives three (3) or more requests for substantially the same records, then the CFPB shall also make the released records publicly available.[8]

The CFPB has received and is reviewing comments on its interim FOIA rules, including the provision concerning section 552(a)(2)(D) of FOIA.

The CFPB's credit card complaint process has been widely publicized, and there is a high level of public interest in information regarding these complaints. As a result, the CFPB believes that its credit card complaint records may become subject to multiple, overlapping FOIA requests. The CFPB seeks comment on the interplay between the proposed Policy Statement and the possible application of the requirements of section 552(a)(2)(D) of FOIA.

III. Rationale for Disclosing Certain Credit Card Complaint Data

The CFPB has developed the proposed Policy Statement in light of its statutory purposes of helping to provide consumers with ''timely and understandable information to make responsible decisions about financial transactions'' and helping the credit card market to ''operate transparently and efficiently.'' 12 U.S.C. 5511(b)(1) & (5). We have separated the issue of disclosure of the narrative fields of complaint data from disclosure of the non-narrative fields. These issues implicate discrete considerations.

We have reviewed disclosure practices at other Federal and state agencies, the complaint-handling experience of other financial regulators, and the positions of different stakeholders as they have been voiced to the CFPB to date. As noted, the proposed Policy Statement only covers the disclosure of certain credit card complaint data. Disclosing data on other types of complaints may raise different considerations that are not addressed by the proposed Policy Statement. Furthermore, the proposed Policy Statement does not concern the CFPB's internal uses of complaint data nor is it intended to limit the CFPB's discretion to share complaint data as otherwise permitted by law.

The CFPB will carefully consider comments it receives in response to this notice and its continued experience with the operation of the CFPB's credit card complaint system before finalizing the Policy Statement. Once the CFPB finalizes this Policy Statement, we will study its effectiveness on an ongoing basis. In addition to seeking comments on the proposed Policy Statement, the CFPB also invites comment on the appropriate ways to study the effectiveness of credit card complaint data disclosure. Although the present Policy Statement is limited to credit card complaints, what the CFPB learns about disclosure in this context may serve to inform disclosure of complaint data about other financial products and services.

A. Disclosing Non-Narrative Field Data Will Let Outside Parties Identify Trends and Patterns That They Believe May Help Inform Consumer Decisions About Credit Card

There is considerable controversy over the extent to which credit card consumer complaint data can provide consumers with useful or reliable information for making decisions about credit card use. Credit card complaints, of course, are not necessarily representative of the experience of all consumers with a particular credit card product or issuer. Rather, the credit card complaints submitted to the CFPB represent the experience of a non-random subset of credit card consumers: Those who view themselves as aggrieved by an action or inaction of an issuer, who were unable to obtain satisfactory relief from the issuer (or who elected not to seek such relief), and who have chosen to appeal to the CFPB for assistance. Some argue, therefore, that making information about these complaints publicly available has the potential to provide information to consumers that is not reliable or probative.

Others argue that by examining trends and patterns in consumer credit card complaints over time, or by examining differences in credit card complaint patterns across issuers, careful researchers may be able to discern information that would be useful and relevant to consumers in making better-informed decisions among payment devices or between credit card issuers. In this view, even though the experience of complainants is not necessarily representative of the experience of all consumers, changes in the volume or mix of complaints, or differences across issuers and complaint types, can illuminate important patterns or trends in the marketplace.

The CFPB anticipates that if it disclosed credit card complaint data, those who would be most likely to mine the data for trends and patterns and to publish their conclusions would be academics and groups dedicated to empowering consumers in making well-informed decisions.[9] Of course, there may be differences of opinion as to the inferences or conclusions reached by these individuals and groups based upon their review of complaint data. To the extent that there are differences in opinion, the CFPB expects that those differences will be publicly aired in a way that will enable consumers who are interested in this data to evaluate the alternative interpretations and reach their own conclusions.

Our expectation gains support from the experience of other agencies that have made consumer complaint data publicly available. Outside groups have already used complaint field data published by another Federal agency—the National Highway Traffic Safety Commission (''NHTSA'')—to assemble trend and pattern data for consumers. Beginning with 2005 data, one private provider of automotive information has recompiled all the individual consumer complaints lodged with safercar.gov, the vehicle safety complaint database that NHTSA maintains.[10]

Outside groups also make regular use of airline passenger complaint data that the Department of Transportation's Office of Aviation Enforcement and Proceedings (''OAEP'') discloses every month in its *Air Travel Consumer Report.*[11] Unlike NHTSA, OAEP does not make field data available at the individual complaint level, but instead publishes its own aggregations of field

[8] *See* 12 CFR 1070.11(c). United States Department of Justice (''DOJ'') guidance provides that three requests for the same records are generally enough to trigger an agency's disclosure obligation under 5 U.S.C. 552(a)(2)(D). Department of Justice, Office of Information Policy, *Guide to the Freedom of Information Act,* pp. 17–18 (2009 ed.); *FOIA Post,* ''FOIA Counselor Q&A: 'Frequently Requested' Records'' (7/25/03) available at *http://www.justice.gov/oip/foiapost/2003foiapost28.htm.*

[9] In addition, issuers would likely mine the data and might publicize to consumers how their complaint performance measures up against competitors.

[10] The data is available at *http://www.edmunds.com/car-news/nhtsa-complaints-report.html.*

[11] The reports are available at *http://airconsumer.ost.dot.gov/reports/index.htm.*

data.[12] The use to which outside groups have put this data show how organizations might use the non-narrative field data that CFPB proposes to disclose. Providers that have scored well in the OAEP data have publicized that fact to consumers. One airline notes that it has ''consistently received the lowest ratio of complaints per passengers boarded of all major U.S. carriers'' since the OEAP began publishing the *Air Travel Consumer Report.*[13] Outside reviewers have also publicized poor or worsening airline performance.[14] The annual Airline Quality Rating reports rate U.S. and other airlines using numerous data sources including the OAEP's complaint data. These findings reportedly reach millions of consumers every year.[15] In all these respects, OAEP provides the critical field data. The marketplace of ideas then does the rest.

The Consumer Product Safety Commission (''CPSC'') began making consumer reports of harm publicly available in March, 2011. It is too early to assess how researchers will use the data in the CPSC's public database, *saferproducts.gov.*[16] As described in a recent report prepared by the General Accounting Office, product manufacturers or their representatives have expressed concern that reports in the database may misidentify products or manufacturers and that reports can be submitted by individuals who did not experience the reported incident of harm.[17] Neither concern applies to the CFPB's credit card complaint data. Credit card complaints are filed by cardholders (or by an authorized representative). The issuer of the applicable credit card can be reliably identified from the submitted credit card number.

In light of the potential for credit card complaint data to be analyzed for information that would be useful to consumers, and the experience of other agencies, the proposed Policy Statement calls for two forms of public disclosure with respect to the non-narrative fields of consumer credit card complaint data. These two forms of public disclosure are discussed below.

1. Data Made Publicly Available by the CFPB

The CFPB proposes to make certain fields of the non-narrative complaint data available to the public in fully searchable and downloadable format. To protect consumers' privacy, the database will not include non-narrative fields that expressly call for personally identifying information (''PII'') (*i.e.,* the name and address fields). The database will include data fields that cover the type of complaint, the issuer involved, the date of the complaint, and the zip code of the consumer.[18] The disclosed field data for each complete complaint will be linked by a unique identifier, enabling outside reviewers to aggregate and correlate the data as they wish. The CFPB intends to provide, with each data release, information about the limitations of the data disclosed, including appropriate disclaimers as to accuracy and representativeness.[19]

2. Reports Published by the CFPB

In addition to making certain credit card complaint data available for research and analysis, the CFPB proposes to publish periodic reports about trends and patterns in complaint data that will give consumers meaningful information about credit card use. These reports also will explain how we use credit card complaint data to work towards other goals that Congress has set for us. On November 30, 2011 the CFPB published an interim report that addressed Consumer Response's handling of credit card complaints received during the first three months of the complaint system's operation. Going forward, our reports may contain additional data aggregations, as explained further below.

The precise data aggregations that CFPB publishes will depend on our assessment of what conclusions can fairly be drawn from the data for a given reporting period. It is possible, for example, that we will not receive enough credit card complaints in any given time period to generate useful information with respect to some potential aggregations. If sample sizes are too small, variations across issuer, time, and subject matter may not reflect statistically significant patterns and trends. We will be mindful of these statistical significance issues in determining what types of trend and pattern data to report and on what schedule.

We have also identified a number of questions that will need to be answered in deciding whether to publish certain specific data aggregations. We invite comment on how these questions may be answered.

First, some trend and pattern data may need context to make the data informative to consumers. Complaint counts by issuer are one apparent example. Unless weighted appropriately against the relative size of an issuer's credit card business—a process commonly referred to as ''normalization''—their disclosure may not offer consumers any meaningful information. The CFPB invites comment on how best to address this issue, including whether there is an available and appropriate normalization metric for these purposes.

Second, some products may, by their very nature, have higher complaint rates than others, even across all issuers that offer them. As a result, these products could cause issuers' complaint incidence to vary more by product mix than by performance. The CFPB invites comment on how best to address this issue, including whether there is an available and appropriate normalization metric for these purposes.

Third, data on the rate at which the CFPB procures relief for consumers in response to credit card complaints may not be meaningful if broken out by issuer. If an issuer has a relatively low rate of offering responses that consumers accept, that may reflect its failure to respond to legitimate grievances. However, it may instead reflect that the issuer has effective internal complaint processes and/or low-complaint products, causing the complaints that reach the CFPB to lack merit. The CFPB invites comment on how best to address this issue.

[12] The OAEP reports complaints by complaint type and by airline, expressed as incidence rates per 100,000 enplanements. *See, e.g.,* Air Travel Consumer Report (Sept. 2011) at pp. 39 & 43, available at *http://airconsumer.ost.dot.gov/reports/2011/September/2011SeptATCR.PDF.*

[13] *See http://www.southwest.com/html/about-southwest/history/fact-sheet.html.*

[14] *See, e.g.,* H. Shami, *America's Meanest Airlines: 2011,* U.S. News, available at *http://www.travel.usnews.com/features.*

[15] Dr. Brent Bowen and Dr. Dean E. Hadley prepare these reports. The latest report is available at *http://www.airlineinfo.com/public/2011aqr.pdf.*

[16] One consumer group has analyzed the first four months of data and identified certain trends, including the percentage of reports about products subject to a pre-report recall. *See http://www.kidsindanger.org/docs/reports/Straight_From_The_Source_Report.pdf.*

[17] General Accounting Office, Consumer Product Safety Commission: Action Needed to Strengthen Identification of Potentially Unsafe Products (Oct. 2011) at pp. 9, 13.

[18] A zip code may be seen as PII because it can function with other data elements to enable re-identification. In light of the other non-narrative fields that we propose to disclose, however, the CFPB does not anticipate that consumer zip codes will lead to such disclosure here.

[19] For example, how CFPB categorizes credit card complaint types will impact the potential uses of the data. To minimize any distortive impact from this categorization, the CFPB will work to ensure that the categories reflect complaints as accurately as possible. As a result, complaint categories may change over time.

B. Until Further Study Can Be Conducted, the CFPB Will Not Disclose Narrative Data Fields Because of the Privacy Risk to Individual Consumers

The CFPB's consumer credit card complaint form includes narrative fields in which the consumer is asked to describe ''what happened'' and a ''fair resolution.'' The issuer is also invited to submit a narrative response to the complaint. Some Federal agencies—most notably the CPSC, pursuant to the Consumer Product Safety Improvement Act of 2008—maintain consumer databases that include consumer and industry narratives. Disclosure of narrative fields, however, would be unlikely to facilitate statistical analyses of trends or patterns in the credit card complaint data. In addition, although disclosure of the narrative fields would allow those who review the complaint data to gain more insight into the substance of complaints than can be gleaned from the field that categorizes complaints by issue type, it might also expose issuers to reputational harm from potentially inaccurate, misleading, or incomplete narratives.

For the time being, the CFPB need not resolve the tension between these competing interests, because disclosing these narrative fields would pose clear risks to privacy interests and to the functioning of the consumer complaint system. The narrative fields are populated entirely at the discretion of the consumer and the issuer. The resulting narratives may include core PII such as the name of the complainant. Moreover, there is a risk that the information contained in the narratives may contain detailed and idiosyncratic information of a type that, if made public, would enable some reviewers of that information to identify the consumer who submitted the complaint.

Publishing narratives could also discourage consumers from providing information in the narrative fields that might carry some risk of identification. Because such information might be useful to the resolution of some complaints, that result could disserve the CFPB's primary goal with respect to complaints, which is to address each consumer's complaint efficiently and effectively. It could also discourage consumers from submitting complaints, hindering the complaint resolution process and also restricting the supply of credit card complaint data.[20] Publishing narratives only if a consumer affirmatively opts in to—or fails to opt out of—publication might alleviate this problem.[21] The CFPB invites comment on the impact of a consumer opt-in (or, in the alternative, a consumer opt-out) on the merits of disclosing narrative data. The CFPB also seeks comment on whether issuers should have a parallel ability to opt into or out of publication of narrative responses, or the ability to provide a public and non-public response to a complaint.

Ultimately, however, the privacy risks cannot be systematically assessed other than by reviewing the complaints and issuer responses that we receive. The CFPB will conduct the necessary comprehensive study and will continue to gather data from submitted complaints as the complaint process further develops. As part of that study, the CFPB also will evaluate the CFPB resources that would be required to redact such information so as to eliminate PII and minimize the risk of identification. In the interim, the CFPB will not disclose narratives because of the potentially significant risk to consumers' privacy interests.

IV. Proposed Policy Statement

The text of the proposed Policy Statement is as follows:

1. Purposes of Credit Card Complaint Data Disclosure

The CFPB receives credit card complaints from consumers. The CFPB intends to disclose certain information about credit card complaints in a public database and in the CFPB's own periodic reports.

The purpose of this disclosure is to provide consumers with timely and understandable information about credit cards and to improve the functioning of the credit card market. By enabling more informed decisions about credit card use, the CFPB intends for its complaint data disclosures to improve the transparency and efficiency of the credit card market.

2. Public Access to Data Fields

After the effective date of this Policy Statement, the CFPB will provide public access to a database containing non-narrative fields for each complete consumer credit card complaint and response within the scope of the CFPB's authority under section 1025 of the Consumer Financial Protection Act. The consumer defines the inputs to some of the fields when he or she (or an authorized representative) inputs a credit card complaint into the CFPB's system. These fields, therefore, represent the consumer's own characterization of his or her credit card complaint. The issuer's response will define other non-narrative fields.

The database will cover non-narrative fields that do not contain confidential personal information, including but not limited to: The subject area or areas covered by the credit card complaint; the name of the card issuer; the zip code in which the consumer lives; the date of the complaint; and whether and how an issuer responded.

In cases where an issuer represents to the CFPB that it has been wrongly identified as the issuer of a card, that issuer's name will not be disclosed pending a determination of the correct issuer. Once the CFPB identifies the correct issuer, the name of that issuer will be included.[22]

The public will have online access to the database. The database will enable user-defined searches. The fields for each complaint will be linked with a unique identifier, enabling reviewers to aggregate the data as they choose, including by complaint type, issuer, location, date, or any combination of these variables. Users also will be able to download the data so that they can carry out additional review.

The CFPB will update the database on a regular basis. To provide an issuer sufficient time to establish that it did not issue the credit card listed in a particular complaint, the update will not take place until at least one month after submission.

The public database will not include a consumer's name, credit card number, or address details. At least until the CFPB can conduct further study, it will exclude the consumer's narrative description of ''what happened'' and of ''fair resolution.'' It also will exclude an issuer's narrative response. These narrative fields may contain personally identifiable information or other information that could enable identification. The threat of such disclosure might also suppress complaints or reduce the specificity of complaint narratives, thereby undermining the effectiveness of the complaint process.

3. Regular CFPB Reporting on Complaints

At periodic intervals, the CFPB will publish reports about the consumer credit card complaints that it handles.

[20] Publication of issuer narratives could have similar effects. To explain its practices adequately to a consumer, an issuer may have to disclose elements of the consumer's private financial information, including details that might enable re-identification. Again, there is a risk that some consumers will opt against submitting a complaint in the event that the issuer's response will be published.

[21] The complaint system currently has no disclosure opt-in (or opt-out) provisions.

[22] The consumer's card number generally will enable verification of the correct issuer.

The reports may contain our analysis of patterns or trends that we identify in the complaint data. The CFPB intends for its reporting to provide information that will be valuable to consumers and other market participants. Before determining what reports to issue beyond those relating to the CFPB's handling of the complaints, the CFPB will study the volume and content of credit card complaints that it has received in a given reporting period for patterns or trends that it is able to discern from the data. If the data will support it, the CFPB intends for its reports to include some standardized metrics that would provide comparisons across reporting periods. The reports will also describe our use of credit card complaint data across the range of our statutory authorities during a reporting period.

4. Matters for Further Study

Going forward, the CFPB intends to study the effectiveness of its credit card complaint disclosure policy in realizing its stated purposes. In addition, the CFPB will carry out a study of the narrative fields submitted by consumers and issuers. The study will assess whether there are practical ways to disclose narrative data in a manner that will improve consumer understanding without undermining privacy interests or the effectiveness of the credit card complaint process and without creating unwarranted reputational injury to issuers.

Dated: November 30, 2011.

Meredith Fuchs,

Chief of Staff.

[FR Doc. 2011–31153 Filed 12–7–11; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157714–06]

RIN 1545–BG43

Determination of Governmental Plan Status; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to advance notice of proposed rulemaking.

SUMMARY: This document contains corrections to advance notice of proposed rulemaking (REG–157714–06) that describes the rules that the Treasury Department and IRS are considering proposing relating to the determination of whether a plan is a governmental planwithin the meaning of section 414(d) and contains an appendix that includes a draft notice of proposed rulemaking on which the Treasury Department and IRS invite comments from the public. The document was published in the **Federal Register** on Tuesday, November 8, 2011(76 FR 69172).

FOR FURTHER INFORMATION CONTACT: Concerning the ANPRM, Pamela R. Kinard at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 414(d) of the Internal Revenue Code.

Need for Correction

As published, this advance notice of proposed rulemaking (REG–157714–06) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of this advance notice of proposed rulemaking (REG–157714–06), which was the subject of FR Doc. 2011–28853, is corrected as follows:

1. On page 69173, column 3, in the preamble, under the paragraph heading ''Explanation of Provisions'', second paragraph, third line, the language ''States or an agency of instrumentality of'' is removed and is replaced with the new language ''States or an agency or instrumentality of''.

2. On page 69175, column 1, in the Appendix, under the paragraph heading ''*Application of Section 414(d)'',* fifth paragraph, the language ''Section 503(a)(1) (applying the prohibited transactions rules in section 503 to governmental plans as defined in section 4975(g)(2))'' is removed and is replaced with the new language ''Section 503(a)(1) (applying the prohibited transaction rules in section 503 to governmental plans as defined in section 4975(g)(2));''.

3. On page 69177, column 2, footnote 17, fourth line, the language ''401(k) plan. See section 401(K)(4)(B)(ii). There is an'' is removed and is replaced with the new language ''401(k) plan. See section 401(k)(4)(B)(ii). There is an''.

4. On page 69179, column 3, footnote 27, eleventh line, the language ''*Louis,* 420 F. Supp.2 at 1024, citing *Lee Const. Co.,''* is removed and is replaced with the new language ''*Louis,* 420 F. Supp.2d at 1024, citing *Lee Const. Co.,''.*

LaNita Van Dyke,

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

[FR Doc. 2011–31464 Filed 12–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133223–08]

RIN 1545–BI19

Indian Tribal Governmental Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to advance notice of proposed rulemaking.

SUMMARY: This document contains corrections to advance notice of proposed rulemaking (REG–133223–08) that describes the rules the Treasury Department and IRS are considering proposing relating to the determination of whether a plan of an Indian Tribal government is a governmental plan within the meaning of section 414(d) and contains an appendix that includes a draft notice of proposed rulemaking on which the Treasury Department and IRS invite comments from the public. The document was published in the **Federal Register** on Tuesday, November 8, 2011 (76 FR 69188).

FOR FURTHER INFORMATION CONTACT: Concerning the ANPRM, Pamela R. Kinard at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 414(d) of the Internal Revenue Code.

Need for Correction

As published, this advance notice of proposed rulemaking (REG–133223–08) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of this advance notice of proposed rulemaking (REG–133223–08), which was the subject of FR Doc. 2011–28858, is corrected as follows:

1. On page 69192, column 1, footnote 10, the language ''Section 401(k)(4)(B)(ii) provide that a cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government of political subdivision thereof, or any or agency or instrumentality thereof.'' is removed and is replaced with the new language ''Section 401(k)(4)(B)(ii) provides that a cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government of political subdivision thereof, or any agency or instrumentality thereof.''.

2. On page 69193, column 1, under the paragraph heading ''*Judicial Determinations'',* second paragraph of the column, second line, the language ''*Bingo & Casino,* held that the operating'' is removed and is replaced with the new language ''*Bingo & Casino,* held that operating''.

LaNita Van Dyke,

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

[FR Doc. 2011–31463 Filed 12–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Chapter XII

[Docket No. ONRR–2011–0007]

Establishment of the Indian Oil Valuation Negotiated Rulemaking Committee

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: On January 31, 2011, the Department published a notice of intent to establish an Indian Oil Valuation Negotiated Rulemaking Committee. In that notice, we requested interested parties to nominate representatives for membership on the Committee and addressed many of the requirements of Section 564 of the Negotiated Rulemaking Act. On August 22, 2011, the Department published a second notice of intent to establish an Indian Oil Valuation Negotiated Rulemaking Committee to address the remaining requirements of Section 564 of the Negotiated Rulemaking Act and to inquire if all interests were represented by the proposed members. This notice establishes the Committee.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Wunderlich, Office of Natural Resources Revenue (ONRR), *Telephone:* (303) 231–3663; *Fax:* (303) 231–3194, or *Email: karl.wunderlich@onrr.gov*.

SUPPLEMENTARY INFORMATION: In response to our second notice, we received three responses recommending three additional members to the Committee. In response, we have added the following three recommended members to the Committee: Patrick Flynn, employee of Resolute Energy Corporation, representative of Industry; Grinnell Day Chief, representative of the Blackfeet Nation; Alan Taradash, representative of the Jicarilla Apache Nation.

One additional comment was received in response to the second notice of intent offering broad objections to the composition of the Committee. In particular, the commenter felt the Committee did not represent all significant interests, did not represent global energy producer interests, included members from the oil industry with conflicts of interest, and should not have had inclusion from the Bureau of Indian Affairs (BIA).

While ONRR appreciates and encourages interest in the Indian Oil Valuation Negotiated Rulemaking Committee, at this time we find it unnecessary to reconstitute or make significant changes to the committee. On January 31, 2011, ONRR solicited nominees for membership to the Committee. On August 22, 2011, ONRR solicited additional nominees. This provided the commenter two opportunities to nominate a member that would represent the significant interests he felt were omitted. ONRR believes it has adequately met the intent of the Federal Advisory Committee Act (FACA) in soliciting membership and finding members with an appropriate balance of viewpoints. ONRR also notes that the Committee is being formed to address valuation of oil production from domestic Indian oil leases. Global energy interests are most likely unconcerned with the subject of this Committee and no nominations were offered to represent these interests. Likewise, the proposed representatives from industry were nominated by their constituents and have an undeniable stake in the rulemaking process. Any perceived conflict of interest on the part of industry's nominations was not adequately described by the commenter. While the commenter noted that the oil industry members have conflicts of interest, this is expected of ''representative'' members of a FACA committee. These members serve as representatives of outside entities or groups and their exclusive function is to represent the points of view of a particular industry or group (e.g. labor, agriculture, energy, environmental, tribal, or some other recognizable group of persons). In representing the interests of a specifically identifiable interest group, the opinions, information, and advice these members offer will reflect the biases of the particular group that the member represents on the Committee. ONRR firmly believes that the interests significantly affected by the rulemaking are represented by the members.

Finally, the Committee was formed within the terms of the FACA which provides for government oversight over FACA committees. In the case of this Committee, ONRR believes that BIA belongs on the Committee, because BIA issues leases and is the office of record maintaining surface and mineral ownership records on Indian Trust lands.

The Committee will meet at least quarterly with the first meeting planned for February 2012.

Certification Statement: I hereby certify that the Indian Oil Valuation Negotiated Rulemaking Committee is necessary, is in the public interest, and is established under the authority of the Secretary of the Interior.

Dated: December 1, 2011.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2011–31559 Filed 12–7–11; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0943]

RIN 1625–AA09

Drawbridge Operation Regulation; Blackwater River, South Quay, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the S189 Bridge over Blackwater River, mile 9.2, at South Quay, VA. The proposed rule would change the current regulation requiring a 24-hour advance notice and allow the bridge to remain in the closed position

for the passage of vessels. There have been no requests for openings in 11 years.

DATES: Comments and related material must reach the Coast Guard on or before February 6, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0943 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Jim Rousseau, Coast Guard; telephone (757) 398–6557, email *James.L.Rousseau2@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0943), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2011–0943'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0943'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

Virginia Department of Transportation has requested a change in the operation regulation of the S189 Bridge across Blackwater River, mile 9.2, at South Quay VA. There has been no request for openings since the year 2000. The only industrial waterway user to request openings left the area in 2000. Since 2008 up to the present day the average daily vehicular count is approximately 2,930. The Coast Guard proposes to allow the above mentioned bridge to remain in the closed position to navigation in accordance with 33 CFR 117.39.

The vertical clearance of the Swing Bridge is 14 feet above mean high tide in the closed position and unlimited in the open position. The current operating schedule for the bridge is set out in 33 CFR 117.999. The current 24 hour advance notice is no longer necessary because of the lack of openings.

Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.999 for the S189 Bridge over Blackwater River, mile 9.2, at South Quay, VA. The current regulation states: The draw of the S189 bridge, mile 9.2 at South Quay, shall open on signal if at least 24 hours notice is given. The new regulation would allow the bridge to not open for the passage of vessels. The change of the operating regulation would reflect the current use of the waterway and vessels with a mast height less than 14 feet can pass underneath the bridge in the closed position at anytime.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require

an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order. The proposed change is expected to have minimal impact on mariners due to no opening request for the past 11 years and no anticipated change to vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the bridge that cannot pass under the bridge in the closed position. This action will not have a significant economic impact on a substantial number of small entities for the following reasons. There have been no vessel requests for openings for the past 11 years. Vessels that can safely transit under the bridge may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Jim Rousseau, Bridge Management Specialist, Fifth Coast Guard District, (757) 398–6557 or email *James.L.Rousseau2@uscg.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or

information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.999, to read as follows:

§ 117.999 Blackwater River

The draw of the S189 bridge, mile 9.2 at South Quay, need not be opened for the passage of vessels.

Dated: November 16, 2011.

William D. Lee,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2011–31455 Filed 12–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1013]

RIN 1625–AA09

Drawbridge Operation Regulation; Saginaw River, Bay City, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the drawbridge opening schedule for the Lake State Railway Bridge at mile 3.10, the Independence Bridge at mile 3.88, the Central Michigan Railroad Bridge at mile 4.94, the Liberty Street Bridge at mile 4.99, the Veterans Memorial Bridge at mile 5.60, and the Lafayette Street Bridge at mile 6.78, all over the Saginaw River at Bay City, MI. The current regulation is confusing, outdated, and unnecessarily restrictive for both commercial and recreational vessels. The proposed regulation will simplify the regulatory language, increase access through the drawbridges for all vessels, and provide for the reasonable needs of all traffic.

DATES: Comments and related material must reach the Coast Guard on or before: January 9, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1013 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone (216) 902–6085, email *Lee.D.Soule@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–1013), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2011–1013'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1013'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please

explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Basis and Purpose

Lake Carriers Association (LCA), an organization representing U.S. shipping companies on the Great Lakes, requested that the existing drawbridge regulation for Saginaw River be reviewed and changed to make the regulation easier to understand and to remove restrictive drawbridge schedules for commercial vessels. The existing regulation was reviewed in its entirety for all drawbridges, vessel types, dates, and hours of operation.

Lake State Railway Bridge at mile 3.10 is a swing bridge that provides 7 feet vertical clearance in the closed position and unlimited clearance in the open position. The Independence Bridge at mile 3.88 is a bascule bridge that provides 22 feet vertical clearance in the closed position and unlimited clearance in the open position. The Central Michigan Railroad Bridge at mile 4.94 is a swing bridge that provides 8 feet of vertical clearance in the closed position and unlimited clearance in the open position. The Liberty Street Bridge at mile 4.99 is a bascule bridge that provides 25 feet of vertical clearance in the closed position and unlimited clearance in the open position. The Veterans Memorial Bridge at mile 5.60 is a bascule bridge that provides 15 feet of vertical clearance in the closed position and unlimited clearance in the open position. The Lafayette Street Bridge at mile 6.78 is a bascule bridge that provides 20 feet vertical clearance in the closed position and unlimited clearance in the open position. There is no alternate waterway for vessels entering or departing Saginaw River.

The draws of the Lake State Railway and CN RR bridges currently open on signal for all vessel traffic that requires a bridge opening, except that from December 16 through March 15 the bridges open on signal if at least 12 hours advance notice is provided.

The draws of the Independence Street, Liberty Street, Veterans Memorial, and Lafayette Street drawbridges open on signal from March 16 through December 15, except as follows: the draws need not open for the passage of vessels less than 50 gross tons from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m., except Saturdays, Sundays, and holidays observed in the locality. The draws need not open for the passage of downbound vessels over 50 gross tons from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., except on Sundays, Federal holidays, and holidays observed in the locality. From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the Independence Street and Veterans Memorial bridges need not open for recreational vessels except from three minutes before to three minutes after the hour and half-hour, and the Liberty Street and Lafayette Street bridges need not open for recreational vessels except from three minutes before to three minutes after the quarter-hour and three-quarter hour. Currently, the draws of these bridges shall open on signal from December 16 through March 15 if at least 12 hours advance notice is provided.

The proposed drawbridge schedules and revised regulation were developed with all known stakeholders, including; LCA, Canadian Shipowners Association, local Coast Guard units, City of Bay City, MI, Michigan Department of Transportation (MDOT), Bay Harbor Marina, Pier 7 Marina, Liberty Harbor Marina, and Bay City Yacht Club. All parties have preliminarily concurred with the proposed drawbridge schedules and language.

Discussion of Proposed Rule

The preliminary investigation conducted during the development of this proposed rule found that marine traffic on Saginaw River consists of large commercial, small commercial, and both power and sail recreational vessels. Large commercial vessel traffic usually operates from the beginning of April until the end of December. Recreational and small commercial vessel traffic usually operates between April 15 and November 1, and generally increases on the weekends. Vehicular traffic has been reduced in the past 20 years following the closure of industrial and manufacturing facilities in Bay City/Saginaw, including reduced vehicular traffic on weekends when recreational vessel traffic increases.

Under the current regulation, the highway drawbridges are not required to open for recreational vessels from 6:30 a.m. to 8:30 a.m., and from 3:30 p.m. to 5:30 p.m., 7 days a week. Additionally, they are not required to open from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Saturday, for the passage of downbound vessels over 50 gross tons (all large commercial vessels). The proposed rule will allow large commercial vessels to obtain bridge openings at any time, and allow recreational vessels to pass on two scheduled times each hour between 6:30 a.m. and 7 p.m., Monday through Friday, and at any time during all other days and times, thereby increasing access through all drawbridges for all vessel traffic. Furthermore, the dates for winter operation of all drawbridges have been adjusted to reflect the current seasonal operations for both commercial and recreational vessels. Currently, vessels are required to provide at least 12-hours advance notice of arrival between December 16 and March 15. The proposed schedule will require 12-hour advance notice of arrival between January 1 and March 31.

The proposed drawbridge regulation was developed to reflect the current conditions and needs of both vessel and vehicular traffic, and was coordinated with all known stakeholders and entities in Bay City/Saginaw, MI. The proposed regulatory language is more concise and easier to understand, has been preliminarily approved by all known entities included in the development of the proposed rule, and is expected to provide for the reasonable balance of all modes of transportation.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866. The Office of Management and Budget has not reviewed it under those Orders. This determination is based upon the Coast Guard's expectation that this proposed rule will improve traffic congestion and safety in the vicinity of the drawbridge and does not exclude bridge openings for vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule

would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: the owners and operators needing to transit the bridges. However, this action will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will increase access through the drawbridges for all entities compared to the existing regulation and drawbridge schedule. All known marina owners and small entities were consulted during the development of this proposed rule and have preliminarily concurred with the proposed drawbridge schedule. Additionally, all vessels that do not require bridge openings may transit the drawbridges at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard, telephone (216) 902–6085, email *lee.d.soule@uscg.mil,* or fax (216) 902–6088. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to revise 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.647 to read as follows:

§ 117.647 Saginaw River.

(a) The draws of the Lake State Railway Bridge, mile 3.10, and the Central Michigan Railroad Bridge, mile 4.94, both in Bay City, shall open on signal; except that from January 1 through March 31, the draws shall open on signal if at least 12 hours advance notice is provided.

(b) The draws of the Independence Bridge, mile 3.88, Liberty Street Bridge, mile 4.99, Veterans Memorial Bridge, mile 5.60, and Lafayette Street Bridge, mile 6.78, all in Bay City, shall open on signal, except as follows:

(1) From April 15 through November 1, between the hours of 6:30 a.m. and 7 p.m., Monday through Friday, except federal holidays, the draws of the Independence and Veterans Memorial Bridges need open for the passage of recreational vessels only from three minutes before to three minutes after the hour and half-hour, and the Liberty Street and Lafayette Street bridges need open for the passage of recreational vessels only from three minutes before to three minutes after the quarter-hour and three-quarter hour.

(2) From January 1 through March 31, the draws of these bridges shall open on signal if at least 12 hours advance notice is provided.

* * * * *

Dated: November 9, 2011.

M.N. Parks,

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

[FR Doc. 2011–31456 Filed 12–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0959]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway (Algiers Alternate Route), Belle Chasse, LA

ACTION: Notice of Proposed Rulemaking; Correction.

SUMMARY: In the **Federal Register** published on December 2, 2011, the Coast Guard placed the Notice of Proposed Rulemaking, Gulf Intracoastal Waterway (Algiers Alternate Route), Belle Chasse, LA. That publication contained an error in the ''Discussion of Proposed Rule'' section stating an incorrect date of the Test Deviation issued in conjunction with the Notice of Proposed Rulemaking. The Test Deviation is scheduled to commence on December 15, 2011 vice the December 19, 2011 date published in the Notice of Proposed Rulemaking. The Notice of Proposed Rulemaking should reflect the correct date of December 15, 2011. This error does not impact the Test Deviation.

DATES: This correction is effective December 8, 2011.

FOR FURTHER INFORMATION CONTACT: For information about this correction, contact Erin Anderson, Office of Regulations and Administrative Law, telephone (202) 372–3849, email *erin.w.anderson@uscg.mil.* For information about the original regulation, contact Donna Gagliano, Coast Guard; telephone (504) 671–2128, email *Donna.Gagliano@uscg.mil.*

SUPPLEMENTARY INFORMATION: In FR Vol. 76, No. 232, USCG 2011–0959, appearing on page 75507 in the issue of Friday, December 2, 2011, the following correction is made:

1. On page 75507, in the first column, in the one place that ''December 19, 2011'' appears, remove ''December 19, 2011'' and replace with ''December 15, 2011''.

Dated: December 2, 2011.

Kathryn Sinniger,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2011–31454 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

[Docket No. 2011–07]

RIN 3014–AA37

Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is issuing this second Advance Notice of Proposed Rulemaking (ANPRM) to continue the process of updating its standards for electronic and information technology, which apply to federal agencies, and its guidelines for telecommunications accessibility, which apply to telecommunications manufacturers. The text of the proposed standards and guidelines under consideration by the Board is available on the Board's Web site (*http://www.access-board.gov/508.htm*). The Board invites the public to review and comment on all aspects of this notice and the proposed text, including the advantages and disadvantages of provisions, the organizational approach to presenting the standards and guidelines, alternative policies to those presented, and information on benefits and costs. After reviewing the comments received in response to this advance notice, the Board plans to issue a proposed rule seeking further public comment followed by a final rule.

DATES: Comments should be received by March 7, 2012.

ADDRESSES: You may submit comments, identified by docket number 2011–07 or RIN number 3014–AA37, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Regulations.gov Docket ID is ATBCB–2011–0007.
- *Email: ictrule@access-board.gov.* Include docket number 2011–07 or RIN number 3014–AA37 in the subject line of the message.
- *Fax:* (202) 272–0081.
- *Mail or Hand Delivery/Courier:* Office of Technical and Information Services, Access Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111.

All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Timothy Creagan, Office of Technical and Information Services, Access Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. *Telephone number:* (202) 272–0016 (voice); (202) 272–0074 (TTY). *Electronic mail address: creagan@access-board.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulatory History

The (Section 508) Electronic and Information Technology Accessibility Standards (standards) were issued in December 2000, 65 FR 80500 (December 21, 2000). The (Section 255) Telecommunications Act Accessibility Guidelines (guidelines) for telecommunications equipment and customer premises equipment were issued in February 1998, 63 FR 5608 (February 3, 1998). The standards require that when developing, procuring, maintaining, or using

electronic and information technology, each federal department or agency must ensure, unless an undue burden would be imposed on the department or agency, that electronic and information technology (regardless of the type of medium) allows individuals with disabilities to have access to and use of information and data that is comparable to the access to and use of the information and data by others without disabilities. The standards include a definition of electronic and information technology, and technical and functional performance criteria for such technology. The Section 255 guidelines require telecommunications manufacturers to ensure that telecommunications equipment and customer premises equipment are designed, developed, and fabricated to be accessible to and usable by individuals with disabilities when it is readily achievable to do so. The term readily achievable is defined in the guidelines as easily accomplishable, without much difficulty or expense.

Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (d) (Section 508) and the Telecommunications Act of 1996, 47 U.S.C. 153, 255 (Section 255) require that the Access Board periodically review and, as appropriate, amend the standards and guidelines to reflect technological advances or changes in electronic and information technology or in telecommunications equipment and customer premises equipment. Once revised, the Board's standards and guidelines are made enforceable by other federal agencies. Section 508(a)(3) of the Rehabilitation Act provides that within 6 months after the Access Board revises its standards the Federal Acquisition Regulatory Council shall revise the Federal Acquisition Regulation and each appropriate federal department or agency shall revise their procurement policies and directives, as necessary, to incorporate the revisions. Under Section 255 of the Telecommunications Act of 1996, the Federal Communications Commission has the authority to adopt regulations implementing Section 255 including adopting rules consistent with the Access Board's guidelines.

Since the Board first issued the guidelines and the standards, technology has evolved and changed. Therefore, the Board decided to update and revise the guidelines and the standards together to address changes in technology and to make both documents consistent. The Board formed the Telecommunications and Electronic and Information Technology Advisory Committee (TEITAC) in 2006 to review the existing guidelines and standards and to recommend changes. TEITAC's 41 members comprised a broad cross-section of stakeholders. The stakeholders included representatives from industry, disability groups, standard-setting bodies in the U.S. and abroad, and government agencies. TEITAC also included representatives from the European Commission, Canada, Australia, and Japan. TEITAC recognized the importance of standardization across markets worldwide. It coordinated its work with standard-setting bodies in the U.S. and abroad, such as the World Wide Web Consortium (W3C). TEITAC members addressed a range of issues, including new or convergent technologies, market forces, and international harmonization.

On April 3, 2008, TEITAC presented its report to the Board. The report recommended revisions to the Board's Section 508 standards and Section 255 guidelines. The report is available on the Board's Web site at *http://www.access-board.gov/sec508/refresh/report/.*

The Board developed an Advance Notice of Proposed Rulemaking (2010 ANPRM) based on the TEITAC report. The ANPRM was published in the **Federal Register** in March 2010, 75 FR 13457 (March 22, 2010). The Board held two public hearings and received 384 comments on the 2010 ANPRM. This 2011 ANPRM is based on a review of those comments.

The 2010 ANPRM also included a proposal to amend the Americans with Disabilities Act (ADA) Accessibility Guidelines to extend coverage of the guidelines to a variety of self-service transaction machines not previously covered by the guidelines. The Board plans to address this subject at a future date and has not included a proposal in this ANPRM to address such machines subject to the ADA.

II. Structure of the 2010 ANPRM

The 2010 ANPRM contained proposed updates under consideration by the Board to the requirements for Section 508 and Section 255 and was organized into eleven chapters. The first two chapters were separate introductory chapters (508 chapter 1 and 255 chapter 1) outlining scoping, application, and definitions unique to each law. The remainder of the chapters comprised a common set of requirements. The ANPRM used the term ''Information and Communication Technology'' (ICT), recommended by TEITAC to describe electronic and information technology covered by Section 508 and telecommunications products, interconnected Voice over Internet Protocol (VoIP) products and Customer Premises Equipment (CPE) covered by Section 255. The new term which was defined in E111 and C109 is consistent with terms previously included in the standards and guidelines but it more accurately describes covered features of electronic and information technology, telecommunications and VoIP products, and CPE. The term ICT is widely used in the public sector and by most other countries. The functional performance criteria and technical requirements set forth in the 2010 ANPRM were intended to apply to ICT subject to either the Rehabilitation Act or the Telecommunications Act of 1996.

508 Chapter 1 contained purpose and application provisions for Section 508 and explained how those provisions are applied to ICT subject to Section 508. The chapter explained how the provisions implement the requirement under Section 508 that federal agencies must ensure that the technology is accessible to people with disabilities, unless an undue burden would be imposed on the department or agency. The meaning of the term ''undue burden'' remains unchanged. Consistent with Section 1194.4 of the standards, undue burden means significant difficulty or expense to the agency after considering all the agency resources available to the program or component for which the product is being developed, procured, maintained, or used.

255 Chapter 1 contained purpose and application provisions for Section 255 and how that is applied to telecommunications and interconnected VoIP products and CPE subject to Section 255. The chapter explained how the provisions implement the requirement under Section 255 that telecommunications manufacturers must ensure that telecommunications equipment and customer premises equipment are designed, developed, and fabricated to be accessible to and usable by individuals with disabilities when it is readily achievable to do so. An action that is ''readily achievable'' can be easily accomplished by a manufacturer without much difficulty or expense.

Chapter 2 included functional performance criteria requiring ICT to provide access to all functionality in at least one of each of the eleven specified modes.

Chapter 3 contained technical requirements applicable to features of ICT that are found across a variety of platforms, formats, and media. Chapters 4, 5, and 6 all contained technical requirements closely adapted from the Web Content Accessibility Guidelines (WCAG) 2.0 Success Criteria which

were rephrased in mandatory language. Chapter 4 addressed platforms, applications, interactive content, and applications. Chapter 5 covered access to electronic documents and common interactive elements found in electronic content and Chapter 6 addressed access to audio and visual electronic content and to players of that content. Chapter 7 addressed hardware aspects of ICT, such as standard connections and reach ranges. Chapter 8 addressed ICT that has audio output functionality when that output is necessary to inform, alert, or transmit information or data. Chapter 9 addressed ICT that supports a real time simultaneous conversation. This conversation may be in an audio, text, or video format. Chapter 10 covered product support documentation and services.

III. Summary of Public Comments to the 2010 ANPRM

Three hundred eighty-four comments were received during the comment period. Comments came from industry, federal and state governments, foreign and domestic companies specializing in information technology, disability advocacy groups, manufacturers of hardware and software, trade associations, institutions of higher education, research and trade organizations, accessibility consultants, assistive technology industry and related organizations, and concerned individuals who did not identify with any of these groups.

In general, commenters agreed with the Board's approach to address the accessibility features of ICT and not discrete product types. The commenters also expressed strong support for the decision to follow the TEITAC recommendation to require harmonization with WCAG 2.0. In addition they strongly supported the Board's efforts to update the standards to address current technology. However, they raised concerns about the overall length of the document and its organization. Many commenters stated that it was unwieldy and difficult to use at close to 100 pages. They reported that the organization of the material did not add to their understanding of how to apply the requirements. They indicated that the relationship of the chapters to one another was unclear because every chapter seemed to use the term ICT differently, based on the functions addressed by the chapter. Commenters noted that some chapters focused on functional features of accessibility and others addressed specific types of technology. They found that this inconsistency within the document made reading and comprehension difficult.

Commenters from industry and government criticized the approach taken for harmonization with WCAG 2.0. The rephrasing of Success Criteria from WCAG 2.0 into regulatory language introduced subtle changes that called into question the suitability of the wealth of guidance material developed specifically for WCAG 2.0. Commenters in general were confused about how the Board distinguished between software and documents. Commenters were also confused about the emphasis given to some topics, which were addressed over an entire chapter, while other equally complex topics were addressed in a group of provisions. Many commenters also indicated that the use of advisories throughout the document was unclear and inconsistent, because some provisions had extensive advisories while others had none. Government and industry information technology professionals raised concerns about how some of the provisions could be implemented so that they could successfully determine if ICT is conformant. Persons responsible for procurements, as well as commenters representing individuals with disabilities questioned how conformance with provisions guaranteed actual access to and use of information and data by individuals with disabilities.

Most commenters wanted clarification of the Board's approach to covering electronic content. In addition, many commenters asked for a clearer explanation of the relationship of the functional performance criteria to the technical requirements. In general, commenters criticized the provisions for closed functionality for a lack of substance which made the provisions vague and confusing. Overall, commenters generally favored the Board's approach to streamlining the exceptions to the technical and functional performance criteria. However, a significant number of commenters from government and industry strongly opposed removing the maintenance spaces exception for ICT located in spaces frequented only by service or maintenance personnel. Other commenters, many from government, expressed confusion over the reorganization of the ''incidental to a contract'' exception as a subset of a provision on federal contracts.

IV. Access Board Response to Public Comments

Upon reviewing the comments, the Board sees that the 2010 ANPRM needed major revisions in terms of both structure and content. The Board also recognizes the need to obtain more guidance on certain issues from those affected by the requirements. At the same time, the Board is interested in harmonizing with standards efforts around the world in a timely way. Accordingly, the Board is now releasing this second Advance Notice of Proposed Rulemaking (2011 ANPRM) to seek further public comment on specific questions and to harmonize with contemporaneous standardization efforts underway by the European Commission.

V. Differences Between the 2010 ANPRM and the 2011 ANPRM

A. Structural Changes in the 2011 ANPRM

The Board has made significant changes in response to public comments to the 2010 ANPRM. The 2011 ANPRM is more concise than the 2010 ANPRM. It has six chapters instead of ten. The Board consolidated and streamlined provisions and consolidated advisories. The Board also removed scoping and application language from the chapters containing technical provisions and relocated them to new chapters at the beginning of the document. In addition, in response to concerns about an uneven approach taken in the 2010 ANPRM, where some chapters focused on features of products and others addressed specific types of products, the Board standardized the approach by removing references to types of products while focusing instead on specific features of products. The Board revised the overall structure of the functional performance criteria so that the provisions have parallel structure. Further, the Board grouped technical requirements for similar functions together in the same chapter to improve readability and usability. The Board also removed specific requirements relating to web and non-web electronic content, documents and user applications and referenced WCAG 2.0 instead. This revised text is consistent with and reflects the public comments received. The Board focused on making this draft as accurate and succinct as possible to improve reader comprehension.

B. Major Issues Identified and Addressed in the 2011 ANPRM

1. Relationship Between Functional Performance Criteria and Technical Provisions

In Section E103.5 of the 2010 ANPRM the Board proposed language to clarify the relationship between the functional performance criteria and the technical provisions. The Board deemed this

clarification to be warranted because the 508 standards currently do not clearly specify when agencies must use the technical provisions and when they must use the functional performance criteria. Subsection E103.5.1 of the 2010 ANPRM proposed that when an agency develops, procures, maintains, or uses ICT, it first must look to the technical provisions. If the technical provisions were fully satisfied, then the agency did not need to apply the functional performance criteria. Consequently, the 2010 ANPRM gave the technical criteria greater weight than the functional performance criteria since the functional performance criteria were used only when the procurement needs of the agency were not fully met by the technical provisions. While the Board intended for the approach taken in the 2010 ANPRM to reflect current practice, commenters objected to this approach, citing the concern that procurements that satisfy only the technical requirements do not necessarily provide access to information and data for individuals with disabilities.

The Board appreciates this concern and has redefined the relationship between the functional performance criteria and the technical provisions in section E204 of the 2011 ANPRM so that ICT must conform to the functional performance criteria, even when technical provisions are met. This is a significant change from the 2010 ANPRM, which did not require use of the functional performance criteria at all when the technical provisions fully addressed the product being procured. In subsection E101.2 of the 2011 ANPRM the Board retains the approach from subsections E103.5.3 and E106 of the 2010 ANPRM of using the functional performance criteria to evaluate whether using the equivalent facilitation provision provides substantially equivalent or greater access to and use of a product for individuals with disabilities. A covered entity has the option to apply the concept of equivalent facilitation in order to achieve conformance with the intent of the technical requirements, provided that the alternative affords individuals with disabilities substantially equivalent or greater access than would result from compliance with the technical requirements.

2. Functional Performance Criterion for Limited Vision

In subsection 202.3 in the 2010 ANPRM, the functional performance criterion for limited vision was changed to require a visual mode of operation which did not require visual acuity greater than 20/200 or a field of vision greater than 20 degrees. Commenters criticized this new approach as inadequate and technically incorrect. Organizations representing persons with disabilities disagreed with the 20/200 requirement, stating that it did not sufficiently address the needs of users with severe low vision. Industry groups noted that the 20/200 requirement contradicted several technical requirements. Both groups indicated that the approach taken did not address features which could actually improve accessibility for persons with limited vision. In addition, as written, only one feature had to be provided for each mode of operation. Commenters stated that this approach was too limited.

In subsection 302.2 in the 2011 ANPRM the Board has made several changes to the functional performance criterion for limited vision in response to these comments. A functional approach which more closely addresses the needs of users with limited vision replaces the approach which specified a measurement for visual acuity. The functional performance provision for limited vision now requires that when a visual mode of operation is provided, ICT must provide at least one mode of operation that magnifies, one mode that reduces the field of vision, and one mode that allows user control of contrast. The provision also states that these modes must be supplied in the same ICT, but may be supplied either directly or through compatibility with assistive technology.

3. Covered Electronic Content: Official Communications

The 2010 ANPRM covered all electronic content used by agencies where it was an official communication by the agency to federal employees or to members of the public. This approach attempted to clarify the approach in the current Section 508 standards. Section 508 requires that agencies ensure that individuals with disabilities have access to and use of information and data that is comparable to the access to and use of information and data by others without disabilities. Arguably, all electronic content developed, procured, maintained, or used by federal agencies is covered by the Section 508 standards because the standards do not limit the application of the requirements for access to and use of information and data to certain types of communication by an agency. Subsection E103.3.1 of the 2010 ANPRM proposed to cover electronic content only to the extent that it was an official agency communication. Commenters, however, disagreed strongly with this approach because, in their view, all communications by an agency are in some way official business of the agency. Consequently, no electronic content would be exempt. They found this to be overbroad with considerable potential cost in relation to the benefit. Because this requirement potentially would cover all electronic content created by an agency, commenters feared that it would require each employee to be capable of creating accessible content for all of his or her communications. If all employees were required to produce accessible formats for all their work, commenters argued that employees would need considerable training. Commenters cautioned that this practice would consume a large portion of agency resources without necessarily resulting in more accessibility.

In response, the Board proposes a more limited approach in section E205 of the 2011 ANPRM. Coverage of electronic content is limited to nine specific categories of information communicated by agencies to employees or to members of the general public during the conduct of official agency business, as determined by the agency mission. Covered electronic content includes the following: content that is public facing; content that is broadly disseminated within the agency; letters adjudicating any cause within the jurisdiction of the agency; internal and external program and policy announcements; notices of benefits, forms, questionnaires and surveys; emergency notifications; formal acknowledgements; and educational and training materials. There are two exceptions to covered content: archival copies stored or retained solely for archival purposes to preserve an exact image of a hard copy, and draft versions of documents.

4. Closed Functionality

Section 302 of the 2010 ANPRM substituted the term ''closed functionality'' for ''self-contained, closed products''. The standards permitted ICT to have closed functionality and required it to be accessible to and usable by individuals with disabilities without requiring the attachment of assistive technology. Commenters did not object to the new terminology of ''closed functionality'' but asked for more detail and clarity in the provisions. In section 402 of the 2011 ANPRM, the Board now provides specific requirements for ICT with closed functionality to ensure that it is accessible to individuals with disabilities. These features include the requirement that ICT with closed functionality must be speech enabled.

The term ''speech enabled'' means speech output. These proposed requirements are derived from Section 707, Automatic Teller Machines and Fare Machines, in the ADA and ABA Accessibility Guidelines and the 2010 Department of Justice ADA Standards for Accessible Design.

5. Exceptions: Maintenance Spaces and ''Incidental to a Contract''

In the 2010 ANPRM, the Board reorganized the exceptions in the current standards and recommended deleting three of them as unnecessary. The three exceptions deleted by the Board were 36 CFR 1194.3(c) which stated that assistive technology need not be provided at all workstations for all federal employees; 36 CFR 1194.3(d) which provided that where agencies provide information and data to the public through accessible ICT, the accessible ICT need only be provided at the intended public location; and 36 CFR 1194.3(f), which stated that products located in spaces used only by service personnel for maintenance and repair need not be accessible. In an effort to simplify the wording, the Board rewrote the exception at 36 CFR 1194.3(b) permitting ICT acquired by a contractor incidental to a contract to not be accessible.

The Board received a number of comments about these proposed changes. Most commenters on this issue supported removing two of the three proposed exceptions. Only the proposed removal of the exception for ICT located in maintenance spaces generated negative comments. Commenters strongly objected to the Board's assertion that many functions could be accessed remotely, noting that there were still many instances when some functions could only be performed in a maintenance space on an infrequent basis. They stated that functions related to maintenance, repair, or occasional monitoring of equipment should not be required to be accessible. The Board has restored this exception in subsection E202.4 of the 2011 ANPRM. The Board revised the language from the current Section 508 standard to make it clear that there are some functions which are only capable of being performed on-site in a maintenance space occupied solely by service personnel. These functions cannot be accessed remotely and include maintenance, repair, or occasional monitoring of equipment.

The Board's efforts at streamlining the exception for ICT purchased by a contractor ''incidental to a contract'' received many critical comments. The rewritten exception deleted the phrase ''incidental to a contract'' and was relocated to a new section (E103.4.2) relating to federal contracts. Commenters expressed confusion as to the purpose of the new section and did not recognize the rewritten exception. One federal procurement official commented that the phrase ''incidental to a contract'' was more understandable and usable, particularly by contracting officials, who were most affected by this language. In response to comments, the Board has restored the original language from the current Section 508 standards in the 2011 ANPRM at subsection E202.3.

6. WCAG 2.0 Incorporation by Reference Rather Than Harmonization

In the 2010 ANPRM, the Board sought public comment on the recommendation of the TEITAC for international harmonization. The 2010 ANPRM included most WCAG 2.0 Level A and Level AA Success Criteria but restated them in mandatory terms more appropriate for regulatory language. In the current 508 Standards, most of the provisions in 36 CFR 1194.22 mirror those of WCAG 1.0. The 2010 ANPRM (subsections E107 and C106) also requested comments on the option to use WCAG 2.0. Commenters noted that deviations from WCAG 2.0 phrasing introduced ambiguities, particularly for those familiar with WCAG 2.0.

The current 508 Standards provide discrete requirements for software (36 CFR 1194.21) and web content (36 CFR 1194.22). As noted in the TEITAC report and the 2010 ANPRM preamble, such distinctions are increasingly arbitrary. The 2010 ANPRM attempted to retain some of this separation by having one chapter of simpler provisions which were applicable to document authors and a chapter of more complex provisions which were applicable only to software developers. Provisions related to multimedia were grouped in a third distinct chapter. Commenters felt that this separation seemed more arbitrary than useful.

Both of the above weaknesses have been addressed in the 2011 ANPRM. Proposed subsections E205.1 and C203.1 incorporate WCAG 2.0 by reference, so there is no paraphrasing. WCAG 2.0 is written to be technology neutral, so it is straightforward to apply the WCAG 2.0 Success Criteria and Conformance Requirements to electronic documents and applications, regardless if those documents and applications are rendered within a web browser or within a native application outside the web browser environment.

Referencing WCAG 2.0 is consistent with Office of Management and Budget (OMB) Circular A–119 [1] which directs agencies to use voluntary consensus standards in lieu of government-unique standards. The primary benefit is economic in that this practice reduces costs to the government associated with developing its own standards and also decreases the cost of goods and services procured by the government. According to the Web Accessibility Initiative [2], fragmentation of standards is an economic issue for government, businesses, and web developers. In this case, incorporation by reference also directly serves the best interests of people with disabilities because harmonization of standards can help accelerate the spread of accessibility across the web. The accessibility of the web is essential to enable the participation of people with disabilities in an information society.

The Board's proposal to reference WCAG 2.0 as the standard for Section 508 and Section 255 web accessibility is also consistent with the Department of Transportation's proposed approach in its supplemental notice of proposed rulemaking addressing, among other things, the accessibility of air carrier and ticket agent Web sites. 76 FR 59307 (September 26, 2011).

The Board's proposal to incorporate WCAG 2.0 by reference is consistent with activity by other international standards organizations.[3] Australia [4], Canada [5], and New Zealand [6] already make direct reference to WCAG 2.0. The European Commission references WCAG 2.0 in its current working draft (under ''Mandate M376'' [7]). WCAG 2.0 also serves as the basis for web accessibility standards in Germany (under ''BITV 2''), France (under

[1] Memorandum for Heads of Executive Departments and Agencies, Circular No. A–119 Revised, February 10, 1998, *http://www.whitehouse.gov/omb/circulars_a119.*

[2] Why Standards Harmonization is Essential to Web Accessibility (draft), W3C Web Accessibility Initiative, Education & Outreach Working Group, June 28, 2011, *http://www.w3.org/WAI/Policy/harmon.html.*

[3] Policies Relating to Web Accessibility, W3C WAI, August 25, 2006, *http://www.w3.org/WAI/Policy/.*

[4] World Wide Web Access: Disability Discrimination Act Advisory Notes, Australian Human Rights Commission, October 2010, *http://www.hreoc.gov.au/disability_rights/standards/www_3/www_3.html.*

[5] Standard on Web Accessibility, Treasury Board of Canada Secretariat, August 1, 2011, *http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?section=text&id=23601.*

[6] New Zealand Government Web Standards, Government Information Services, Department of Internal Affairs, November 15, 2011, *http://webstandards.govt.nz/standards/nzgws-2/.*

[7] European Accessibility Requirements for Public Procurement of Products and Services in the ICT Domain, European Commission (EC), November 2, 2011, *http://www.mandate376.eu/.*

''RGAA 2.2.1'') and Japan (under ''JIS X 83141'') and has so far generated eight formal authorized translations.[8]

7. Clarification of Documentation Requirement for Undue Burden

In the 2010 ANPRM, the Board proposed clarifications to the circumstances when documentation for the basis of a determination of undue burden is required, proposing that documentation must be provided in cases of development, maintenance, or use of ICT, as well as procurement. This was a change from 36 CFR 1194.2(2) which only discussed documentation of an undue burden determination during procurement of ICT. 29 U.S.C. 794d(a)(4) requires that ''documentation by the department or agency supporting the procurement shall explain why compliance creates an undue burden''. 29 U.S.C. 794d(a)(1)(B) provides that federal agencies must provide alternative means of access to information and data to individuals with disabilities when development, procurement, maintenance, or use of electronic and information technology would impose an undue burden. The TEITAC recommended that the documentation requirement for undue burden be clarified. Accordingly, the Board added subsection E104.3 in the 2010 ANPRM to require documentation of undue burden determinations in the procurement, development, maintenance and use of ICT. The Board received only two comments, both made by one individual with a disability, in response to this provision. Both comments requested clarification of the factors to be addressed in undue burden documentation. In the 2011 ANPRM, the Board has clarified the factors used as the basis for a determination of undue burden in subsection E202.5.1, and retained the requirement for documentation in subsection E202.5.2.

The Board believes that requiring documentation of undue burden determinations for the use, maintenance, and development of ICT in addition to procurements will result in greater consistency and conformance with the 508 standards. These changes are consistent with the language of the statute, incorporate current practices, and encourage consistency in the documentation of undue burden determinations.

[8] Translations of W3C Documents, World Wide Web Consortium, retrieved November 23, 2011, *http://www.w3.org/2005/11/Translations/Lists/ListAuth.html.*

VI. Questions

A. General

In addition to the major policy questions discussed above, this ANPRM includes some non-substantive editorial changes to the first ANPRM that are not detailed in this discussion. In addition to the questions below, the Board seeks general comments on the provisions in this document, including the extent to which they are necessary, their advantages and disadvantages, their quantitative and qualitative benefits and costs, and recommended alternatives. The Board also invites the public to identify any gaps in the draft guidelines and standards, and approaches to addressing such gaps.

B. Questions

Question 1: As discussed above, in response to public comments, the Board has made significant changes to the 2010 ANPRM by consolidating, streamlining, and removing provisions and advisories to improve readability, comprehensibility, and usability. The Board seeks comment on this new approach.

Question 2: As noted above, the Board has changed the approach taken towards covered electronic content (E205.1) in the 2011 ANPRM. The proposed requirement in Section E205.1 requires electronic content falling into certain categories of official communications by federal agencies to be accessible. Should additional or different types of communications be included in this subsection? What are the benefits and costs of this approach? Would such an approach have any unintended consequences on federal agency communications?

Question 3: In the discussion above, the Board has changed the approach to the functional performance criteria for limited hearing (302.5) and limited vision (302.2) in the 2011 ANPRM to require three specific features to be provided. These features may be provided either directly or through the use of assistive technology. The Board requests information on whether the features listed in these functional performance requirements will provide accessibility to users with limited vision or hearing, or whether there are other features which should be required in addition or instead. What are the costs and benefits associated with requiring the three features?

Question 4: As noted above, the 2011 ANPRM has changed the relationship between the functional performance criteria and the technical provisions (E204.1). The Board seeks comment on the proposed approach requiring conformance with the functional performance criteria at all times, even when the technical provisions are met. What are the costs and benefits associated with this approach?

Question 5: The 2011 ANPRM requires Web sites to be accessible to individuals with disabilities by conforming to WCAG 2.0. WCAG 2.0 allows a non-conforming (*i.e.,* inaccessible) Web page to be considered compliant if there is an accessible mechanism for reaching an accessible version of the Web page that is up to date and contains the same information and functionality as the inaccessible Web page. A web page that meets all these criteria qualifies as a ''conforming alternate version'' and is intended to provide individuals with disabilities equivalent access to the same information and functionality as the non-conforming web page. However, unrestricted use of conforming alternate versions may facilitate the emergence of two separate Web sites: One for individuals with disabilities and another for individuals without disabilities. Alternatively, restricting the use of conforming alternate versions may result in significant costs to federal departments and agencies by limiting their options for providing accessible content.

Should the Board restrict the use of conforming alternate versions? The Board seeks comments on whether allowing inaccessible content, even with conforming alternate versions, negatively affects the usability and accessibility of Web sites by individuals with disabilities. The Board also requests comments on the difficulty or costs that may be incurred if federal departments or agencies are not free to use conforming alternate versions of content along with inaccessible content.

Question 6: As noted above, Chapter 4 addresses features of ICT which may be used to communicate or produce electronic content or retrieve information or data. Some of the sections addressing these features of ICT include but are not limited to: Two Way Voice Communication (408), Operable Parts (407), and Standard Connections (406). The Board seeks comment on whether it should provide additional provisions to address accessibility concerns associated with features of ICT, such as content displayed on small screens, which are not otherwise addressed. For example the Board is considering whether to allow an exception to subsection 402.4 for text size for ICT which has a smaller screen. Should the Board require a minimum or maximum screen size to display content? Should a minimum text size be

specified for display on a screen? When ICT communicates or produces electronic content or retrieves information or data, are there additional unique limiting features that are not adequately addressed in these provisions, such as screen and text size and battery life, which the Board should address?

Question 7: The 2011 ANPRM has retained the approach of addressing features of ICT which make the ICT accessible and usable to individuals with disabilities. Are there some features or technologies addressed in the ANPRM that are obsolete or that have changed in a way that makes the proposed requirements irrelevant or difficult to apply? If so, commenters should recommend revisions to those section(s) of the ANPRM that should be updated and, if possible, recommend specific changes that would address the needs of individuals with disabilities and the unique characteristics of the technology concerned.

Question 8: Some modern touch screen devices, such as versions of some smartphones and tablets, have proved popular with people who are blind, despite not having keys which are tactilely discernible. Should the provision requiring that input controls be tactilely discernible (407.3) be revised to allow for such novel input methods? Should the Board add an exception to 407.3 to allow for input controls which are not tactilely discernible when access is provided in another way? If so, how should access be addressed when the controls are not tactilely discernible? Should a particular technology or method of approach be specified?

Question 9: As discussed above, the subsection for WCAG 2.0 conformance (E207.2) for user interface components and content of platforms and applications is intended to set a single standard for user interfaces, without regard to underlying rendering mechanisms, such as web browsers, operating systems, or platforms. Is applying the WCAG 2.0 Success and Conformance criteria to electronic documents and applications outside the web browser environment sufficient and clear to users, or should the Board provide further clarification? Are there other accessibility standards more applicable to user interface components and content of platforms and applications than WCAG 2.0 that the Board should reference?

Nancy Starnes,

Chair.

[FR Doc. 2011–31462 Filed 12–7–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0870; FRL–9501–4]

Approval and Promulgation of Implementation Plans; South Dakota; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Dakota State Implementation Plan (SIP) addressing regional haze submitted by the State of South Dakota on January 21, 2011, as amended by a submittal received on September 19, 2011. This SIP revision was submitted to address the requirements of the Clean Air Act (CAA or Act) and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program'').

DATES: *Comments:* Comments must be received on or before February 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0870, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: fallon.gail@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0870. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. The Regional Office's official hours of business are Monday through Friday, 8:30–4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gail Fallon, EPA Region 8, at (303) 312–6281, or *fallon.gail@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(v) The words *South Dakota* and *State* mean the State of South Dakota.

Table of Contents

I. Background

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit particulate matter with a diameter less than 2.5 microns ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon (OC), elemental carbon (EC) and soil dust) and its precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). These precursors react in the atmosphere to form $PM_{2.5}$. $PM_{2.5}$ impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color and visible distance that one can see. $PM_{2.5}$ also can cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [1] in many Class I areas (*i.e.,* national parks, memorial parks, wilderness areas and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. 64 FR 35714, 35715 (July 1, 1999). In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *Id.*

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I federal areas [2] which impairment results from man-made air pollution.'' CAA § 169A(a)(1). The terms ''impairment of visibility'' and ''visibility impairment'' are defined in the Act to include a reduction in visual range and atmospheric discoloration. *Id.* section 169A(g)(6). In 1980, we promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''RAVI.'' 45 FR 80084 (December 2, 1980). These regulations represented the first phase in addressing visibility impairment. We deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment had improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues, and we promulgated regulations addressing regional haze in 1999. 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P. The Regional Haze Rule revised the existing visibility regulations to integrate into them provisions addressing regional haze impairment and establish a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. Some of the main regional haze requirements are summarized in section II of this action. The requirement to submit a Regional Haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. States were required to submit a SIP addressing regional haze visibility impairment no later than December 17, 2007.[3] 40 CFR 51.308(b).

Few states submitted a Regional Haze SIP prior to the December 17, 2007 deadline, and on January 15, 2009, EPA found that 37 states, including South Dakota and the District of Columbia, and the Virgin Islands, had failed to submit SIPs addressing the regional

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. *See* CAA section 162(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122, November 30, 1979. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. CAA section 162(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I federal areas.'' Each mandatory Class I Federal area is the responsibility of an FLM. *See* CAA section 302(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I federal area.''

[3] EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

haze requirements. 74 FR 2392. Once EPA has found that a state has failed to make a required submission, EPA is required to promulgate a FIP within two years unless the state submits a SIP and the Agency approves it within the two year period. CAA § 110(c)(1).

B. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments and various Federal agencies. Pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, we have encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were formed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Western Regional Air Program (WRAP) is a collaborative effort of state governments, tribal governments and various Federal agencies established to conduct data analyses, conduct pollutant transport modeling and coordinate planning activities among the western states. Member state governments include: Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnak, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe and the Shoshone-Bannock Tribe of Fort Hall.

II. Requirements for Regional Haze SIPs

The following is a summary of the requirements of the Regional Haze Rule. See 40 CFR 51.308 for further detail regarding the requirements of the rule.

A. The CAA and the Regional Haze Rule

Regional Haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and our implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install Best Available Retrofit Technology (BART) controls for the purpose of eliminating or reducing visibility impairment. The specific Regional Haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural and Current Visibility Conditions

The Regional Haze Rule establishes the deciview (dv) as the principal metric for measuring visibility. *See* 70 FR 39104, 39118. This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is sometimes expressed in terms of the visual range, which is the greatest distance in kilometers or miles at which a dark object can just be distinguished against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one deciview.[4]

The deciview is used in expressing reasonable progress goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current and natural conditions, and tracking changes in visibility. The Regional Haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by man-made air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, *i.e.,* man-made sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each Regional Haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the Regional Haze Rule requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and the average of the 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. We have provided guidance to states regarding how to calculate baseline, natural and current visibility conditions.[5]

For the first Regional Haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

[4] The preamble to the Regional Haze Rule provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

[5] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, *available* at *http://www.epa.gov/ttncaaa1/t1/memoranda/RegionalHaze_envcurhr_gd.pdf,* (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *Guidance for Tracking Progress Under the Regional Haze Rule,* (September 2003, EPA–454/B–03–004, available at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf,* (hereinafter referred to as our ''2003 Tracking Progress Guidance'').

C. Determination of Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of Regional Haze SIPs from the states that establish two reasonable progress goals (*i.e.,* two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. *See* 40 CFR 51.308(d), (f). The Regional Haze Rule does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (*i.e.,* ''background'') visibility conditions. In setting reasonable progress goals, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period. *Id.*

In establishing reasonable progress goals, states are required to consider the following factors established in section 169A of the CAA and in our Regional Haze Rule at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the reasonable progress goals for the best and worst days for each applicable Class I area. In setting the reasonable progress goals, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which states are to use for analytical comparison to the amount of progress they expect to achieve. If a state establishes a reasonable progress goal that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, the state must demonstrate, based on the reasonable progress factors, that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable, and that the progress goal adopted by the state is reasonable. In setting reasonable progress goals, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' *i.e.,* other nearby states with emission sources that may be affecting visibility impairment at the state's Class I areas. 40 CFR 51.308(d)(1)(iv). In determining whether a state's goals for visibility improvement provide for reasonable progress toward natural visibility conditions, EPA is required to evaluate the demonstrations developed by the state pursuant to paragraphs 40 CFR 51.308(d)(1)(i) and (d)(1)(ii). 40 CFR 51.308(d)(1)(iii).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources with the potential to emit 250 tons or more per year of any pollutant in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the Act requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [6] built between 1962 and 1977 procure, install and operate BART as determined by the state or by EPA in the case of a plan promulgated under section 110(c) of the CAA. Under the Regional Haze Rule, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, we published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. 70 FR 39104. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources. Regardless of source size or type, a state must meet the requirements of the CAA and our regulations for selection of BART, and the state's BART analysis and determination must be reasonable in light of the overarching purpose of the regional haze program.

The process of establishing BART emission limitations can be logically broken down into three steps: First, states identify those sources which meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301 [7]; second, states determine which of such sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source which fits this description is ''subject to BART''); and third, for each source subject to BART, states then identify the best available type and level of control for reducing emissions.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility-impairing pollutants are SO_2, NO_X and PM. We have stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciviews. 40 CFR part 51, appendix Y, section III.A.1.

In their SIPs, states must identify ''BART-eligible sources'' and ''subject-to-BART sources'' and document their

[6] The ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

[7] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

BART control determination analyses. The term ''BART-eligible source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. *See also* 40 CFR 51.308(e)(1)(ii)(A).

A Regional Haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of our approval of the Regional Haze SIP. CAA section 169(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the Regional Haze Rule, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See* CAA section 110(a). As noted above, the Regional Haze Rule allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART.

E. Long Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their Regional Haze SIP a 10- to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the Regional Haze Rule requires that states include a long term strategy (LTS) in their Regional Haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable reasonable progress goals. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area(s) located in another state or states, the Regional Haze Rule requires the state to consult with the other state(s) in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). Also, a state with a Class I area impacted by emissions from another state must consult with such contributing state, and must also demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the reasonable progress goals for the Class I area. *Id.* at (d)(3)(ii). The RPOs have provided a forum for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment (RAVI); (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the reasonable progress goals; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)

As part of the Regional Haze Rule, we revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first Regional Haze SIP. Future coordinated LTS and periodic progress reports evaluating progress towards reasonable progress goals, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI and must be submitted to us as a SIP revision.

G. Monitoring Strategy and Other SIP Requirements

Section 51.308(d)(4) of the Regional Haze Rule includes the requirement for a monitoring strategy for measuring, characterizing and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, *i.e.,* review and use of monitoring data from the network. The monitoring strategy is due with the first Regional Haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether reasonable progress goals will be met.

Under section 51.308(d)(4), the SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping and other measures necessary to assess and report on visibility.

The Regional Haze Rule requires control strategies to cover an initial implementation period extending to the

year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d), with the exception of BART. The requirement to evaluate sources for BART applies only to the first Regional Haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e). Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The Regional Haze Rule requires that states consult with Federal land managers (FLMs) before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the reasonable progress goals and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. Our Evaluation of South Dakota's Regional Haze SIP

The State of South Dakota submitted a revision to its SIP to address the requirements for regional haze on January 21, 2011. On September 19, 2011, South Dakota submitted an amendment to the Regional Haze SIP revision for approval into the South Dakota SIP. The amendment incorporated changes made by the State to ensure approvability of the SIP revision. The changes incorporated detailed monitoring, recordkeeping, and reporting requirements for BART sources into state regulation, Administrative Rules of South Dakota (ARSD) Chapter 74:36:21, including specifying that BART limits apply at all times and clarified compliance test methods for particulate matter and continuous emission monitoring system requirements for SO_2 and NO_X. In addition, South Dakota revised the reasonable progress analysis for the GCC Dacotah cement plant. The following is a discussion of our evaluation of the revision.

A. Affected Class I Areas

In accordance with 40 CFR 51.308(d), South Dakota identified two Class I areas within its borders: Badlands National Park and Wind Cave National Park. South Dakota is responsible for developing reasonable progress goals for these two Class I areas. South Dakota emissions have or may reasonably be expected to have impacts at Class I areas in other states including: Boundary Waters Canoe Area Wilderness Area and Voyageurs National Park in Minnesota; Medicine Lake National Wildlife Refuge Wilderness Area and UL Bend National Wildlife Refuge Wilderness Area in Montana; Bridger Wilderness Area, Fitzpatrick Wilderness Area, Grand Teton National Park, Teton Wilderness Area, North Absaroka Wilderness Area, Washakie Wilderness Area and Yellowstone National Park in Wyoming; and Theodore Roosevelt National Park and Lostwood Wilderness Area in North Dakota. South Dakota consulted with the appropriate state air quality agency in each of these states through their involvement with the WRAP and worked with other states that are not members of WRAP (including Minnesota and Nebraska). Assessment of South Dakota's contribution to haze in these Class I areas is based on technical analyses developed by WRAP.

B. Determination of Baseline, Natural and Current Visibility Conditions

As required by section 51.308(d)(2)(i) of the Regional Haze Rule and in accordance with our 2003 Natural Visibility Guidance, South Dakota calculated baseline/current and natural visibility conditions for its Class I areas, Badlands and Wind Cave, on the most impaired and least impaired days, as summarized below. The natural visibility conditions, baseline visibility conditions and visibility impact reductions needed to achieve the uniform rate of progress in 2018 for both South Dakota Class I areas are presented in Table 1 and further explained in this section. More detail is available in Section 3 of the South Dakota SIP.[8]

TABLE 1—VISIBILITY IMPACT REDUCTIONS NEEDED BASED ON BEST AND WORST DAYS BASELINES, NATURAL CONDITIONS AND UNIFORM RATE OF PROGRESS (URP) GOALS FOR SOUTH DAKOTA CLASS I AREAS

South Dakota Class I area	20% Worst days				20% Best days	
	2000–2004 Baseline (dv)	2018 URP Goal (dv)	2018 Reduction needed (delta dv)	2064 Natural conditions (dv)	2000–2004 Baseline (dv)	2064 Natural conditions (dv)
Badlands National Park	17.14	15.02	2.12	8.06	6.89	2.86
Wind Cave National Park	15.84	13.94	1.90	7.71	5.14	1.88

1. Estimating Natural Visibility Conditions

Natural background visibility as defined in our 2003 Natural Visibility Guidance is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors).

[8] The visibility and uniform rate of progress calculations presented in Table 1 and elsewhere in section III.B represent corrections EPA made to minor math errors in the visibility results South Dakota presented in the SIP and which the State agrees will be corrected with the next routine revision of the SIP. Our corrections are included in the docket in a spreadsheet entitled, EPA–R08–OAR–2011–0870 South Dakota Regional Haze Proposal Section III.B Visibility Conditions Corrections.

As documented in our 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to this guidance to estimate the values that characterize the natural visibility conditions of Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[9] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction.

For Badlands and Wind Cave, South Dakota opted to use the revised IMPROVE equation to calculate natural background conditions. This is an acceptable approach under our 2003 Natural Visibility Guidance. EPA has found the use of the revised IMPROVE equation appropriate for WRAP states.[10] For Badlands, the natural visibility background for the 20 percent worst days is 8.06 deciviews and for the 20 percent best days is 2.86 deciviews. For Wind Cave, the natural visibility result for the 20 percent worst days is 7.71 deciviews and for the 20 percent best days is 1.88 deciviews. We have reviewed South Dakota's estimates of the natural visibility conditions and as the approach used by the State was consistent with our 2003 Natural Visibility Guidance we are proposing to find them acceptable.

2. Estimating Baseline Visibility Conditions

As required by section 51.308(d)(2)(i) of the Regional Haze Rule, South Dakota calculated baseline visibility conditions for Badlands and Wind Cave. The baseline condition calculation begins with the calculation of light extinction using the IMPROVE equation. The IMPROVE equation sums the light extinction [11] resulting from individual pollutants, such as sulfates and nitrates. As with the natural visibility conditions calculation, South Dakota chose to use the revised IMPROVE equation.

The period for establishing baseline visibility conditions is 2000–2004, and baseline conditions must be calculated using available monitoring data. 40 CFR 51.308(d)(2). The South Dakota Regional Haze SIP employed visibility monitoring data collected by IMPROVE monitors located in both South Dakota Class I areas for the years 2000 through 2004 and the resulting baseline conditions represent an average for 2000–2004. South Dakota calculated the baseline conditions at Badlands as 17.14 deciviews on the 20 percent worst days, and 6.89 deciviews on the 20 percent best days. South Dakota calculated the baseline conditions at Wind Cave as 15.84 deciviews on the 20 percent worst days, and 5.14 deciviews on the 20 percent best days. We have reviewed South Dakota's estimations of baseline visibility conditions and propose to find these acceptable as the approach the State used was consistent with our 2003 Natural Visibility Guidance.

3. Natural Visibility Impairment

To address the requirements of 40 CFR 51.308(d)(2)(iv)(A), South Dakota also calculated the number of deciviews by which baseline conditions exceed natural visibility conditions at Badlands and Wind Cave. For Badlands, baseline conditions exceed natural conditions by 9.08 deciviews (17.14–8.06) for the 20 percent worst days and 4.03 deciviews (6.89–2.86) for the 20 percent best days. For Wind Cave, these figures are 8.13 (15.84–7.71) and 3.26 deciviews (5.14–1.88), respectively.

4. Uniform Rate of Progress

In setting the reasonable progress goals, South Dakota analyzed and determined the uniform rate of progress needed to reach natural visibility conditions by the year 2064. In so doing, South Dakota compared the baseline visibility conditions in Badlands and Wind Cave to the natural visibility conditions in Badlands and Wind Cave (as described above) and determined the uniform rate of progress needed in order to attain natural visibility conditions by 2064 in both Class I areas. South Dakota constructed the uniform rate of progress consistent with the requirements of the Regional Haze Rule by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for Badlands and Wind Cave. The uniform rates of progress are summarized in Table 2 and further described below.

Using a baseline visibility value at Badlands of 17.14 deciviews and a ''refined'' natural visibility value of 8.06 deciviews for the 20 percent worst days, South Dakota calculated the uniform rate of progress to be approximately 0.151 deciviews per year (deciviews/year or dv/yr). This results in a total reduction of 9.08 deciviews to reach the natural visibility condition of 8.06 deciviews in 2064. The uniform rate of progress results in a visibility improvement of 2.18 deciviews needed for the period covered by this SIP revision submittal (up to and including 2018).

Using a baseline visibility value at Wind Cave of 15.84 deciviews and a ''refined'' natural visibility value of 7.71 deciviews for the 20 percent worst days, South Dakota calculated the uniform rate of progress to be approximately 0.136 deciviews per year. This results in a total reduction of 8.13 deciviews to reach the natural visibility condition of 7.71 deciviews in 2064. The uniform rate of progress results in a visibility improvement of 1.89 deciviews needed for the period covered by this SIP revision submittal (up to and including 2018).

[9] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and state implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[10] The science behind the revised IMPROVE equation is summarized in a document entitled, Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans, February 28, 2011, (hereinafter referred to as EPA WRAP Technical Support Document and available in the docket) and in numerous published papers. See for example: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for IMPROVE, Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado, *available at http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htmand* Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006, *available at http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[11] The amount of light lost as it travels over one million meters. The haze index, in units of dv, is calculated directly from the total light extinction, b_{ext} expressed in inverse megameters (Mm^{-1}), as follows: HI = 10 $\ln(b_{ext}/10)$.

TABLE 2—SUMMARY OF UNIFORM RATES OF PROGRESS

Class I area	Badlands	Wind cave
Baseline Conditions	17.14 dv	15.84 dv
Natural Visibility	8.06 dv	7.71 dv
Total Improvement by 2064	9.08 dv	8.13 dv
Needed Improvement for this SIP by 2018	2.18 dv	1.89 dv
URP	0.151 dv/year	0.136 dv/year

We propose to find that South Dakota has appropriately calculated the uniform rates of progress.

C. BART

BART is an element of South Dakota's LTS for the first implementation period. As discussed in more detail in section II.D of this preamble, the BART evaluation process consists of three components: (1) An identification of all the BART-eligible sources; (2) an assessment of whether those BART-eligible sources are in fact subject to BART; and (3) a determination of any BART controls. South Dakota addressed these steps as follows:

1. Identification of BART-Eligible Sources

The first step of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. The State identified the BART-eligible sources in South Dakota by utilizing the approach set out in the BART Guidelines (70 FR 39158); this approach provides three criteria for identifying BART-eligible sources: (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emission unit(s) began operation on or after August 7, 1962, and was in existence on August 7, 1977; and (3) potential emissions of any visibility-impairing pollutant from subject units are 250 tons or more per year. South Dakota initially screened its emissions inventory and permitting database to identify major facilities with emission units in one or more of the 26 BART categories. Following this, South Dakota used its databases and records to identify facilities in these source categories with potential emissions of 250 tons per year or more for any visibility-impairing pollutant from any units that were in existence on August 7, 1977 and began operation on or after August 7, 1962.

The BART Guidelines direct states to address SO_2, NO_X and direct PM (including both coarse (PM_{10}) and fine ($PM_{2.5}$) particulate matter emissions as visibility-impairing pollutants and to exercise their ''best judgment to determine whether VOC or NH_3 emissions from a source are likely to have an impact on visibility in an area.'' *See* 70 FR 39162. The available inventory information indicates VOCs in South Dakota overwhelmingly come from biogenic sources, and NH_3 in South Dakota is primarily due to area sources, such as livestock and fertilizer application. Because these are not point sources, they are not subject to BART. We have reviewed this information and propose to find South Dakota's focus on SO_2, NO_X, and PM acceptable.

South Dakota identified BART-eligible sources in South Dakota as shown in Table 3. This information is presented in Section 6 of South Dakota's SIP.

TABLE 3—LIST OF BART-ELIGIBLE SOURCES IN SOUTH DAKOTA

BART-eligible source	Location	BART source category (SC)	Nearest class I area
1. Northern States Power Company (Units 1, 2, and 3).	Sioux Falls, South Dakota	SC 1—fossil fuel steam electric plants >250 MMBtu/hr heat input.	N/A.[1]
2. Otter Tail Power Company, Big Stone I (Unit 1).	Near Big Stone City, South Dakota	SC 1—fossil fuel steam electric plants >250 MMBtu/hr heat input.	Boundary Waters 431 km.
3. Pete Lien and Sons, Inc.	Rapid City, South Dakota	SC 12—lime plants	Wind Cave 52 km.

[1] South Dakota did not analyze the three units at Northern States Power for distance to Class I areas as they have been decommissioned.

2. Identification of Sources Subject to BART

The second step of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to any visibility impairment at any Class I area, *i.e.* those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.

a. Modeling Methodology

The BART Guidelines provide that states may use the CALPUFF [12] modeling system or another appropriate model to predict the visibility impacts from a single source on a Class I area and to, therefore, determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, *i.e.,* ''is subject to BART.'' The BART Guidelines state that we find CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162).

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions, and suggest that states may want to consult with us and their RPO to address any issues prior to modeling. South Dakota relied on WRAP's CALPUFF modeling for South Dakota BART sources as

[12] Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (*e.g.,* the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer at *http://www.src.com/verio/download/download.htm.*

recommended by the BART Guidelines.[13] 40 CFR part 51, appendix Y, section III.A.3.

To determine if each BART-eligible source has a significant impact on visibility, South Dakota used WRAP's CALPUFF modeling results to estimate daily visibility impacts above estimated natural conditions at each Class I area within 300 km of any BART-eligible facility, based on maximum actual 24-hour emissions over a three year period (2000–2002).

b. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' 70 FR 39104, 39161. The BART Guidelines also state that ''the appropriate threshold for determining whether a source contributes to visibility impairment may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' *Id.* Further, in setting a contribution threshold, states should ''consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts.'' The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity to a Class I area justifies this approach.

South Dakota used a contribution threshold of 0.5 deciviews for determining which sources are subject to BART. The State's decision was based on the following factors: (1) 0.5 deciviews equates to the 5% extinction threshold for new sources under the Prevention of Significant Deterioration (PSD) New Source Review rules, (2) 0.5 deciviews is consistent with the threshold selected by other states in the west, which all selected 0.5 deciviews, and (3) 0.5 deciviews represents the limit of perceptible change. Although we do not agree that all of the factors considered by South Dakota's Department of Environmental and Natural Resources are relevant in determining whether a source can be considered to cause or contribute to visibility impairment, we propose to approve the State's threshold of 0.5 deciviews. As the discussion below indicates, Big Stone I is the only BART-eligible source in South Dakota in operation. Given that and the fact that the modeling indicates that Big Stone I is reasonably anticipated to have an impact over the 0.5 deciview threshold at several Class I Areas, it is apparent that no BART-eligible sources were exempted from review based on the 0.5 deciviews threshold that could have had meaningful impact on visibility in one or more Class I areas. We are proposing that 0.5 deciviews is a reasonable threshold for South Dakota in determining whether its BART-eligible sources are subject to BART.

c. Sources Identified by South Dakota as Subject to BART

South Dakota determined that the three units at Northern States Power were not subject to BART because the units have been decommissioned and are no longer permitted to operate under the facility's Title V air quality permit. Consistent with the BART Guidelines, South Dakota requested that WRAP model each of its remaining operating BART-eligible sources to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

The WRAP modeling results demonstrated that Pete Lien and Sons, Inc. did not cause or contribute to visibility impairment at any Class I area. After reviewing the modeling inputs, South Dakota determined that the vertical kiln should be modeled again due to several errors. However, before additional modeling could be done, Pete Lien and Sons, Inc. shut down and dismantled the kiln in 2009 per its Title V permit.[14]

The WRAP modeling results for Otter Tail Power Company's Big Stone I are summarized in Table 4. The results show that Big Stone I's emissions cause visibility impacts that exceed the 0.5 deciviews threshold at the Badlands National Park in South Dakota, Theodore Roosevelt National Park in North Dakota, and Boundary Waters Wilderness and Voyageurs National Park in Minnesota.

TABLE 4—WRAP'S MODELING RESULTS FOR BIG STONE I

Class I area	State	Minimum distance to class I area (km)	98th percentile visibility impact (dv)[1]
Badlands	SD	470	0.683
Boundary Waters	MN	431	1.034
Bridger	WY	1,041	0.001
Fitzpatrick	WY	1,050	0.001
Grand Teton	WY	1,112	0.001
Lostwood	ND	585	0.263
Medicine Lake	MT	690	0.256
North Absaroka	WY	1,013	0.011
Teton	WY	1,052	0.004
Theodore Roosevelt	ND	555	0.687
UL Bend	MT	902	0.089
Voyageurs	MN	438	0.729
Washakie	WY	1,006	0.007
Wind Cave	SD	572	0.263

[13] The WRAP modeling protocol is available at *http://pah.cert.ucr.edu/aqm/308/bart/WRAP_RMC_BART_Protocol_Aug15_2006.pdf.*

[14] Although Pete Lien and Sons' existing Title V air quality permit still identifies the vertical kiln as a unit, permit condition 1.1 specifies in the footnote of Table 1–1 that Pete Lien and Sons is required to shutdown and dismantle the vertical kiln before the initial startup of Unit #45. Pete Lien and Sons fulfilled this commitment by notifying South Dakota on March 13, 2009, that the vertical kiln was shutdown and dismantled. See SIP Section 6.1.2.

TABLE 4—WRAP'S MODELING RESULTS FOR BIG STONE I—Continued

Class I area	State	Minimum distance to class I area (km)	98th percentile visibility impact (dv)[1]
Yellowstone	WY	1,049	0.009

[1] Modeling results represent the maximum 98th percentile impact over the modeled 3-year meteorological period 2001–2003.

South Dakota allowed Otter Tail Power Company to re-run the modeling after the company identified several errors in actual emission rates and stack parameters. After additional review, Otter Tail Power Company developed a revised modeling protocol that both the State and EPA approved. The modeling protocol is included in Appendix A of the SIP. The results from Otter Tail's modeling are summarized in Table 5. Otter Tail's modeling report is included in Appendix B of the SIP.

TABLE 5—OTTER TAIL'S MODELING RESULTS FOR BIG STONE I

Class I area	98th percentile visibility impact (dv)[1]
Badlands	0.5
Boundary Waters	1.1
Lostwood	0.4
Theodore Roosevelt	0.5
Voyageurs	0.7
Wind Cave	0.3
Isle Royale	0.7

[1] Modeling results represent the maximum 98th percentile impact over the modeled meteorological years 2002, 2006, and 2007.

In reviewing Otter Tail's results, the State rounded to one significant figure and determined that Big Stone I emissions cause visibility impacts that exceed the 0.5 deciviews threshold at the same Class I areas identified in the WRAP modeling in addition to Isle Royale in Michigan. South Dakota relied on Otter Tail's modeling, noting that it best represented the visibility impacts from Big Stone I because the original WRAP modeling did not have the correct emission rates and stack parameters and that the modeling protocol adjustments improved the accuracy of the model over long distances.

3. BART Determinations and Federally Enforceable Limits

The third step of a BART evaluation is to perform the BART analysis. The BART Guidelines (70 FR 39164) describe the BART analysis as consisting of the following five steps:

- Step 1: Identify All Available Retrofit Control Technologies,
- Step 2: Eliminate Technically Infeasible Options,
- Step 3: Evaluate Control Effectiveness of Remaining Control Technologies,
- Step 4: Evaluate Impacts and Document the Results, and
- Step 5: Evaluate Visibility Impacts.

In determining BART, the State must consider the five statutory factors in section 169A of the CAA: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. *See also* 40 CFR 51.308(e)(1)(ii)(A). The five-factor analysis occurs during steps 4 and 5 of the process.

South Dakota requested that Otter Tail Power Company complete a BART analysis for Big Stone I and used this analysis as a basis for its BART determination for this source for NO_X, SO_2 and PM. The Otter Tail BART analysis is included in Appendix C of the SIP. Otter Tail generally followed the five steps contained in the BART Guidelines and evaluated the five BART factors. In some instances, South Dakota identified additional control technologies for evaluation and also added an analysis of average cost effectiveness compared to visibility benefit (dollar per deciview) for the various multi-pollutant control options. We find that South Dakota, through its reliance on Otter Tail's BART analysis, reasonably considered the five BART factors and arrived at a reasonable BART determination for Big Stone I. We propose to approve South Dakota's BART determination summarized below.

a. Otter Tail Power Company, Big Stone I

Background

Big Stone I is a steam electric generating plant located near Big Stone City, South Dakota with one generating unit burning Powder River Basin coal and a net electrical output of 475 MW. The Otter Tail Power Company is the operating agent for the Big Stone Plant co-owners: NorthWestern Energy, Montana-Dakota Utilities, Co., a division of MDU Resources Group, and Otter Tail Power Company. The generating unit is a Babcock cyclone boiler that started operating in 1975. The State analyzed each pollutant and its effect on the visibility in Class I areas. Since Big Stone I does not have a total generating capacity greater than 750 MW, South Dakota was not required to follow the BART Guidelines in determining BART, but it generally followed the approach for determining BART set out in the Guidelines. A summary of the State's analyses of existing controls and potential BART controls for each pollutant is set forth below. The State's BART determination for Big Stone I is provided in Section 6 of the SIP. The visibility and cost impacts noted in the following assessment are derived from the company's BART analysis provided in Appendix B of the SIP.[15]

Unit 1 Boiler

SO_2 BART Review: Unit 1 has no existing SO_2 controls. The baseline uncontrolled SO_2 emissions that South Dakota reported in the SIP are 18,000 tons per year.

Step 1: Identify All Available Technologies.

The State identified the following SO_2 control options as having potential application to Unit 1: Fuel switching, coal cleaning, coal upgrading (K-Fuel), hydrated lime injection, semi-dry flue gas desulfurization (FGD), wet FGD, Enviroscrub, electro catalytic oxidation and the Airborne process.

Step 2: Eliminate Technically Infeasible Options.

The State eliminated the following options as technically infeasible: Coal

[15] Otter Tail's costs rely on the CUECost model. While we are satisfied with the State's control technology conclusions as further described in this section, in general we do not recommend relying on the CUECost model. According to the BART Guidelines, ''cost estimates should be based on the OAQPS Control Cost Manual, where possible'' ''[i]n order to maintain and improve consistency.'' 70 FR 39104, 39166. The OAQPS Control Cost Manual is now known as The EPA Air Pollution Control Cost Manual, EPA/452/B–02–001, 6th Ed., January 2002.

cleaning, coal upgrading, hydrated lime injection, Enviroscrub, Electro catalytic oxidation and the Airborne process. Fuel switching is a viable method to reduce sulfur dioxide emissions by switching to a fuel with lower sulfur content. The Big Stone facility's primary fuel source is subbituminous coal obtained from the Powder River Basin in Wyoming. Powder River Basin subbituminous coal has one of the lowest sulfur contents available in the United States. As such, the State concluded that Otter Tail Power Company has already implemented fuel switching.

Step 3: Evaluate Control Effectiveness of Remaining Control Technology.

The State considered the control efficiencies listed in Table 6.

TABLE 6—SUMMARY OF BIG STONE I SO_2 BART ANALYSIS CONTROL TECHNOLOGIES FOR UNIT 1 BOILER [1]

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions (tons/yr)	Emissions reduction (tons/yr)
Wet FGD #1	95	0.043	900	17,100
Wet FGD #2	83	0.15	3,130	14,870
Semi-Dry FGD #1	90	0.09	1,880	16,120
Semi-Dry FGD #2	83	0.15	3,130	14,870

[1] South Dakota calculated emissions from a baseline of 18,000 tons per year of SO_2. The baseline was derived from the highest average 24-hour average emission rate (4,832 pounds per hour) for calendar years 2001 through 2003 and operations occurring 85% of the time or 7,746 hours per year.

Step 4: Evaluate Impacts and Document Results.

Factor 1: Costs of compliance.

The State relied on Otter Tail's cost analysis for SO_2 controls and this is summarized below in Table 7. The State deemed the average cost effectiveness reasonable for the two remaining control options, semi-dry and wet FGD.

TABLE 7—SUMMARY OF BIG STONE I SO_2 BART COST ANALYSIS FOR UNIT 1 BOILER

Control option	Total installed capital cost (MM$)	Total annual cost (MM$)	Emissions reduction (tons/yr)	Cost effectiveness ($/ton)
Wet FGD #1	$171.8	$29.05	17,100	$1,699
Wet FGD #2	171.8	28.90	14,870	1,944
Semi-Dry FGD #1	141.3	23.57	16,120	1,462
Semi-Dry FGD #2	141.3	23.33	14,870	1,569

Factor 2: Energy impacts.

The State noted increased energy demand estimates provided by Otter Tail of 9,500 kilowatts (2.0 percent of generation) for wet FGD and 3,325 kilowatts (0.7 percent of generation) for semi-dry FGD. The State did not identify any energy requirements that would preclude the selection of either of the two alternatives.

Factor 3: Non-air quality environmental impacts.

The State described the non-air quality environmental impacts of the two control alternatives including the solid and aqueous waste streams. The semi-dry FGD system would be installed upstream of the existing baghouse. The baghouse would be used to collect the injected lime and reacted sulfur dioxide emissions along with other existing particulate matter emissions. Otter Tail did not identify how much additional particulate matter would be collected by the baghouse due to the use of the semi-dry FGD system. Otter Tail assumed the additional material collected in the baghouse would be negligible compared to the existing collection. Otter Tail estimated that the wet FGD system would generate an additional 44,700 tons of gypsum solids which would need to be properly disposed. The State did not identify any non-air quality effects that would preclude the selection of either of the two alternatives.

Factor 4: Remaining useful life.

The expected remaining useful life of the unit is greater than 30 years.

Factor 5: Evaluate visibility impacts.

Table 8 presents a comparison of the visibility impacts of the two top control options, wet FGD and semi-dry FGD. The values are derived from modeling conducted by Otter Tail. For the cases presented, Otter Tail held the emission rates for NO_X and PM constant but varied the SO_2 emissions rates in the model as noted. In some cases, the modeling predicted that the semi-dry FGD would produce a greater visibility benefit than the wet FGD. It is not clear why the model predicted this result; it may relate to stack parameters. Based on the visibility modeling, the State found that there would be no discernible visibility benefit from selecting a wet FGD over a semi-dry FGD.

TABLE 8—VISIBILITY IMPACT COMPARISON BETWEEN WET AND SEMI-DRY FGD SO_2 CONTROLS [1]

[98th Percentile—Deciviews]

Option [2]	Control equipment	Class I area [4]	2002	2006	2007
#3	OFA and Semi-dry FGD (0.09 lb/MMBtu)	Boundary Waters	0.319	0.534	0.620
		Voyageurs	0.307	0.391	0.450
		Isle Royale	0.363	0.287	0.323
		Badlands	0.219	0.172	0.230
		Theodore Roosevelt.	0.087	0.234	0.173
#4	OFA and Wet FGD (0.043 lb/MMBtu)	Boundary Waters	0.350	0.521	0.611

TABLE 8—VISIBILITY IMPACT COMPARISON BETWEEN WET AND SEMI-DRY FGD SO_2 CONTROLS [1]—Continued

[98th Percentile—Deciviews]

Option [2]	Control equipment	Class I area [4]	2002	2006	2007
		Voyageurs	0.312	0.464	0.502
		Isle Royale	0.351	0.250	0.290
		Badlands	0.225	0.191	0.234
		Theodore Roosevelt.	0.084	0.230	0.138
	Comparison Review [3] (incremental visibility impact of wet FGD (in Option 3) compared to semi-dry FGD (in Option 4)).	Boundary Waters	0.031	−0.013	−0.009
		Voyageurs	0.005	0.073	0.052
		Isle Royale	−0.012	−0.037	−0.033
		Badlands	0.006	0.019	0.004
		Theodore Roosevelt.	−0.003	−0.004	−0.035
#5a	SOFA and Semi-dry FGD (0.09 lb/MMBtu)	Boundary Waters	0.250	0.419	0.493
		Voyageurs	0.249	0.306	0.354
		Isle Royale	0.285	0.226	0.256
		Badlands	0.165	0.133	0.180
		Theodore Roosevelt.	0.069	0.186	0.141
#5b	SOFA and Wet FGD (0.043 lb/MMBtu)	Boundary Waters	0.274	0.407	0.478
		Voyageurs	0.244	0.365	0.393
		Isle Royale	0.274	0.195	0.227
		Badlands	0.174	0.147	0.182
		Theodore Roosevelt.	0.066	0.180	0.108
	Comparison Review [3] (incremental visibility impact of wet FGD (in Option 5a) compared to semi-dry FGD (in Option 5b)).	Boundary Waters	0.024	−0.012	−0.015
		Voyageurs	−0.005	0.059	0.039
		Isle Royale	−0.011	−0.031	−0.029
		Badlands	0.009	0.014	0.002
		Theodore Roosevelt.	−0.003	−0.006	−0.033

[1] Otter Tail Power Company conducted visibility modeling for both wet and semi-dry FGD options using combined controls with constant emission rates for NO_X and PM. Thus, the results shown include the noted SO_2 and NO_X control options and the existing fabric filter PM control option.

[2] An explanation of each of the numbered control options and the corresponding emission rates is included in Section 6 of the SIP, Table 6–13, p. 94.

[3] A negative number means the wet FGD had a lower visibility impact than the semi-dry FGD.

[4] These are the Class I areas that exceed the 0.5 deciview threshold as listed in Table 5.

Step 5: Select BART.

South Dakota determined BART to be the second ranked control option, semi-dry FGD at 90 percent control efficiency in Section 6.3.5.2 of the SIP. Even though the top ranked control option, wet FGD at 95 percent control efficiency, reduced the SO_2 emissions more than the second ranked option, the State determined that there is no discernible difference between the two options when considering visibility impacts. South Dakota specified BART limits of 505 lb/hour and 0.09 lb/MMBtu (30-day rolling average) that apply at all times including periods of startup, shutdown and malfunction. The estimated cost of the semi-dry FGD system was $1,462 per ton ($/ton) of SO_2 removed, and the capital and annualized costs were estimated to be $141,300,000 and $23,570,000 per year ($/year or $/yr), respectively.

We are proposing to approve the State's SO_2 BART determination for Big Stone I. The State's assessment of costs and other impacts and its elimination of the wet FGD at 95% control efficiency was reasonable based on the five-factor analysis. While the average cost effectiveness values for both wet FGD and semi-dry FGD are reasonable, the modeling predicted that the use of a wet FGD at 95% efficiency rather than a semi-dry FGD at 90% efficiency would result in minimal, if any, visibility benefit. Thus, it was reasonable for the State to eliminate a wet FGD at 95% efficiency from consideration. The installation of a semi-dry FGD at Big Stone I will result in a reduction in annual SO_2 emissions from the plant of approximately 16,120 tons.[16] The visibility benefit for the selected BART controls for all pollutants combined is provided in the summary in Table 12 in section III.C.3.b. below.

NO_X BART Review: Big Stone I is already equipped with overfire air (OFA) for NO_X control. South Dakota indicates in the SIP that Unit 1 has baseline controlled NO_X emissions of 18,000 tons per year with an emission rate of 0.65 lb/MMBtu.

Step 1: Identify All Available Technologies.

South Dakota identified the following control options as having potential application as BART: Selective catalytic reduction (SCR), oxygen enhanced combustion, catalytic absorption/oxidation, gas reburn, Enviroscrub, electro-catalytic oxidation, NO_XStar, Cascade processes, selective non-catalytic reduction (SNCR), rich reagent injection (RRI), flue gas recirculation (FGR), separated over-fire air (SOFA), over-fire air (OFA), and low-NO_X burners (LNB).

[16] The selected SO_2 emission limit of 0.09 lb/MMBtu (30-day rolling average) also happens to be well below the presumptive limit for EGU's without existing controls and over the 750 MW generating capacity threshold described in the BART Guidelines.

Step 2: Eliminate Technically Infeasible Options.

The State identified the following control options as technically infeasible: Oxygen enhanced combustion, absorption/oxidation, gas reburn, Enviroscrub, electro-catalytic oxidation, NO_XStar, Cascade processes, and LNB. The State noted that flue gas recirculation is not known to reduce nitrogen oxide emissions any further when added with an over-fire air system. Therefore, the State and Otter Tail Power Company did not conduct any further review of flue-gas recirculation.

Step 3: Evaluate Control Effectiveness of Remaining Control Technology.

The State considered the control efficiencies listed in Table 9.

TABLE 9—SUMMARY OF BIG STONE I NO_X BART ANALYSIS CONTROL TECHNOLOGIES FOR UNIT 1 BOILER [1]

Control option	Control efficiency (%)	Emission rate (lb/MMBtu)	Emissions (tons/yr)	Emissions reduction (tons/yr)
SCR and SOFA	89	0.10	2,000	16,000
RRI, SNCR and SOFA	77	0.20	4,090	13,910
SNCR and SOFA	60	0.35	7,220	10,780
SOFA	42	0.50	10,360	7,640
OFA	25	0.65	13,490	4,510

[1] South Dakota calculated emissions from a baseline of 18,000 tons per year of NO_X. The baseline was derived from the highest average 24-hour average emission rate (4,855 pounds per hour) for calendar years 2001 through 2003 and operations occurring 85% of the time or 7,746 hours per year.

Step 4: Evaluate Impacts and Document Results.

Factor 1: Costs of compliance.

The State relied on Otter Tail's cost analysis for NO_X controls and this is summarized below in Table 10. The State deemed the average cost effectiveness reasonable for all of the remaining control options, SCR, SNCR, RRI, SOFA, and OFA, as provided by Otter Tail.

TABLE 10—SUMMARY OF BIG STONE I NO_X BART COST ANALYSIS FOR UNIT 1 BOILER

Control option	Total installed capital cost (MM$)	Total Annual cost (MM$)	Emissions reduction (tons/yr)	Average cost effectiveness ($/ton)
SCR and SOFA	$81.9	$13.21	16,000	$825
RRI, SNCR and SOFA	16.2	11.39	13,910	818
SNCR and SOFA	11.9	3.99	10,780	197
SOFA	4.8	0.65	7,640	85
OFA	0	0.14	4,510	31

Factor 2: Energy impacts.

The State noted that all the energy impacts were less than one percent of the plant's generating capacity and did not identify any energy requirements that would preclude the selection of any of the alternatives.

Factor 3: Non-air quality environmental impacts.

The State discussed that the OFA and SOFA systems would increase the amount of unburned carbon in the flyash, which would increase the amount of flyash that needs to be properly disposed. Otter Tail Power Company considers this increase negligible compared to the existing amount of flyash being properly disposed.

The State noted that the SNCR and the SCR systems would generate a small amount of unreacted ammonia or urea to be emitted. Even though ammonia and urea are not considered regulated air pollutants, these emissions are involved in the formation of ammonium sulfates and ammonium nitrates, which contribute to the amount of visibility impairment.

The State did not identify any non-air quality environmental impacts that would preclude the selection of any of the control equipment alternatives.

Factor 4: Remaining useful life.

The expected remaining useful life of the unit is greater than 30 years.

Factor 5: Evaluate visibility impacts.

Table 12, below, presents the visibility impacts for the State's selected BART controls for all pollutants. The values presented come from Otter Tail's modeling. The State found that SCR + SOFA would result in greater visibility improvement than the other options.

Step 5: Select BART.

South Dakota determined BART to be SCR + SOFA. South Dakota specified BART limits of 561 lb/hour and 0.10 lb/MMBtu (30-day rolling average) that apply at all times including periods of startup, shutdown, and malfunction. The estimated cost of the SCR + SOFA controls was $825 per ton ($/ton) of NO_X removed, and the capital and annualized costs were estimated to be $81,800,000, and $13,210,000 per year ($/year or $/yr), respectively.

We are proposing to approve the State's NO_X BART determination for Big Stone I. The State's assessment of costs and other impacts was reasonable. The installation of SCR and SOFA at Big Stone I will result in a reduction in annual NO_X emissions from the plant of approximately 16,000 tons. Table 12, below, provides the visibility benefit for the selected BART controls for all pollutants combined.

PM BART Review: Big Stone I is already equipped with a pulse jet fabric filter baghouse for PM which is considered the most efficient control technology available. The baseline controlled PM emissions that South Dakota reported in the SIP are 300 tons per year with an emission rate of 0.015 lb/MMBtu. The State identified the following PM control options as having potential application to the Big Stone I boiler: Existing fabric filter baghouse, new fabric filter baghouse, compact hybrid particulate collector (COHPAC), electrostatic precipitator, wet scrubber,

and cyclones/multiclones. The State did not eliminate any of the control technologies as technically infeasible for controlling PM emissions from the boiler.

South Dakota determined BART to be no additional controls. The State reviewed the five BART factors generally, but noted no further detailed analysis was required since Otter Tail has already installed and is operating a fabric filter baghouse, which is the top particulate control technology. South Dakota specified BART limits of 67.3 lb/hour and 0.012 lb/MMBtu (30-day rolling average). The latter represents a stringent level of control that is consistent with recent Best Available Control Technology determinations for PSD permits.

We are proposing to approve the State's PM BART determination for Big Stone I. The State's assessment that no detailed analysis is required since the most stringent control option is already in place is consistent with the BART Guidelines. (40 CFR 51, appendix Y, IV.D.5.) Furthermore, since South Dakota's proposed BART emission limits does not explicitly exempt emissions during malfunctions, we interpret the SIP to require compliance with the PM limits at all times (including malfunctions).

b. South Dakota's BART Results and Summary

We have summarized South Dakota's BART determinations in Table 11 below. We have summarized the visibility impacts at the appropriate Class I areas for South Dakota's selected BART controls in Table 12 below. The substantial emissions reductions in SO_2 and NO_X will result in a significant improvement in visibility at several Class I areas. The visibility improvement from reducing both pollutants at the most impacted area, Boundary Waters, is estimated to be 0.9 deciviews and 54 fewer days above 0.5 deciviews.[17]

South Dakota's Regional Haze Rule, which we are proposing to approve with the SIP, requires each source subject to BART to install and operate BART no later than five years after we approve the Regional Haze SIP. Administrative Rules of South Dakota (ARSD) Chapter 74:36:21. Given the scope of the retrofits involved, five years represents a schedule that is expeditious as practicable. This satisfies the requirement under 40 CFR 51.308(e)(1)(iv), that ''each source subject to BART be required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.''

As noted previously, to be approvable, the Regional Haze SIP must include monitoring, recordkeeping, and reporting requirements to ensure that the BART limits are enforceable. South Dakota has included these requirements in ARSD Chapter 74:36:21. We have reviewed these requirements and find them to be adequate as they relate to the BART limits we are proposing to approve. In particular, for SO_2 and NO_X BART limits, the rule requires the use of continuous emission monitoring systems (CEMS) to determine compliance, generally in accordance with 40 CFR part 75. For the filterable PM BART limits, the rule requires stack testing. Adequate recordkeeping and reporting requirements are also specified.

For the reasons discussed above, we propose to find that South Dakota satisfied the BART requirements of 40 CFR 51.308(e).

TABLE 11—SOUTH DAKOTA BART DETERMINATIONS FOR BIG STONE I UNIT 1 BOILER

Pollutant	Baseline emissions (tons/yr)[1]	Baseline level of control (% reduction)	BART level of control (% reduction)	Control device	Emissions after controls (tons/yr)	Emission reduction (tons/yr)	Emission limit
SO_2	18,000	0	90	Semi-dry FGD	1,880	16,120	505 lb/hr, and 0.09 lb/MMBtu, 30-day rolling average.
NO_X	18,000	25	88	SOFA + SCR	2,000	16,000	561 lb/hr, and 0.10 lb/MMBtu, 30-day rolling average.
PM	300	95–99.9	95–99.9	Existing Fabric Filter			67.3 lb/hr, and 0.012 lb/MMBtu, 30-day rolling average.

[1] South Dakota calculated baseline emissions for SO_2 and NO_X by identifying the highest average 24-hour average actual emission rate for the years 2001 through 2003 and adjusted this to 85% operations level or 7,746 hours per year.

TABLE 12—VISIBILITY IMPACTS FOR SOUTH DAKOTA'S BART DETERMINATIONS FOR BIG STONE I UNIT 1 BOILER

[98th Percentile—Deciviews]

Control options	Class I area	2002	2006	2007
SCR, SOFA, and Semi-Dry FGD[1]	Boundary Waters	0.097	0.136	0.170
	Voyageurs	0.086	0.107	0.123
	Isle Royale	0.092	0.077	0.098
	Badlands	0.079	0.060	0.070
	Theodore Roosevelt	0.036	0.070	0.064

[1] The results reflect the visibility impacts after installation of controls with an SCR at a NO_X emissions rate of 0.1 lb/MMBtu, a semi-dry FGD at an SO_2 emissions rate of 0.15 lb/MMBtu, and the existing pulse jet fabric filter baghouse at a PM emissions rate of 0.015 lb/MMBtu. The selected BART emissions limits for SO_2 and PM are lower than the modeled values, therefore, the visibility impacts after BART controls are installed will be lower than those presented in this table. See Table 8 for a comparison of visibility impacts for wet and semi-dry FGD. See Table 5 for baseline visibility impacts.

[17] The 0.9 deciviews estimated visibility benefit at Boundary Waters is calculated by subtracting the 2007 impact of 0.17 deciviews in Table 12 from the baseline impact of 1.1 deciviews in Table 5. Our calculations for 54 fewer days above 0.5 deciviews are included in the docket.

D. Evaluation of South Dakota's Reasonable Progress Goals

In order to establish reasonable progress goals for Badlands and Wind Cave and to determine the controls needed for the LTS, South Dakota followed the process established in the Regional Haze Rule. First, South Dakota identified the anticipated visibility improvement in 2018 in the two South Dakota Class I areas using the WRAP Community Multi-Scale Air Quality (CMAQ) photochemical grid modeling results. This modeling identified the extent of visibility improvement from the baseline by pollutant for each Class I area. The modeling relied on projected source emission inventories, which included enforceable Federal and state regulations already in place and anticipated BART controls.

South Dakota then identified, with input from EPA, the sources and source categories (other than BART sources) in South Dakota that are major contributors to visibility impairment and considered whether these sources should be controlled based on a consideration of the factors identified in the CAA and EPA's regulations. *See* CAA 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A). South Dakota also computed the baseline visibility impacts for these sources using their 2002 actual emissions and the CALPUFF modeling system. Next, based on this analysis, South Dakota set the reasonable progress goals for each Class I area and compared the reasonable progress goals for each area to the 2018 uniform rate of progress. The SIP includes South Dakota's analysis and conclusion that reasonable progress will be made by 2018, including an analysis of pollutant trends, emission reductions, and improvements expected. The reasonable progress discussion and analyses are included in Section 7 of the SIP. We are proposing to approve South Dakota's submitted reasonable progress goals as described more fully below.

1. WRAP Visibility Modeling

The primary tool WRAP relied upon for modeling regional haze improvements by 2018, and for estimating South Dakota's Reasonable Progress Goals, was the CMAQ model. The CMAQ model was used to estimate 2018 visibility conditions in South Dakota and all western Class I areas, based on application of anticipated regional haze strategies in the various states' regional haze plans, including assumed controls on BART sources.[18]

2. Reasonable Progress ''Four-Factor'' Analysis

In determining the measures necessary to make reasonable progress, states must take into account the following four factors and demonstrate how they were taken into consideration in selecting reasonable progress goals for a Class I area:

- Costs of Compliance,
- Time Necessary for Compliance,
- Energy and Non-Air Quality Environmental Impacts of Compliance, and
- Remaining Useful Life of any Potentially Affected Sources.

CAA 169A(g)(1) and 40 CFR 308(d)(1)(i)(A).

As the purpose of the reasonable progress analysis is to evaluate the potential of controlling certain sources or source categories for addressing visibility from manmade sources, the four-factor analysis conducted by South Dakota addresses only anthropogenic sources, on the assumption that the focus should be on sources that can be ''controlled.'' In its evaluation of potential sources or source categories for reasonable progress, South Dakota primarily considered point sources. South Dakota determined that the key pollutants contributing to visibility impairment at the two Class I areas are SO_2, organic carbon and NO_X. South Dakota also only considered controls for emissions of SO_2 and NO_X (*i.e.,* sulfate and nitrate) which are typically associated with anthropogenic sources. South Dakota determined the major source of organic carbon in the two Class I areas is natural fire. By reviewing the WRAP modeling results, South Dakota determined that PM emissions from point sources contribute only a minimal amount to visibility impairment in the South Dakota Class I areas.

Based on the WRAP CMAQ modeling, South Dakota's contribution of ammonia sulfate, organic carbon mass, and ammonia nitrate concentrations is approximately 1.5% for ammonia sulfate, minimal for organic carbon mass, and 4% for ammonia nitrate. Therefore, South Dakota concluded that minimal gain would be achieved from further reduction in sulfur dioxide, organic carbon mass, and nitrogen oxide emissions from point sources within South Dakota. More discussion on sources of sulfate and nitrate emissions and the State's rationale for focusing on point sources is included in Section 7 of the SIP. South Dakota initially asserted that a four-factor analysis was not warranted based on its belief that Badlands and Wind Cave would both achieve the needed reductions to meet the uniform rate of progress for both Class I areas despite the WRAP predictions. This belief was based on the State's conclusion that the emission estimates included in the WRAP modeling turned out to be too high. The emission estimates did not include reductions reflecting the BART emission limits for Otter Tail Power Company's BigStone I facility but did include anticipated emissions from two proposed coal-fired power plants—Big Stone II and NextGen. The Big Stone II facility will not be constructed and the NextGen facility is on hold indefinitely.

However, South Dakota did not remodel with revised emissions estimates to demonstrate that the uniform rate of progress would be met for Badlands and Wind Cave. EPA therefore requested that South Dakota perform a four-factor analysis for three facilities, at a minimum: the Black Hills Ben French power plant, the GCC Dacotah cement plant, and the Pete Lien and Sons lime plant. South Dakota did perform a four-factor analysis for Black Hills Ben French and GCC Dacotah based on the WRAP's report, *Supplementary Information for Four-Factor Analyses for Selected Individual Facilities in South Dakota,* May 19, 2009, authored by EC/R (hereinafter referred to as the EC/R Report). The EC/R Report is included in Appendix F of the SIP. The EC/R report did not address the Pete Lien and Sons lime plant.

During our review of South Dakota's four-factor analysis, we analyzed actual emissions data from EPA's 2002 National Emissions Inventory database. We started with the emissions inventory totals for SO_2 and NO_X then divided the actual emissions (Q) in tons per year from the sources by their distance (D) in kilometers to the nearest Class I Federal area. A summary list of the largest sources we reviewed in our Q/D analysis is included below in Table 13.

[18] We provide a more detailed discussion on the WRAP modeling in section IV.E.3 below and in the EPA WRAP Technical Support Document available in the docket.

TABLE 13—EPA Q/D ANALYSIS FOR SOUTH DAKOTA SOURCES

Source	SO_2 + NO_X 2000–2004 average (tons)	Distance to nearest Class I area (km)	Q/D to closest Class I area (tons/km)
Black Hills, Ben French Power Plant	1,782	65	27.41
GCC Dacotah	4,465	66	67.66
John Morrell & Company	648	410	1.58
Merillat Industries Inc.	135	58	2.33
Pete Lien and Sons, Inc.	276	59	4.68

South Dakota did not undertake a reasonable progress analysis of John Morrell & Company or Merillat Industries, Inc. Given the low Q/D values associated with these two sources, we are proposing to find that South Dakota's approach was reasonable.

Although Pete Lien and Sons, Inc. also had a Q/D of less than 10, the State did consider whether controls should be required for reasonable progress. South Dakota opted, however, not to conduct a full four-factor analysis on Pete Lien and Sons but did a general review of the impacts of this facility. Pete Lien and Sons' SO_2 emissions are less than 1 ton/year and so have a de minimus impact on visibility in any Class I area. For NO_X, the State has determined that the plant is already required to use what is considered Best Available Control Technology (BACT), and thus no further controls are required. As further explanation, the 2002 NO_X emissions for Pete Lien and Sons were 272 tons/year. In May 2008, the company included a BACT analysis for NO_X in a PSD application for a new preheater-type rotary lime kiln and ancillary equipment for this facility. The BACT analysis found non-selective catalytic reduction and selective catalytic reduction to be technically infeasible for several reasons including temperatures and the location of injection nozzles. South Dakota reviewed the application at the time and agreed with the conclusion that BACT for a lime rotary kiln was considered good combustion practices. South Dakota conducted a further review of EPA's RACT/BACT/LAER Clearinghouse to determine if any new rotary lime kilns had been permitted since Pete Lien and Sons' PSD application had been submitted with more stringent post-combustion BACT controls. There were three entries. One occurred in each of the states of Texas, Ohio, and Wisconsin. The Texas source only involved carbon monoxide. In Ohio and Wisconsin, the permitting authorities had concluded in the BACT analyses for NO_X that no control technologies were cost effective and that good combustion practices were considered BACT. The State concluded there were no new rotary lime kilns that had been required to install post-combustion NO_X controls for BACT. As a result, the State concluded that such controls would not constitute BART.

South Dakota also evaluated Pete Lien and Sons' visibility impacts at Badlands and Wind Cave by conducting a CALPUFF modeling analysis. The modeling report is included in Appendix I of the SIP. A summary of the modeling results is provided below in Table 14.

TABLE 14—SUMMARY OF BASELINE VISIBILITY IMPACTS FROM REASONABLE PROGRESS SOURCE PETE LIEN AND SONS

[98th Percentile, dv]

Year	Badlands	Wind Cave
2002	0.05	0.06
2006	0.06	0.05
2007	0.07	0.05

We propose to approve South Dakota's less detailed analysis for Pete Lien and conclusion that no controls are required. A Q/D value of 10 is generally viewed as a conservative threshold for identifying facilities that may have significant source-specific impacts. We consider a Q/D threshold of 10 to be reasonable for this planning period based on the FLM's proposed FLAG Guidance amendments for initial screening criteria, as well as statements in EPA's BART guidelines.[19] For Pete Lien and Sons, the Q/D of 4.68 is well below this threshold; the baseline visibility impacts analysis by South Dakota in Table 14 confirms that Pete Lien and Sons does not have significant source-specific impacts.

South Dakota undertook a more detailed analysis of the two sources that exceeded a Q/D of 10, Black Hills Ben French and GCC Dacotah. These sources are further described below in Table 15.

TABLE 15—SOUTH DAKOTA SOURCES FOR REASONABLE PROGRESS FOUR-FACTOR ANALYSES

Source	Unit	Type	Capacity	SO_2 actual average emissions 2002 (tons/yr)	NO_X actual average emissions 2002 (tons/yr)
Black Hills, Ben French Power Plant.	Unit 1 Boiler	EGU	25 MWe	785	907
GCC Dacotah	Wet Kiln 4	Cement Plant	550 tons clinker/day	26	707
	Wet Kiln 5	Cement Plant	550 tons clinker/day	431	388
	Wet Kiln 6[1]	Cement Plant	2,250 tons clinker/day	885	2,267

[1] South Dakota opted not to include Kiln 6 in its four-factor analysis as further described in the State's conclusions in section III.D.3 below.

[19] The relevant language in our BART Guidelines reads, ''Based on our analyses, we believe that a state that has established 0.5 dv as a contribution threshold could reasonably exempt from the BART review process sources that emit less than 500 tons per year of NO_X or SO_2 (or combined NO_X and SO_2), as long as these sources are located more than 50 kilometers from any Class I area; and sources that emit less than 1000 tons per year of NO_X or SO_2 (or combined NO_X and SO_2) that are located more than 100 kilometers from any Class I area.'' (See 40 CFR 51, appendix Y, section III, How to Identify Sources ''Subject to BART.'') The values described equate to a Q/D of 10.

Four-Factor Analysis

The control options and costs that South Dakota considered were derived, in part, from the EC/R report. EPA also requested South Dakota consider SNCR at GCC Dacotah which was not included in the EC/R report. For the Black Hills Ben French and GCC Dacotah reasonable progress sources, SO_2 and NO_X are uncontrolled, although the Black Hills Ben French facility uses low-sulfur coal (0.33 wt%) to minimize formation of SO_2 during combustion.

Cost of Compliance

Tables 16 and 17 show the cost of compliance for the control technologies evaluated for each of the reasonable progress sources.

TABLE 16—CONTROL OPTION COSTS FOR REASONABLE PROGRESS SOURCE BLACK HILLS, BEN FRENCH POWER PLANT [1]

Pollutant	Control option	2002	Control efficiency		Reductions		Capital cost ($1000)	Annual cost ($1000)	Cost effectiveness range ($/ton)	
		(tons/yr)	%	%	(tons/yr)	(tons/yr)			High end	Low end
NO_X	LNB	907	30	75	272	680	1,250	195	717	287
	LNB w/OFA	907	50	65	454	590	1,780	298	656	505
	SNCR	907	30	75	272	680	1,290	770	2,831	1,132
	SCR	907	40	90	363	816	3,000	754	2,077	924
							4,250	1,068	2,942	1,309
SO_2	Dry Sorbent Injection	785	10	40	79	314	4,300	1,700	21,519	5,414
	Spray Dryer Absorber	785	.....	90	.....	707	11,600	2,670	.....	3,777
	Wet FGD	785	.....	90	.....	707	14,600	2,760	.....	3,904

[1] The cost analysis was based on a 30-year equipment life. Black Hills indicated the expected life of the Ben French power plant is 10 years. South Dakota conducted an additional analysis with a 10-year equipment life. The 10-year evaluation resulted in slightly higher average cost effectiveness values but did not change the outcome of the analysis. All controls are cost effective with the exception of the dry sorbent injection at the lowest end of the control efficiency range which would not reflect the true performance capability of the technology; we consider the high end of the range to be most appropriate.

TABLE 17—CONTROL OPTION COSTS FOR REASONABLE PROGRESS SOURCE GCC DACOTAH, CEMENT PLANT [1]

Pollutant	Control option	2002	Control efficiency		Reductions		Capital cost ($1000)	Annual cost ($1000)	Cost effectiveness range ($/ton)	
		(tons/yr)	%	%	(tons/yr)	(tons/yr)			High end	Low end
Wet Kiln 4										
NO_X	LNB (indirect)	707	30	40	212	283	526	129	608	456
	LNB (direct)	707	.....	40	.....	283	1,873	331	.....	1,170
	Biosolids Injection	707	.....	23	.....	163	.....	.....	[2]	[2]
	CemStar	707	20	60	141	424	1,599	299	2,121	705
	Mid-Kiln	707	20	50	141	354	2,748	−315	[3]	[3]
	LoTOx™	707	80	90	566	636	.....	.....	[2]	[2]
	SCR	707	.....	80	.....	566	14,813	4,137	.....	7,309
	SNCR	707	30	40	212	283	.....	878 [3]	4,142	3,102
SO_2	Wet FGD	26	90	99	23	26	9,133	1,370	59,565	52,692
Wet Kiln 5										
NO_X	LNB (indirect)	388	30	40	116	155	526	129	1,112	832
	LNB (direct)	388	.....	40	.....	155	1,873	331	.....	2,135
	Biosolids Injection	388	.....	23	.....	89	.....	.....	[2]	[2]
	CemStar	388	20	60	78	233	1,599	299	3,833	1,283
	Mid-Kiln	388	20	50	78	194	2,748	−315	[3]	[3]
	LoTOx™	388	80	90	310	349	.....	.....	[2]	[2]
	SCR	388	30	40	116	155	.....	878 [3]	7,569	5,665
	SNCR	388	.....	80	.....	310	14,813	4,137	.....	13,345
SO_2	Wet FGD	431	90	99	388	427	9,133	1,370	3,531	3,208

[1] South Dakota also did an analysis based on operating scenario with 50% fewer hours based on last five years of actual operations showing all costs would still be economical.

[2] The EC/R report did not list a cost per ton because it did not identify any capital or annual costs.
[3] South Dakota did not list a cost per ton because the annual cost was a negative number.

Time Necessary for Compliance

While the State did not provide specifics on the time necessary for compliance, the EC/R report upon which the State relied for other aspects of its four-factor analysis found that up to 6.5 years after SIP approval would be necessary to achieve compliance with some of the control options. The State did not identify the time necessary for compliance as a factor that would preclude selection of any of the analyzed control options.

Energy and Non-Air Quality Impacts

The State did not identify any energy or non-air quality impacts that would preclude selection of any of the analyzed control options. The EC/R report upon which the state relied for other aspects of its four-factor analysis describes the various potential energy and non-air quality impacts of various control technologies in general terms for consideration.

Remaining Useful Life of the Source

South Dakota found the remaining useful life would be at least 10 years for the Black Hills, Ben French Power Plant but also considered a 30 year life in its cost analysis. South Dakota used a remaining useful life of at least 30 years for the GCC Dacotah Cement Plant Kiln 4 and Kiln 5 but generally questioned the accuracy of this based on much reduced operations over the past five years.

Visibility Improvement

In addition to evaluating the four statutory factors, South Dakota also considered the baseline visibility impacts for each RP source based on maximum 24-hour emission rates for meteorological years 2002, 2006, and 2007 compared to natural background. The CALPUFF modeling results for Black Hills Ben French and GCC Dacotah are summarized in Tables 18 and 19 below. The modeling reports are available in Appendices G and H of the SIP.

TABLE 18—SUMMARY OF BASELINE VISIBILITY IMPACTS FROM REASONABLE PROGRESS SOURCE BLACK HILLS BEN FRENCH UNIT 1 BOILER

[98th Percentile, dv]

Year	Badlands	Wind Cave
2002	0.21	0.22
2006	0.23	0.23
2007	0.20	0.30

TABLE 19—SUMMARY OF BASELINE VISIBILITY IMPACTS FROM REASONABLE PROGRESS SOURCE GCC DACOTAH KILNS 4 AND 5

[98th Percentile, dv]

Year	Badlands	Wind Cave
2002	0.32	0.36
2006	0.32	0.36
2007	0.31	0.46

3. South Dakota's Conclusions From the Four-Factor Analysis

South Dakota declined to conduct a four-factor analysis for GCC Dacotah Kiln 6. In addressing a concern raised by the National Park Service [20] during the public comment period for the GCC Dacotah Cement Plant, South Dakota provided an explanation in an email to EPA regarding its decision not to include GCC Dacotah's Kiln 6 in its four-factor analysis for the facility and specifically, not to impose SNCR controls on that unit. [21] As the State explained, GCC Dacotah submitted a PSD air quality application for an upgrade to Kiln 6 in November 2001. In issuing the PSD permit in 2003, South Dakota determined NO_X BACT for Kiln 6 was the installation of staged combustion with a thermal efficient in-line low-NO_X calciner complimented by a LNB with indirect firing in the kiln; South Dakota found that SNCR was not technically feasible for Kiln 6. GCC Dacotah installed the required NO_X BACT controls. South Dakota also determined SO_2 BACT for Kiln 6 and imposed a corresponding emissions limit.

Based on the baseline visibility impacts, the State concluded that visibility benefits from controls at Ben French and GCC Dacotah would be small. Given the small benefits, the State concluded that additional controls during this planning period would not be warranted to achieve reasonable progress. The State did not include a discussion of its four-factor analyses in explaining the basis for its conclusion that additional controls are unwarranted but instead based its determination on the modeling of baseline visibility impacts.

4. Establishment of the Reasonable Progress Goals

40 CFR 308(d)(1) of the Regional Haze Rule requires states to ''establish goals (in deciviews) that provide for reasonable progress towards achieving natural visibility conditions'' for each Class I area of the state. These reasonable progress goals are interim goals that must provide for incremental visibility improvement for the most impaired visibility days, and ensure no degradation for the least impaired visibility days. The reasonable progress goals for the first planning period are goals for the year 2018.

Based on (1) The results of the WRAP CMAQ modeling; (2) the results of the four-factor analysis of major South Dakota sources; and (3) the emission controls on South Dakota BART sources, South Dakota established reasonable progress goals for the most impaired days for both of South Dakota's Class I areas, as identified in Table 20 below. Also shown in Table 20 is a comparison of the reasonable progress goals to the uniform rate of progress for both Class I areas. The reasonable progress goals for the 20% worst days fall short of the uniform rate of progress by 1.28 and 1.34 deciviews for Badlands and Wind Cave, respectively.

[20] The National Park Service commented that South Dakota's reasonable progress analysis should also include Kiln #6 at GCC Dacotah as the National Park Service believes SNCR technology is a feasible control option for cement kilns. August 17, 2011 letter from NPS, John Bunyak to DENR, Rick Boddicker. This letter is included in the docket.

[21] Email from Rick Boddicker, DENR to Gail Fallon, EPA Region 8 (October 11, 2011). This email is included in the docket.

TABLE 20—COMPARISON OF REASONABLE PROGRESS GOALS TO UNIFORM RATE OF PROGRESS ON MOST IMPAIRED DAYS FOR SOUTH DAKOTA CLASS I AREAS

South Dakota class I area	Visibility conditions on 20% worst days (dv)			Percentage of URP achieved
	Average for 20% worst days (baseline 2000–2004)	2018 URP goal	RPG (WRAP projection)	
Badlands National Park	17.14	15.02	16.30	40
Wind Cave National Park	15.84	13.94	15.28	29

South Dakota's reasonable progress goals for Badlands for 2018 for the 20% worst days represent a 0.84 deciviews improvement over baseline and its reasonable progress goals for Wind Cave for 2018 represent a 0.56 deciviews improvement over baseline. South Dakota's reasonable progress goals establish a slower rate of progress than the uniform rate of progress. South Dakota has calculated that under the rate of progress represented by its reasonable progress goals, South Dakota would attain natural visibility conditions in the year 2265 for Badlands and 2236 for Wind Cave, or 201 and 172 years, respectively, beyond 2064.

Table 21 provides a comparison of South Dakota's reasonable progress goals to baseline conditions on the least impaired days. This comparison demonstrates that South Dakota's reasonable progress goals will result in no degradation in visibility conditions in the first planning period; instead, for the 20% best days, there would be a slight improvement in visibility from the baseline for both Class I areas.

TABLE 21—COMPARISON OF REASONABLE PROGRESS GOALS TO BASELINE CONDITIONS ON LEAST IMPAIRED DAYS FOR SOUTH DAKOTA CLASS I AREAS

South Dakota class I area	Visibility conditions on 20% best days (dv)		Achieved "no degradation" (Y/N)
	Average for 20% best days (Baseline 2000–2004)	RPG (WRAP projection)	
Badlands National Park	6.89	6.64	Y
Wind Cave National Park	5.14	5.02	Y

South Dakota believes the reasonable progress goals it established for the South Dakota Class I areas are reasonable, and that it is not reasonable to achieve the glide path in 2018, based on the State's findings from the four-factor analysis combined with its visibility analyses that indicate the benefit would be small.

5. Reasonable Progress Consultation

In accordance with 40 CFR 51.308(d)(3)(i) and (ii), each state that causes or contributes to impairment in a Class I area in another state or states is required to consult with other states and demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goals for the Class I area. If the state has participated in a regional planning process, the state must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.

South Dakota consulted directly with neighboring states through the WRAP, and relied on the technical tools, policy documents, and other products that all western states used to develop their regional haze plans. Discussions with neighboring states included review of major contributing sources of air pollution, as documented in numerous WRAP reports and projects. The focus of this review process was interstate transport of emissions, major sources believed to be contributing, and whether any mitigation measures were needed. All the states relied upon similar emission inventories, results from source apportionment studies and BART modeling, review of IMPROVE monitoring data, existing state smoke management programs, and other information in assessing the extent to which each state contributes to visibility impairment other states' Class I areas.

The WRAP Implementation Work Group was one of the primary collaboration mechanisms. South Dakota participated in WRAP and worked with other states that are not members of WRAP (including Minnesota and Nebraska) in developing its SIP. Otter Tail Power Company's Big Stone I facility is the only source in South Dakota that is reasonably anticipated to contribute to visibility impairment with visibility impacts greater than 0.5 deciviews at a Class I area. This facility is predicted to contribute to visibility impairment at the Badlands National Park in South Dakota; Theodore Roosevelt National Park in North Dakota; Boundary Waters Canoe Area Wilderness and Voyageurs National Park in northern Minnesota and the Isle Royale National Park in Michigan. Otter Tail Power Company developed a case-by-case BART analysis that South Dakota reviewed to establish the BART emission limits for Big Stone I. The case-by-case BART analysis and South Dakota's review were submitted to the appropriate states for their comments. South Dakota established BART procedures in the Administrative Rules of South Dakota that are equivalent to Federal regulation in 40 CFR part 51 and adopted the BART emission limits and monitoring recordkeeping and reporting requirements applicable to BART-eligible coal fired power plants (which

includes Big Stone I) in the rule. The requirements will eventually be adopted in Otter Tail Power Company's Title V air quality operating permit for the Big Stone I facility. South Dakota believes the BART requirements represent South Dakota's fair share of emission reductions for Class I areas impacted by emissions from South Dakota sources and other states provided no adverse comments.

40 CFR 51.308(d)(3)(ii) of the Regional Haze Rule requires a state to demonstrate that its regional haze plan includes all measures necessary to obtain its fair share of emission reductions needed to meet reasonable progress goals. Based on the consultation described above, South Dakota identified no major contributions that supported developing new interstate strategies, mitigation measures, or emission reduction obligations. Both South Dakota and neighboring states agreed that the implementation of BART and other existing measures in state regional haze plans were sufficient for the states to meet the reasonable progress goals for their Class I areas, and that future consultation would address any new strategies or measures needed.

6. Our Conclusion on South Dakota's Reasonable Progress Goals

We are proposing to approve South Dakota's conclusion that it is not reasonable to meet the uniform rate of progress for Badlands and Wind Cave by 2018. Where a state has established a reasonable progress goal that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, the state must demonstrate, based on the four statutory factors that the rate of progress for the implementation plan to attain natural conditions by 2064 is not reasonable and that the progress goal adopted by the State is reasonable. While South Dakota undertook a four-factor analyses which it described in its SIP, the State made the determination not to impose additional controls for reasonable progress at the facilities in South Dakota most likely to have the largest source-specific impacts. The State based that determination on the modeled baseline visibility impacts for the facilities.

EPA proposes to approve the State's determination that it is not reasonable to achieve the uniform rates of progress at Badlands and Wind Cave and that the reasonable progress goals adopted by the State are reasonable based on consideration of the following:

a. Findings from the four-factor analysis along with the State's baseline visibility analyses indicate likely visibility benefits from the most cost-effective controls would be small.

b. Sources outside South Dakota—including other states and Canada—contribute most of the visibility impairing pollutants at Class I areas in South Dakota, with South Dakota's emissions ranging from 2 to 18 percent of the total emissions for each type of pollutant.

c. On the 20 percent most impaired days, sulfate and organic carbon are the two greatest contributors to visibility impairment at both Class I areas. The four-factor analyses performed by the State show the costs for controlling SO_2 at these facilities is excessive, given the minimal visibility benefits from such controls. Much of the organic carbon emissions are from natural fires that cannot be controlled.

d. Although, as noted in Table 20 above, the reasonable progress goals for Badlands and Wind Cave fall short of the uniform rate of progress, these goals are based on the WRAP CMAQ modeling and the WRAP 2018 projections. As South Dakota discussed in the SIP, the WRAP 2018 projections overestimated emissions of visibility-impairing pollutants from sources in South Dakota. It is therefore likely that the actual rate of progress will be closer to the uniform rate of progress.

We also agree with South Dakota's conclusion that it appropriately consulted with other states for this planning period. We also agree with South Dakota's determination that it needed no further controls beyond those already contained in the SIP to address impacts on Class I areas in other states. Finally, we are proposing to approve South Dakota's conclusion that no additional controls on non-BART sources are needed at this time. We expect South Dakota to evaluate additional controls for the sources below and other sources during the next regional haze planning period.

Below we discuss each reasonable progress source and EPA's conclusions regarding the State's reasonable progress determination.

Black Hills, Ben French Unit 1

EPA is proposing to approve the State's conclusion that no additional SO_2 controls are warranted for this unit for this planning period. The cost effectiveness values range from $3,777 for a spray dryer absorber to $21,519 per ton for the least efficient dry sorbent injection option. Based on the cost effectiveness values and the minimal visibility benefits from controlling this unit, we find that South Dakota reasonably rejected additional SO_2 controls during this planning period.

EPA is proposing to approve the State's conclusion that no additional NO_X controls are warranted for this unit for this planning period. The cost effectiveness values range from $287 for LNB to $2,942 per ton for SCR. Some of these costs are reasonable. However, South Dakota also considered the visibility impacts—it modeled visibility impacts of 0.23 deciviews at Badlands and 0.30 deciviews at Wind Cave from all emissions from the source—and any visibility improvement that would result from additional NO_X controls alone would be significantly less than these values. When the costs are weighed against visibility improvement, South Dakota's determination that additional controls of NO_X are not warranted in this planning period is reasonable, and we are proposing to approve it.

GCC Dacotah Kilns 4, 5, and 6

EPA is proposing to approve the State's conclusion that no additional SO_2 controls are warranted for Kilns 4 and 5 for this planning period. The cost effectiveness values for a new wet FGD system range from $52,692 to $59,565 per ton on Kiln 4 and from $3,208 to $3,531 per ton on Kiln 5. Based on the cost effectiveness values and South Dakota's modeling of baseline visibility impacts from Kilns 4 and 5, we find that South Dakota reasonably rejected additional SO_2 controls during this planning period.

EPA is proposing to approve the State's conclusion that no additional NO_X controls for Kilns 4 and 5 are reasonable for this planning period. For Kiln 4, the cost effectiveness values range from $456 per ton for LNB to $7,309 per ton for SCR. For Kiln 5 the cost effectiveness values range from $832 per ton for LNB to $13,345 per ton for SCR. Some of these costs are reasonable. However, South Dakota modeled the baseline visibility impacts from Kilns 4 and 5 combined—0.32 deciviews at Badlands and 0.46 at Wind Cave—and any visibility benefits that would result from additional NO_X controls alone would be significantly less than these values. We therefore propose to find that South Dakota reasonably rejected additional NO_X controls during this planning period.

EPA is also proposing to approve the State's determination that no additional NO_X or SO_2 controls are required on Kiln 6. During this planning period, it is reasonable for the State to rely on the relatively recent NO_X and SO_2 BACT determinations in the 2003 PSD permit for Kiln 6. However, during the next

planning period, the State should reconsider these determinations.

E. LTS

As described in section II.E of this action, the LTS is a compilation of state-specific control measures relied on by the state for achieving its reasonable progress goals. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3). South Dakota's LTS for the first implementation period addresses the emissions reductions from Federal, state and local controls that take effect in the state from the end of the baseline period starting in 2004 until 2018. The South Dakota LTS was developed by South Dakota, in coordination with the WRAP, through an evaluation of the following components: (1) WRAP emission inventories for a 2002 baseline and a 2018 projection (including reductions from WRAP member state controls required or expected under Federal and state regulations (including BART)); (2) modeling to determine visibility improvement and apportion individual state contributions; (3) state consultation; and (4) application of the LTS factors. The State's detailed LTS is included in Section 8 of the Regional Haze SIP.

1. Emissions Inventories

40 CFR 51.308(d)(3)(iii) requires that South Dakota document the technical basis, including modeling, monitoring, and emissions information, on which it relied to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. South Dakota must identify the baseline emissions inventory on which its strategies are based. 40 CFR 51.308(d)(3)(iv) requires that South Dakota identify all anthropogenic (human-caused) sources of visibility impairment it considered in developing its LTS. This includes major and minor stationary sources, mobile sources, and area sources. In its efforts to meet these requirements, South Dakota relied on technical analyses developed by WRAP and approved by all state participants, as described below.

Emissions within South Dakota are both naturally occurring and man-made. Two primary sources of naturally occurring emissions include wildfires and windblown dust. In South Dakota, the primary sources of anthropogenic emissions include electric utility steam generating units, energy production and processing sources, agricultural production and processing sources, prescribed burning, and fugitive dust sources. The South Dakota inventory includes emissions of SO_2, NO_X, $PM_{2.5}$, PM_{10}, primary organic aerosol, elemental carbon, VOCs, NH_3, and CO. See Section 5 of the SIP.

An emissions inventory for each pollutant was developed by WRAP for South Dakota for the baseline year 2002 and for 2018, which is the first reasonable progress milestone.[22] The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from Federal and state regulations. The emission inventories developed by WRAP were calculated using approved EPA methods.

There are 10 different emission inventory source categories identified in the South Dakota regional haze Plan: point, area, oil and gas, on-road, off-road, all fire, biogenic, road dust, fugitive dust and windblown dust. Tables 22 through 30 show the 2002 baseline emissions, the 2018 projected emissions, and net changes of emissions for SO_2, NO_X, primary organic aerosol, elemental carbon, $PM_{2.5}$, PM_{10}, NH_3, VOC and carbon monoxide (CO) by source category in South Dakota. The methods that WRAP used to develop these emission inventories are described in more detail in Section 5 of the SIP and in the EPA WRAP Technical Support Document (TSD).

TABLE 22—SOUTH DAKOTA SO_2 EMISSION INVENTORY—2002 AND 2018 [1]

South Dakota Statewide SO_2 Emissions
[Tons/year]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	14,037	11,996	−2,041	−15
Big Stone I [2]	11,171	3,425	−7,746	−69
All Fire	469	465	−4	−1
Biogenic	0	0	0	0
Area	1,198	1,789	591	49
Oil and Gas	6	0	−6	−100
On-Road Mobile	922	129	−793	−86
Off-Road Mobile	6,066	199	−5,867	−97
Road Dust	4	5	1	25
Fugitive Dust	24	26	2	8
Wind Blown Dust	0	0	0	0
Total	22,726	14,609	−8,117	−36

[1] SO_2 emissions shown include both gas and particulate.
[2] Otter Tail Power Company's Big Stone I emissions are included in the ''Point'' emissions but separated for comparison.

In 2018, South Dakota's sulfate contribution switched mainly to point and area sources, and like other states and regions in the United States, mobile source contributions are minimal due to new changes in Federal emission standards from mobile sources.

[22] These inventories, in addition to being available in Section 5 of the SIP, are also available at *http://vista.cira.colostate.edu/TSS/Results/HazePlanning.aspx*.

TABLE 23—SOUTH DAKOTA NO_X EMISSION INVENTORY—2002 AND 2018 [1]

South Dakota Statewide NO_X Emissions
[Tons/year]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	20,699	30,186	9,487	46
Big Stone I [2]	14,552	15,323	771	5
All Fire	1,713	1,694	−19	−1
Biogenic	52,852	52,852	0	0
Area	2,903	3,309	406	14
Oil and Gas	361	557	196	54
On-Road Mobile	29,224	8,059	−21,165	−72
Off-Road Mobile	39,039	23,785	−15,254	−39
Road Dust	5	6	1	20
Fugitive Dust	27	27	0	0
Wind Blown Dust	0	0	0	0
Total	146,823	120,475	−26,348	−18

[1] NO_X emissions shown include both gas and particulate.
[2] Otter Tail Power Company's Big Stone I emissions are included in the "Point" emissions row but separated for comparison.

TABLE 24—SOUTH DAKOTA PRIMARY ORGANIC AEROSOL EMISSION INVENTORY—2002 AND 2018

South Dakota Statewide Primary Organic Aerosol Emissions
[Tons/year]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	10	8	−2	−20
Big Stone I [1]	0	0	0	.....
All Fire	4,574	4,531	−43	−1
Biogenic	0	0	0	.....
Area	1,792	1,769	−23	−1
Oil and Gas	0	0	0	.....
On-Road Mobile	278	270	−8	−3
Off-Road Mobile	942	386	−556	−59
Road Dust	255	325	70	27
Fugitive Dust	1,317	1,322	5	0
Wind Blown Dust	0	0	0	.....
Total	9,168	8,611	−557	−6

[1] Otter Tail Power Company's Big Stone I emissions are included in the "Point" emissions but separated for comparison.

TABLE 25—SOUTH DAKOTA ELEMENTAL CARBON EMISSION INVENTORY—2002 AND 2018

South Dakota Statewide Elemental Carbon Emissions
[Tons/year]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	0	0	0	0
All Fire	717	715	−2	0
Biogenic	0	0	0	0
Area	306	314	8	0
Area Oil and Gas	0	0	0	0
On-Road Mobile	339	86	−253	−75
Off-Road Mobile	3,234	1,072	−2,162	−67
Road Dust	18	23	5	28
Fugitive Dust	89	90	1	1
Wind Blown Dust	0	89	89	*
Total	4,703	2,389	−2,314	−49

* Greater than 100.

As detailed in Tables 26 and 27, the primary sources of PM (both $PM_{2.5}$ and PM_{10}) are road, fugitive and windblown dust (agriculture, construction, and unpaved and paved roads).

TABLE 26—SOUTH DAKOTA $PM_{2.5}$ EMISSION INVENTORY—2002 AND 2018

South Dakota Statewide $PM_{2.5}$ Emissions
[Tons/year]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	216	205	−11	−5
Big Stone I [1]	209	0	−209	−100
All Fire	839	821	−18	−2
Biogenic	0	0	0	0
Area	1,804	1,920	116	6
Area Oil and Gas	0	0	0	0
On-Road Mobile	0	0	0	0
Off-Road Mobile	0	0	0	0
Road Dust	4,061	5,190	1,129	28
Fugitive Dust	25,220	25,840	620	2
Wind Blown Dust	50,274	50,274	0	0
Total	82,414	84,250	−11	−5

[1] Otter Tail Power Company's Big Stone I emissions are included in the "Point" emissions but separated for comparison.

TABLE 27—SOUTH DAKOTA PM_{10} EMISSION INVENTORY—2002 AND 2018

South Dakota Statewide PM_{10} Emissions
[Tons/year]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	727	9,847	9,120	*
Big Stone I [1]	209	318	109	52
All Fire	754	751	−3	0
Biogenic	0	0	0	0
Area	156	190	34	22
Area Oil and Gas	0	0	0	0
On-Road Mobile	169	188	19	0
Off-Road Mobile	0	0	0	0
Road Dust	38,164	48,773	10,609	28
Fugitive Dust	122,914	129,009	6,095	5
Wind Blown Dust	452,470	452,470	0	0
Total	615,354	641,228	25,874	4

[1] Otter Tail Power Company's Big Stone I emissions are included in the "Point" emissions but separated for comparison.
* Greater than 100.

TABLE 28—SOUTH DAKOTA NH_3 EMISSION INVENTORY—2002 AND 2018

South Dakota Statewide NH_3 Emissions
[Tons/year]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	100	102	2	2
Big Stone I [1]	29	0	−29	−100
All Fire	562	553	−9	−2
Biogenic	0	0	0	0
Area	118,877	118,992	115	0
Area Oil and Gas	0	0	0	0
On-Road Mobile	842	1,075	233	0
Off-Road Mobile	25	36	11	0
Road Dust	0	0	0	0
Fugitive Dust	0	0	0	0
Wind Blown Dust	0	0	0	0
Total	120,406	120,758	352	0

[1] Otter Tail Power Company's Big Stone I emissions are included in the "Point" emissions but separated for comparison.

TABLE 29—SOUTH DAKOTA VOC EMISSION INVENTORY—2002 AND 2018

South Dakota Statewide VOC Emissions
[Tons/year]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	2,542	4,510	1,968	77
Big Stone I [1]	107	112	5	5
All Fire	3,853	3,808	−45	−1
Biogenic	445,241	445,241	0	0
Area	40,511	49,659	9,148	23
Area Oil and Gas	33,721	562	−33,159	0
On-Road Mobile	13,741	5,101	−8,640	0
Off-Road Mobile	12,764	7,686	−5,078	0
Road Dust	0	0	0	0
Fugitive Dust	0	0	0	0
Wind Blown Dust	0	0	0	0
Total	552,373	516,567	−35,806	−6

[1] Otter Tail Power Company's Big Stone I emissions are included in the "Point" emissions but separated for comparison.

TABLE 30—SOUTH DAKOTA CO EMISSION INVENTORY—2002 AND 2018

South Dakota Statewide CO Emissions
[Tons/year]

Source category	Baseline 2002	Future 2018	Net change	Percent change
Point	4,700	16,632	11,932	*
Big Stone I [1]	490	509	19	4
All Fire	64,326	63,843	−483	−1
Biogenic	103,402	103,402	0	0
Area	23,029	23,773	744	3
Area Oil and Gas	11	16	5	0
On-Road Mobile	221,726	120,041	−101,685	0
Off-Road Mobile	92,508	95,276	2,768	0
Road Dust	0	0	0	0
Fugitive Dust	0	0	0	0
Wind Blown Dust	0	0	0	0
Total	509,702	422,983	−86,719	−17

[1] Otter Tail Power Company's Big Stone I emissions are included in the "Point" emissions but separated for comparison.
* Greater than 100.

2. Sources of Visibility Impairment in South Dakota Class I Areas

In order to determine the significant sources contributing to haze in South Dakota's Class I areas, South Dakota relied upon two source apportionment analysis techniques developed by the WRAP. The first technique was regional modeling using the Comprehensive Air Quality Model (CAMx) and the PM Source Apportionment Technology (PSAT) tool, used for the attribution of sulfate and nitrate sources only. The second technique was the Weighted Emissions Potential (WEP) tool, used for attribution of sources of organic carbon, elemental carbon, $PM_{2.5}$ and PM_{10}. The WEP tool is based on emissions and residence time, not modeling.

PSAT uses the CAMx air quality model to show nitrate-sulfate-ammonia chemistry and apply this chemistry to a system of tracers or ''tags'' to track the chemical transformations, transport, and removal of NO_X and SO_2. These two pollutants are important because they tend to originate from anthropogenic sources. Therefore, the results from this analysis can be useful in determining contributing sources that may be controllable, both in-state and in neighboring states.

WEP is a screening tool that helps to identify source regions that have the potential to contribute to haze formation at specific Class I areas. Unlike PSAT, this method does not account for chemistry or deposition. The WEP combines emissions inventories, wind patterns and residence times of air masses over each area where emissions occur, to estimate the percent contribution of different pollutants. Like PSAT, the WEP tool compares baseline values (2000–2004) to 2018 values, to show the improvement expected by 2018, for sulfate, nitrate, organic carbon, elemental carbon, $PM_{2.5}$ and PM_{10}. More information on the WRAP modeling methodologies is available in the EPA WRAP TSD.

The PSAT and WEP results for South Dakota are provided in Sections 4 and 5 of the SIP. See the EPA WRAP TSD for details on how the 2018 emissions inventory was constructed. WRAP and South Dakota used this inventory and other states' 2018 emission inventories to construct visibility projection modeling for 2018.

3. Visibility Projection Modeling

The Regional Modeling Center (RMC) at the University of California Riverside, under the oversight of the WRAP Modeling Forum, performed modeling for the regional haze LTS for the WRAP member states, including South Dakota. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. The RMC primarily used the CMAQ

photochemical grid model to estimate 2018 visibility conditions in South Dakota and all western Class I areas, based on application of the regional haze strategies in the various state plans, including assumed controls on BART sources.

The RMC developed air quality modeling inputs, including annual meteorology and emissions inventories for: (1) A 2002 actual emissions base case; (2) a planning case to represent the 2000–2004 regional haze baseline period using averages for key emissions categories; and (3) a 2018 base case of projected emissions determined using factors known at the end of 2005. All emission inventories were spatially and temporally allocated using the SMOKE modeling system. Each of these inventories underwent a number of revisions throughout the development process to arrive at the final versions used in CMAQ modeling. The WRAP states' modeling was developed in accordance with our guidance.[23] A more detailed description of the CMAQ modeling performed for the WRAP can be found in Section 5 of the SIP and in the EPA WRAP TSD.

The photochemical modeling of regional haze for the WRAP states for 2002 and 2018 was conducted on the 36-km resolution national regional planning organization domain that covered the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. The RMC examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The 2002 modeling efforts were used to evaluate air quality/visibility modeling for a historical episode—in this case, for calendar year 2002—to demonstrate the suitability of the modeling systems for subsequent planning, sensitivity and emissions control strategy modeling. Model performance evaluation compares output from model simulations with ambient air quality data for the same time period to determine whether model performance is sufficiently accurate to justify using the model to simulate future conditions. Once the RMC determined that model performance was acceptable, it used the model to determine the 2018 reasonable progress goals using the current and future year air quality modeling predictions, and compared the reasonable progress goals to the uniform rate of progress.

4. Consultation and Emissions Reductions for Other States' Class I Areas

40 CFR 51.308(d)(3)(i) requires that South Dakota consult with another state if its emissions are reasonably anticipated to contribute to visibility impairment in that state's Class I area(s), and that South Dakota consult with other states if those other states' emissions are reasonably anticipated to contribute to visibility impairment at Badlands or Wind Cave. South Dakota's consultations with other states are described in section III.D.5 above. After evaluating whether emissions from South Dakota sources contribute to visibility impairment in other states' Class I areas, South Dakota concluded that Otter Tail Power Company's Big Stone I facility was the only source in South Dakota that is reasonably anticipated to contribute to visibility impairment of a Class I are in another state. South Dakota's evaluation relied upon NO_X and SO_2 BART and reasonable progress reductions as described in the SIP. South Dakota did consult with other states and tribes, largely through the WRAP process, in order to meet the regulatory requirements. South Dakota also worked with states that are not members of WRAP including Minnesota and Nebraska.

40 CFR 51.308(d)(3)(ii) requires that if South Dakota emissions cause or contribute to impairment in another state's Class I area, South Dakota must demonstrate that it has included in its Regional Haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for that Class I area. Section 51.308(d)(3)(ii) also requires that, since South Dakota participated in a regional planning process, it must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. As we state in the Regional Haze Rule, South Dakota's commitments to participate in WRAP bind it to secure emission reductions agreed to as a result of that process, unless it proposes a separate process and performs its consultations on the basis of that process. See 64 FR 35735.

South Dakota accepted and incorporated the WRAP-developed visibility modeling into its Regional Haze SIP, and the Regional Haze SIP includes the controls assumed in the modeling. South Dakota satisfied the Regional Haze Rule's requirements for consultation and included controls in the SIP sufficient to address the relevant requirements of the Regional Haze Rule related to impacts on Class I areas in other states.

5. Mandatory LTS Factors

40 CFR 51.308(d)(3)(v) requires that South Dakota, at a minimum, consider certain factors in developing its LTS. The LTS factors are: (a) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (b) measures to mitigate the impacts of construction activities; (c) emissions limitations and schedules for compliance to achieve the reasonable progress goals; (d) source retirement and replacement schedules; (e) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (f) enforceability of emissions limitations and control measures; and (g) the anticipated net effect on visibility due to projected changes in point, area and mobile source emissions over the period addressed by the LTS.

a. Reductions Due to Ongoing Air Pollution Programs

In addition to its BART determinations, South Dakota's LTS incorporates emission reductions due to a number of ongoing air pollution control programs.

i. PSD/New Source Review Rules

The two primary regulatory tools for addressing visibility impairment from industrial sources are BART and the PSD New Source Review rules. The PSD rules protect visibility in Class I areas from new industrial sources and major changes to existing sources. South Dakota's Air Pollution Control Rules (ARSD Chapter 74:36) contain requirements for visibility impact assessment and mitigation associated with emissions from new and modified major stationary sources. A primary responsibility of South Dakota under these rules is visibility protection. Chapter 74:36:09 and 74:36:10 describes mechanisms for visibility impact assessment and review by South Dakota, as well as impact modeling methods and requirements. Typically, this modeling is conducted for sources

[23] Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, (EPA–454/B–07–002), April 2007, located at *http://www.epa.gov/scram001/guidance/guide/final-03-p.m.-rh-guidance.pdf* Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, August 2005, updated November 2005 (''our Modeling Guidance''), located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html*, EPA–454/R–05–001.

within 300 kilometers of a Class I area. South Dakota will not issue an air quality permit to any new major source or major modification within this distance that is found through modeling to cause significant visibility impairment, unless the impact is mitigated.

ii. South Dakota's Phase I Visibility Protection Program

EPA implemented a RAVI protection program in 1987 with a Federal Implementation Plan (FIP) for South Dakota to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306, respectively. The existing Federal RAVI program is compatible with the regional haze program and no revisions are needed at this time. South Dakota indicated in the SIP that it will coordinate with EPA to conduct joint periodic reviews and revisions of the long-term RAVI strategy as required by 40 CFR 51.306(c). South Dakota noted in its Regional Haze Plan that it may consider incorporation of the RAVI program into South Dakota's SIP in the future. See Section 8.5.1 of the SIP.

iii. On-Going Implementation of State and Federal Mobile Source Regulations

Mobile source annual emissions show a major decrease in NO_X in South Dakota from 2002 to 2018. See Table 23 above. This reduction will result from numerous ''on the books'' Federal mobile source regulations. This trend is expected to provide significant visibility benefits. Beginning in 2006, EPA mandated new standards for on-road (highway) diesel fuel, known as ultra-low sulfur diesel. This regulation dropped the sulfur content of diesel fuel from 500 parts per million (ppm) to 15 ppm. Ultra-low sulfur diesel fuel enables the use of cleaner technology diesel engines and vehicles with advanced emissions control devices, resulting in significantly lower emissions.

Diesel fuel intended for locomotive, marine, and non-road (farming and construction) engines and equipment was required to meet a low sulfur diesel fuel maximum specification of 500 ppm sulfur in 2007 (down from 5000 ppm). By 2010, the ultra-low sulfur diesel fuel standard of 15 ppm sulfur applied to all non-road diesel fuel. Locomotive and marine diesel fuel will be required to meet the ultra-low sulfur diesel standard beginning in 2012, resulting in further reductions of diesel emissions.

b. Measures To Mitigate the Impacts of Construction Activities

In developing its LTS, South Dakota has considered the impact of construction activities. Based on general knowledge of construction activity in the state, and without conducting extensive research on the contribution of emissions from construction activities to visibility impairment in South Dakota Class I areas, South Dakota found that current state regulations adequately address construction activities. Current rules addressing impacts from construction activities in South Dakota include ARSD 74:36:18, which regulates fugitive dust emissions for facilities in the Rapid City area.

c. Emission Limitation and Schedules of Compliance

The SIP contains emission limits and schedules of compliance for the one source subject to BART—Otter Tail Power Company's Big Stone I. The schedule for implementation of BART for this source is identified in Section 6.4 of the SIP and in State rule ARSD 74:36:21 that we are proposing to approve with this SIP.

d. Source Retirement and Replacement Schedules

The State does not anticipate major source retirements or replacements. Replacement of existing facilities will be managed according to the State's existing SIP. The 2018 modeling that WRAP conducted included emissions from two proposed coal-fired power plants and one proposed oil refinery in South Dakota. Although the PSD permit has been issued for one of the proposed coal-fired power plants, the applicant notified South Dakota that it is no longer going to build the plant. The second coal-fired power plant requested that South Dakota put its application on hold until further notice. Therefore, the next modeling exercise for determining visibility in 2018 will need to be adjusted to reflect these developments, and the current modeling results for 2018 are potentially conservative.

e. Agricultural and Forestry Smoke Management Techniques

40 CFR 308(d)(3)(v)(E) of the Regional Haze Rule requires the LTS to address smoke management techniques for agricultural and forestry burning. As part of the long term strategy, South Dakota will investigate the impacts that a smoke management plan for wild fires and prescribed burns will have on the 20% most impaired days within the first planning period of 2013. Currently very little agricultural burning takes place in South Dakota and the majority of agricultural land lies in the eastern two-thirds of the State, while both Class I areas are in the western third. In addition, South Dakota did not observe any of the 20% most impaired days that were attributed to agricultural burning in the eastern half of South Dakota. Therefore, agricultural burning does not appear to have much of an impact on visibility at South Dakota's Class I areas. However, there is some grass burning in and around the Class I areas that South Dakota has committed to investigate to determine if this practice warrants being covered under a smoke management plan. See Section 8.5.5 of the SIP.

Additionally, South Dakota is investigating prescribed burns conducted by the National Park Service and the U.S. Forest Service and the impact of prescribed burns on organic carbon mass, ammonia sulfide, and ammonia nitrate levels. South Dakota has observed there is evidence that fires contributed to the 20% most impaired days during the baseline period.

South Dakota has taken the initial steps in developing a smoke management plan by contacting appropriate groups that will need to collaborate on this effort. South Dakota has been in contact with the South Dakota Division of Wildland Fire Suppression regarding their prescribed fire database to begin assessing the impacts from such fires on visibility at the State's Class I areas. South Dakota will continue working with the FLMs, other state agencies, and local governments during the development and implementation of the smoke management plan.

f. Enforceability of South Dakota's Measures

40 CFR 51.308(d)(3)(v)(F) of the Regional Haze Rule requires states to ensure that emission limitations and control measures used to meet reasonable progress goals are enforceable. In addition to what is required by the Regional Haze Rule, general SIP requirements mandate that the SIP must also include adequate monitoring, recordkeeping, and reporting requirements for the regional haze emission limits and requirements. *See* CAA section 110(a). As noted, the SIP specifies BART emission limits and compliance schedules, and South Dakota has included such limits and compliance schedules in the state regional haze rule, ARSD 74:36:21, included in the regional haze SIP we are proposing to approve. These emission limits apply at all times, including periods of startup, shutdown, and

malfunction.[24] In addition to specifying the limits and compliance schedules, the state rule specifies monitoring, recordkeeping and reporting requirements. South Dakota worked closely with EPA in developing these requirements. For SO_2 and NO_X limits, South Dakota has required the use of CEMS that must be operated and maintained in accordance with relevant EPA regulations, in particular, 40 CFR part 75. For PM limits, the SIP requires testing in accordance with EPA-approved test methods. The SIP requires that relevant records be kept for five years, and that sources report excess emissions on a quarterly basis.

g. Anticipated Net Effect on Visibility Due to Projected Changes

The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions during this planning period is addressed in sections III.E.3 above.

6. Our Conclusion on South Dakota's LTS

South Dakota's LTS satisfies the requirements of 40 CFR 51.308(d)(3), and we are proposing to approve it.

F. Coordination of RAVI and Regional Haze Requirements

Our visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in section II.F, above. Under our RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. *See* 40 CFR 51.302. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I federal area.'' Visibility in any mandatory Class I Federal area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in South Dakota. In addition, there have been no certifications of RAVI for South Dakota Class I areas. The South Dakota Regional Haze SIP, in Sections 10.6.1 and 9.0, does address the two requirements regarding coordination of the regional haze LTS and monitoring provisions with the RAVI LTS and monitoring provisions. As noted in the Regional Haze SIP, South Dakota has made a commitment to coordinate the South Dakota regional haze long term strategy with EPA's RAVI FIP long term strategy. See Section 8.5.1 of the SIP. We propose to find that the Regional Haze SIP appropriately supplements and augments the EPA FIP for RAVI visibility provisions by updating the monitoring and LTS provisions to address regional haze. We discuss the relevant monitoring provisions further below.

G. Monitoring Strategy and Other SIP Requirements

40 CFR 51.308(d)(4) requires that the SIP contain a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. This monitoring strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. As 40 CFR 51.308(d)(4) notes, compliance with this requirement may be met through participation in the IMPROVE network. 40 CFR 51.308(d)(4)(i) further requires the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the state are being achieved. Consistent with EPA's monitoring regulations for RAVI and regional haze, South Dakota indicates in Section 9.0 of the Regional Haze SIP that it will rely on the IMPROVE network for compliance purposes. The IMPROVE monitors at the South Dakota Class I Areas also described in Section 9.0 of the SIP. We propose to find that South Dakota has satisfied the requirements in 40 CFR 51.308(d)(4) enumerated in this paragraph.

40 CFR 51.308(d)(4)(ii) requires that South Dakota establish procedures by which monitoring data and other information are used in determining the contribution of emissions from within South Dakota to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the State. The IMPROVE monitoring program is national in scope, and other states have similar monitoring and data reporting procedures, ensuring a consistent and robust monitoring data collection system. As 40 CFR 51.308(d)(4) indicates, participation in the IMPROVE program constitutes compliance with this requirement. We therefore propose that South Dakota has satisfied this requirement.

40 CFR 51.308(d)(4)(iv) requires that the SIP provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I Federal area in the state. To the extent possible, South Dakota should report visibility monitoring data electronically. 40 CFR 51.308(d)(4)(vi) also requires that the SIP provide for other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility. We propose that South Dakota's participation in the IMPROVE network ensures that the monitoring data is reported at least annually and is easily accessible; therefore, such participation complies with this requirement.

40 CFR 51.308(d)(4)(v) requires that South Dakota maintain a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. The State must also include a commitment to update the inventory periodically. Please refer to section III.E.1, above, where we discuss South Dakota's emission inventory. South Dakota states in Section 5.1 of the SIP that it intends to update the South Dakota statewide emissions inventories periodically and review periodic emissions information from other states and future emissions projections. We propose that this satisfies the requirement.

H. FLM Coordination

Badlands and Wind Cave are both managed by the National Park Service, the FLM for these South Dakota Class I areas. Although the FLMs are very active in participating in the regional planning organizations, the Regional Haze Rule grants the FLMs a special role in the review of the regional haze SIPs, summarized in section II.H, above. The FLMs and the state environmental agencies are our partners in the regional haze process.

Under 40 CFR 51.308(i)(2), South Dakota was obligated to provide National Park Service with an opportunity for consultation, in person and at least 60 days prior to holding a public hearing on the Regional Haze SIP. South Dakota sent a draft of its Regional Haze SIP to the National Park Service and other FLMs on January 15, 2010. South Dakota held a public hearing in front of the Board of Minerals and Environment on September 15, 2010. In July 2011, South Dakota provided the FLMs and others a draft of proposed amendments to the Regional Haze SIP. The FLMs provided comments to South Dakota's amended

[24] As noted above, with respect to the PM BART limits for Big Stone I Unit 1, because the SIP does not explicitly exempt emissions during malfunctions from the limits, we interpret the SIP to require compliance with the PM limits at all times (including malfunctions).

submittal. The State held another public hearing on August 18, 2011.

40 CFR 51.308(i)(3) requires that South Dakota provide in its Regional Haze SIP a description of how it addressed any comments provided by the FLMs. The FLMs communicated to the State (and EPA) their concerns on the January 15, 2010 draft Regional Haze SIP. South Dakota responded to the FLM's comments and concerns in Appendix D of the Regional Haze SIP. The National Park Service commented on the Regional Haze SIP amendment regarding its concerns pertaining to a reasonable progress four-factor analysis to evaluate controls at GCC Dacotah's Kiln 6 and additional consultation with Nebraska on Gerald Gentleman Station. South Dakota provided us with its rationale on GCC Dacotah's Kiln 6 which we discussed in section III.D.2. above. We also noted our agreement with the level of consultation with Nebraska for this planning period in section III.D.6. above. According to the Regional Haze Rule, South Dakota should consult with Nebraska during the next planning period.

Lastly, 40 CFR 51.308(i)(4) specifies the regional haze SIP must provide procedures for continuing consultation between the state and FLMs on the implementation of the visibility protection program required by 40 CFR 51.308, including development and review of implementation plan revisions and 5-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in mandatory Class I Federal areas. South Dakota commits in Section 10 of its Regional Haze SIP to continue to coordinate and consult with the FLMs as required by 40 CFR 51.308(i)(4). South Dakota states that it intends to consult the FLMs in the development and review of implementation plan revisions; review of progress reports; and development and implementation of other programs that may contribute to impairment of visibility at South Dakota and other Class I areas.

We are proposing that the State complied with the requirements of 40 CFR 51.308(i).

I. Periodic SIP Revisions and Five-Year Progress Reports

South Dakota commits in Section 11 of the SIP to complete items required in the future by the Regional Haze Rule. South Dakota acknowledged its obligation under 40 CFR 51.308(f) to submit periodic progress reports and Regional Haze SIP revisions, with the first report due by July 31, 2018 and every ten years thereafter.

South Dakota acknowledged its obligation under 40 CFR 51.308(g) to submit a progress report in the form of a SIP revision to us every five years following the initial submittal of the Regional Haze SIP. The report will evaluate the progress made towards the reasonable progress goals for each mandatory Class I area located within South Dakota and in each mandatory Class I area located outside South Dakota that may be affected by emissions from within South Dakota.

IV. Proposed Action

We are proposing to approve South Dakota's Regional Haze SIP revision, including ARSD Chapter 74:36:21, that was submitted on January 21, 2011 and an amendment to this submittal that was submitted on September 19, 2011.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 29, 2011.

Howard M. Cantor,

Acting Regional Administrator, EPA, Region 8.

[FR Doc. 2011–31406 Filed 12–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0025; FRL–9502–5]

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: Withdrawal of Proposed Disapproval.

SUMMARY: EPA is withdrawing a proposed disapproval proposed on September 23, 2009, regarding two provisions that have been superseded by later submitted revisions. EPA is taking these actions under section 110 of the Clean Air Act.

DATES: The proposed rule published September 23, 2009 (74 FR 48450) is withdrawn as of December 8, 2011.

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: The EPA is withdrawing severable portions of its September 23, 2009, proposed disapproval of revisions to Title 30 of the Texas Administrative Code (30 TAC) Section 116.10(11)(A) and (B), submitted March 13, 1996; July 22, 1998; and September 4, 2002. These are severable portions of the definition of ''modification of existing facility.''

As noted in the September 23, 2009, proposed action on Subparagraphs (A) and (B), the two Subparagraphs are not severable from each other. See 74 FR 48450, at 48452. The two provisions were considered in conjunction with each other as our basis of evaluation in the original proposal. Because (B) is now repealed, and the wording of (A) has been changed in an October 5, 2010, submitted revision,[1] the basis of evaluation in the original proposed action has changed. As proposed July 18, 2011 (76 FR 42078), EPA therefore withdraws its previously proposed action so that the submitted revised Subparagraph (A) and the impact of the repeal of Subparagraph (B) upon the revised Subparagraph (A) may be addressed in a future separate action. This course of action will promote efficiency, mitigate confusion, and facilitate new comments on the future proposed action on the October 5, 2010, submittal with a proper basis of evaluation. Given the need for comments and evaluation of the newly submitted regulatory wording changes to Subparagraph (A), EPA considers any established deadline under the *Business Coalition for Clean Air Appeal Group (BCCA)* Settlement Agreement to be inapplicable with respect to this provision.

The repeal of Subparagraph (B) in the October 2010 SIP submittal also renders moot and inapplicable any obligation to act on that provision under the BCCA Settlement Agreement. Because Subparagraph (B) was repealed and is no longer before EPA for action, no further action is needed on this provision. Consequently, EPA now withdraws its previously proposed action on Subparagraph (B).

In response to our July 18, 2011, proposed withdrawal of 30 TAC 116.10(11)(A) and (B), we received comments from Texas Industry Project and BCCA Appeal Group. The commenters agree that it is appropriate to withdraw the proposed disapproval of these provisions because Subparagraph (A) has been amended since EPA's proposed disapproval and because Subparagraph (B) has been repealed. Based upon the proposal and consideration of the comments we received, we are withdrawing the proposed September 23, 2009, disapproval of 30 TAC 116.10(11)(A) and (B), as submitted March 13, 1996; July 22, 1998; and September 4, 2002. Subparagraph (A) as it appears in the October 5, 2010, submittal will be evaluated and will be addressed in a separate future action.

[1] The October 5, 2010 Submittal also redesignated Section 116.10(11) to Section 116.10(9).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 29, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–31529 Filed 12–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0082; FRL–9328–8]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before January 9, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP) number of interest as shown in the body of this document, by one of the following methods:

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

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. 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: A contact person, with telephone number and email address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petitions so that the public has an opportunity to comment on the requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

New Tolerances

1. *PP 1E7923.* (EPA–HQ–OPP–2011–0860). Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08450, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide clothianidin, (*E*)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on strawberry at 1.4 parts per million (ppm); citrus fruit group 10–10 at 0.5 ppm; citrus, dried pulp at 1 ppm; pistachio at 0.01 ppm; and tea, plucked leaves at 50 ppm. Adequate enforcement methodology (liquid chromatography/mass spectroscopy/mass spectroscopy) (LC/MS/MS) analysis is available to enforce the tolerance expression. Contact: Sidney Jackson, (703) 305–7610, email address: *jackson.sidney@epa.gov.*

2. *PP 1E7925.* (EPA–HQ–OPP–2011–0905). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide etofenprox, [2-(4-ethoxyphenyl)-2-methylpropyl 3-phenoxybenzyl ether], in or on food and

feed commodities at 0.5 ppm. An aliquot was purified by solid phase extraction (graphitized carbon black for alfalfa, snap bean pods with seed, and leaf lettuce and HAX solid phase extraction for pasture grass and snap bean foliage). The purified extract was concentrated to dryness, reconstituted in acetonitrile:water, and submitted to LC/MS/MS analysis. Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

3. *PP 1E7929.* (EPA–HQ–OPP–2011–0906). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide cyazofamid, 4-chloro-2-cyano-*N,N*-dimethyl-5-(4-methylphenyl)-1*H*-imidazole-1-sulfonamide (CA) and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1*H*-imidazole-2-carbonitrile (CA), expressed as cyazofamid, in or on bean, succulent at 0.4 ppm; bean, succulent, shelled at 0.07 ppm; leafy greens, subgroup 4A at 9.0 ppm; basil, fresh leaves at 30.0 ppm; basil, dried leaves at 80.0 ppm; vegetable, tuberous and corm, subgroup 1C at 0.02 ppm; and vegetable, fruiting, group 8–10 at 0.40 ppm. LC/MS/MS is used to measure and evaluate the residues of cyazofamid. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

4. *PP 1F7916.* (EPA–HQ–OPP–2011–0781). Canyon Group LLC, c/o Gowan Company, 370 South Main St., Yuma, AZ 85364, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonylaminosulfonyl]-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, and its metabolites and degradates, in or on millet, proso, forage at 7.0 ppm; millet, proso, hay at 0.02 ppm; millet, proso, grain at 0.01 ppm; millet, proso, straw at 0.01 ppm; grass forage, fodder, and hay, crop group 17, forage at 17.0 ppm; and grass forage, fodder, and hay, crop group 17, hay at 0.9 ppm. A practical analytical method, gas chromatography with a nitrogen-specific detector (GC–NSD), is available for enforcement purposes. The analytical method accounts for parent halosulfuron-methyl and for the halosulfuron-methyl rearrangement ester, sometimes referred to as ''RRE'' and ''MON 5781.'' This product results from the abstraction for the SO2NHCO moiety between the rings, such that the two rings are then joined together only by an NH group. Contact: Maggie Rudick, (703) 347–0257, email address: *rudick.maggie@epa.gov.*

5. *PP 1F7927.* (EPA–HQ–OPP–2011–0873). FMC Corporation, 1735 Market St., Philadelphia, PA 19103, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide, fluthiacet-methyl, acetic acid [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H,* 3*H*-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl] thio]-methyl ester, and its acid metabolite fluthiacet, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H,* 3*H*-[1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]], in or on the raw agricultural commodities of crop group 15 (except rice): grain, cereal at 0.01 ppm; grain, cereal, forage at 0.05 ppm; grain, cereal, hay at 0.05 ppm; grain, cereal, stover at 0.05 ppm; grain, cereal, straw at 0.05 ppm; and crop subgroup 6C: pea and bean (except soybean), dried shelled at 0.01 ppm. The analytical enforcement method for fluthiacet-methyl was used with minor modification. The analytical method for all crop matrices consisted of solvent extraction using a high speed mixer, followed by centrifugation. An aliquot of the resulting supernatant was filtered and diluted as necessary for quantitation by high performance liquid chromatography with tandem mass spectrometric detection (HPLC/MS/MS). Contact: Bethany Benbow, (703) 347–8072, email address: *benbow.bethany@epa.gov.*

6. *PP 8F7463.* (EPA–HQ–OPP–2009–0364). Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish tolerances in 40 CFR part 180 for indirect or inadvertent residues of the fungicide fluopyram, (*N*-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide), in or on alfalfa, forage at 0.25 ppm; alfalfa, hay at 0.80 ppm; rapeseed (canola seed) at 5.0 ppm; corn, sweet, kernel plus cob with husk removed at 0.10 ppm; cotton, gin byproducts at 0.05 ppm; cotton, undelinted seed at 0.10 ppm; grain, cereal, forage, fodder and straw, group 16, except rice; forage at 8.0 ppm; grain, cereal, forage, fodder and straw, group 16, except rice; hay, straw and stover at 14 ppm; grain, cereal, forage, fodder and straw, group 16, except rice; aspirated fractions at 50 ppm; grain, cereal, group 15, except rice and sweet corn at 3.0 ppm; soybean, aspirated fractions at 70 ppm; soybean, forage at 8.0 ppm; soybean, hay at 30 ppm; soybean, hulls at 0.40 ppm; and soybean, seed at 0.30 ppm. Fluopyram was determined to be the only analyte required for analysis based on the metabolic profile in plants, the short pre-harvest intervals analyzed, and results from preliminary residues trials in Europe. The analytical method involves, solvent extraction, filtration, and addition of an isotopically labeled internal standard followed by solid phase extraction. Quantitation is by high performance liquid chromatography-electrospray ionization/tandem mass spectrometry. Contact: Lisa Jones, (703) 308–9424, email address: *jones.lisa@epa.gov.*

Amended Tolerance

PP 1E7929. (EPA–HQ–OPP–2011–0906). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to remove, upon approval of the aforementioned tolerances in paragraph 3. under ''New Tolerances,'' the tolerances in 40 CFR 180.601 for residues of the fungicide cyazofamid, 4-chloro-2-cyano-*N,N*-dimethyl-5-(4-methylphenyl)-1*H*-imidazole-1-sulfonamide (CA) and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1*H*-imidazole-2-carbonitrile (CA), expressed as cyazofamid, in or on spinach at 9.0 ppm; potato at 0.02 ppm; vegetable, fruiting, group 8 at 0.40 ppm; and okra at 0.40 ppm. These tolerances are being proposed to be removed, as they will be superseded by inclusion in crop group or subgroup tolerances in paragraph 3. under ''New Tolerances.'' Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

New Tolerance Exemption

PP 1E7877. (EPA–HQ–OPP–2011–0934). Dow Corning Corporation, 2200 W. Salzburg Road, Midland, MI 48640, requests to establish an exemption from the requirement of a tolerance for residues of silicic acid, sodium salt, reaction products with chlorotrimethylsilane and isopropyl alcohol, reaction with poly(oxypropylene)-poly(oxyethylene) glycol, in or on the raw agricultural commodity under 40 CFR 180.960, as a component of seed coatings that provide non-sticking when the seeds are in the planter machines, and also control water permeation to slow germination of the seeds at 1,000 ppm. The petitioner believes no analytical method is needed because no analytical method is generally required for the establishment of a tolerance exemption. Contact: Alganesh Debesai, (703) 308–8353, email address: *debesai.alganesh@epa.gov.*

Amended Tolerance Exemption

PP 0F7758. (EPA–HQ–OPP–2011–0950). Lonza, Inc., 90 Boroline Road, Allendale, NJ 07401, requests to amend an existing exemption from the requirement of a tolerance in 40 CFR

180.940(a) for residues of didecyl dimethyl ammonium carbonate and didecyl ammonium bicarbonate (hereinafter cited jointly as DDACB), in or on food-contact surfaces when applied/used in public eating places, dairy processing equipment, and/or food processing equipment, and utensils at 400 ppm. The petitioner believes no analytical method is needed because the subject quaternary ammonium compounds are exempt from the requirements of a tolerance. Contact: Drusilla Copeland, (703) 308–6224, email address: *copeland.drusilla@epa.gov.*

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 30, 2011.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–31560 Filed 12–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FDMS Docket No.: EPA–R08–RCRA–2011–0823; FRL–9502–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (''EPA,'' ''the Agency'' or ''we'' in this preamble) is proposing to grant a petition submitted by the ConocoPhillips Billings, Montana Refinery (''ConocoPhillips'' or ''Petitioner'') to exclude or ''delist,'' from the list of hazardous wastes, residual solids from sludge removed from two storm water tanks at its Billings, Montana refinery and processed in accordance with the petition. The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the potential impact of the petitioned waste on human health and the environment.

The EPA's proposed decision to grant the petition is based on an evaluation of waste-specific information provided by ConocoPhillips. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

This exclusion would be valid only when sludge from the two storm water tanks is dewatered and de-oiled using a filter press and/or portable centrifuge, and the resulting residual solids are disposed of in a RCRA Subtitle D landfill that is permitted, licensed, or registered by a state to manage industrial solid waste. If finalized, the EPA would conclude that ConocoPhillips' petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors that would cause the waste to be hazardous.

DATES: The EPA will accept public comments on this proposed decision until January 9, 2012 the EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Any person may request an informal hearing on this proposed decision by filing a request to the EPA by December 22, 2011. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No.: EPA–R08–RCRA–2011–0823, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: cosentini.christina@epa.gov.*
3. *Fax:* (303) 312–6341.
4. *Mail, Hand Delivery or Courier:* Deliver your comments to Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P–HW, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Courier or hand deliveries are only accepted during the EPA Region 8's normal hours of operation from 8 a.m. to 4 p.m. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.: EPA–R08–RCRA–2011–0823. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet.

If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center home page at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at: EPA Region 8, from 8 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, Colorado, *contact:* Christina Cosentini, phone number (303) 312–6231.

FOR FURTHER INFORMATION CONTACT: Christina Cosentini, Solid and Hazardous Waste Program, EPA Region 8, 1595 Wynkoop Street, Mail Code 8P–HW, Denver, Colorado 80202, (303) 312–6231, *cosentini.christina@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What action is the EPA approving?

The EPA is proposing to grant a petition submitted by the ConocoPhillips Billings Refinery to have residual solids from processing sludge removed from two storm water tanks at its Billings, Montana Refinery excluded or delisted from the RCRA definition of a hazardous waste, contingent upon such waste being dewatered and de-oiled using a filter press and/or portable centrifuge and the resulting solids disposed in a RCRA Subtitle D Landfill.

B. Why is the EPA approving this delisting?

The ConocoPhillips petition requested the residual solids from processed storm water tank sludge be excluded from the F037 waste listing. F037 wastes are wastes that are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters. This exclusion will apply to an annual maximum of 200 cubic yards of residual solids. ConocoPhillips claims that the petitioned waste does not meet the criteria for which the EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described in section III, we agree with the petitioner that the waste is nonhazardous. The EPA reviewed the description of the process which generates the waste and the analytical data submitted by ConocoPhillips. We believe that the petitioned waste does not meet the criteria for the F037 waste listing, and that there are no other factors which might cause the residual solids to be hazardous.

C. How will ConocoPhillips Billings Refinery manage the waste if it is delisted?

ConocoPhillips will dispose of the residual solids from the processed storm water tank sludge in a RCRA Subtitle D landfill which is regulated by the State of Montana, or other state subject to Federal RCRA delisting, to manage industrial waste.

II. Background

A. What is a listed waste?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it at 40 CFR 261.31 and 261.32. The EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity); (2) they meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3); or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under 40 CFR 261.3(a)(2)(iv) or (c)(2)(i), known as the ''mixture'' or ''derived-from'' rules respectively.

B. What is a delisting petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in the regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. A procedure to exclude or delist a waste is provided in 40 CFR 260.20 and 260.22, which allows a person, or a facility, to submit a petition to the EPA, or an authorized state, demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for the EPA to decide whether any factors, in addition to those for which the waste was listed, warrant retaining it as a hazardous waste. (See 40 CFR 260.22; 42 U.S.C. 6921(f).)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

C. What factors must the EPA consider in deciding whether to grant a delisting petition?

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* HSWA § 222, 42 U.S.C. 6921(f); 40 CFR 260.22(d)(1)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (3).

In addition to considering the criteria in 40 CFR 260.22(a) and 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and information in the background documents for the listed waste, the EPA must consider any factors (including additional constituents) other than those for which the EPA listed the waste, if these additional factors could cause the waste to be hazardous.

The EPA's tentative decision to delist waste from the ConocoPhillips Billings Refinery is based on our evaluation of the waste for factors or criteria that could cause the waste to be hazardous. These factors include: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

The EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* 40 CFR 261.3(a)(2)(iv) and (c)(2)(i) (referred to as the ''mixture'' and ''derived-from'' rules, respectively). Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

III. EPA's Evaluation of the Waste Information and Data

A. What waste did ConocoPhillips petition the EPA to delist?

On December 3, 2010, ConocoPhillips petitioned the EPA to exclude a maximum annual volume of 200 cubic yards of F037 residual solids from processing (for oil recovery) the sludge removed from the two storm water tanks at the Billings, Montana refinery from the lists of hazardous waste contained in 40 CFR 261.31 and 261.32. The F037 listing includes residuals from the processing of oil-bearing hazardous secondary materials (*i.e.,* the sludge in the storm water tanks) excluded under 40 CFR 261.4(a)(12)(i). Sediment in the storm water tanks accumulates from storm water runoff from the Refinery's process area, as well as some dry-weather flow consisting of water from wash-down, maintenance, and cleaning activities, steam condensate and heat exchanger back-flushing. This sediment is processed by the refinery for the recovery of oil and the residual solids are classified as hazardous waste due a conservative interpretation for the assignment of hazardous waste code F037. The waste conservatively falls under the classification of listed waste under 40 CFR 261.3.

B. How does ConocoPhillips generate the waste?

ConocoPhillips generates the waste through periodically removing and processing sludge accumulated in two storm water tanks through oil recovery and dewatering. The sludge in the storm water tanks is accumulated storm water runoff from the Refinery's process area, and some dry-weather flow consisting of water from wash-down, maintenance, and cleaning activities as well as steam condensate and heat exchanger back-flushing. The sludge in not accumulated at a constant rate and is currently removed from the tanks at approximately 18 month intervals and processed via centrifuge and/or filter press for oil recovery and dewatering. Recovered oil is reinserted into the refining process and water from dewatering is routed to the Refinery's on-site wastewater treatment plant.

C. How did ConocoPhillips sample and analyze the waste?

ConocoPhillips collected sample sludge from 16 locations in each tank, the sludge was composited and processed for oil recovery and dewatering through a filter press, and submission of the filter pressed residual solid material for analysis. A total of eight composite samples, one duplicate and one matrix spike/matrix duplicate were analyzed for both total and Toxicity Characteristic Leaching Procedure (TCLP) analyses of constituents of concern (COC). The COC list was comprised of a subset of the Appendix IX constituent list in 40 CFR 264, and was based on: (1) Knowledge of the refinery processes and wastes; (2) the evaluation of available references, including Exhibit 3 of the March 23, 2000 USEPA RCRA Delisting Program Guidance manual for the Petitioner entitled *Constituents of Concern for Wastes from Petroleum Processes;* (3) the U.S. EPA Region 5 ''Skinner List'' constituents and (4) the basis for the F037 listing per 40 CFR 261 Appendix VII. Each sample was also analyzed for pH, oil & grease, total cyanide and total sulfide. Two samples of the filter pressed material (one from each tank) were analyzed using both neutral and alkaline pH TCLP extraction fluids as presented in the delisting guidance.

D. What were the results of the ConocoPhillips waste analysis?

The table below presents the maximum observed total concentrations and the TCLP concentrations for all the COC. Total concentrations are expressed in milligrams per kilogram (mg/kg) and leachate concentrations are expressed in milligrams per liter (mg/L). ConocoPhillips submitted a signed statement certifying accuracy and responsibility of the results. *See* 40 CFR 260.22(i)(12)).

TABLE I—MAXIMUM TOTAL AND TCLP CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION LEVELS

[Storm Water Tank—Filter Press residual solids, ConocoPhillips Billings Refinery, Billings, Montana]

Constituent	Maximum total constituent analysis (mg/kg)	Maximum TCLP constituent analysis (mg/L)	Maximum allowable TCLP delisting concentration level (mg/L)
Acenaphthene	8.0	<.0051	37.9
Antimony	1.89	.0074	.97
Anthracene	18.0	.0017	50
Arsenic	60.1	.157	.301
Barium	196	1.12	100
Benz(a)anthracene	3.6	<.005	.25
Benzene	.031	<.01	.5
Benzo(a)pyrene	1.5	<.006	1.1
Benzo(b)fluoranthene	.6	<.008	8.7
Benzo(k)fluoranthene	.66	<.008	50
Beryllium	<.13	<.003	2.78
Bis(2-ethylhexyl)phthalate	1.8	<.0033	50
2-Butanone	.12	<.02	50
Butyl Benzyl phthalate	<.11	<.0007	46.5
Cadmium	1.46	<.006	1.0
Carbon disulfide	.0083J	<.02	36
Chromium	152	<.006	5.0
Chrysene	4.2	<.008	25.0
Chlorobenzene	<0.13	<.01	16.4
Chloroform	<.013	<.01	.286
Cobalt	24.4	.0074	.763
Cyanide(total)	7.72	<.003	41.2
Dibenz(a,h)anthrancene	.17	<0.008	1.16
1,2-Dichlorobenzene	<.0013	<.01	50
1,3-Dichlorobenzene	<.0013	<.01	18.5
1,4-Dichlorobenzene	<.0011	<.01	1.69

TABLE I—MAXIMUM TOTAL AND TCLP CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION LEVELS—Continued

[Storm Water Tank—Filter Press residual solids, ConocoPhillips Billings Refinery, Billings, Montana]

Constituent	Maximum total constituent analysis (mg/kg)	Maximum TCLP constituent analysis (mg/L)	Maximum allowable TCLP delisting concentration level (mg/L)
1, 2-Dichloroethane	<.0013	<.01	.375
1,1-Dichloroethane	<.0013	<.01	50
1,1-Dichloroethylene	<.0013	<.01	.7
Diethyl phthalate	<.11	<.0005	50
Dimethyl phthalate	<.11	<.0005	50
2, 4-Dimethylphenol	<.13	<.0019	40.4
Di-n-butyl phthalate	<.11	<.0005	50
2, 4-Dintrophenol	<.23	<.0014	4.12
2, 4-Dinitrotoluene	<.22	<.001	.059
Di-n-octyl phthalate	.19	<.0006	50
1,4-Dioxane	<.43	<2	36.5
Ethylbenzene	.660	<.01	12
Ethylene Dibromide	<.0013	<.01	2.74
Fluoranthene	3.8	<0.0035J	8.78
Fluorene	19.0	<0.0085	17.5
Indeno(1,2,3-cd)pyrene	.440	<0.0013	27.3
Lead	43.1	0.0053	5.0
Mercury	1.46	0.00005	0.2
MTBE	<.013	<.01	50
m&p -Cresol	1.60	.024	10.3
Naphthalene	90.0	0.086	1.17
Nickel	212	0.173	48.2
Nitrobenzene	<.12	<.0008	1.03
4-Nitrophenol	<.22	<.0019	50
o-Cresol	.170	<.001	50
Phenanthrene	62.0	<.180	50
Phenol	.320J	.0032	50
Pyrene	9.7	<0.0026J	15.9
Pyridine	<.11	<.002	2.06
Quinoline	<.11	<.0006	50
Selenium	100	.18	1.0
Silver	.16J	<0.007	5.0
Styrene	<.013	<.01	50
Sulfide (total)	145	N/A	500
Tetrachloroethene	.073	<.012	.7
Toluene	.630	.02J	26
1,1,1-Trichloroethane	<.0013	<.01	50
Trichloroethene	.0076	<.01	.403
Vanadium	114	.13	12.3
Xylenes, Total	7.60	.071	22
Zinc	1140	.227	500

Notes:

(A) These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

(B) Based on lowest level of: nominal upper limit, land disposal restriction limit, RCRA hazardous level; or DRAS modeling with a target risk of 10–6 and a target HI of 0.1 with the exception of: arsenic, naphthalene and 1,4-Dioxane TCLP set at 10–5 and HI of 1.0.

E. How did the EPA evaluate the risk of delisting this waste?

For this delisting determination, the EPA applied the Delisting Risk Assessment Software (DRAS) described in various EPA rulemakings. *See, e.g.,* 65 FR 58,015 (Sept. 27, 2000); 65 FR 75,637 (Dec. 4, 2000) and 73 FR 28,768 (May 19, 2008). We used the most recent version of DRAS, v.3.0.34 updated in September 2010. DRAS calculates the potential risks associated with disposing a given waste stream to a landfill or surface impoundment. For a given waste stream, DRAS calculates both the waste's aggregate risks and also back-calculates each waste constituent's maximum allowable concentration permissible for delisting. DRAS requires the user to assign a target cancer risk and hazard index.

For this analysis, DRAS was used to predict the maximum allowable concentrations of hazardous constituents that may be released from ConocoPhillips's storm water tank filter press solids after landfill disposal, and determined the potential impact of disposal on human health and the environment. In assessing potential risks to ground water, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in ground water at a hypothetical receptor well down gradient from the disposal site. The EPA used two risk levels to evaluate the ConocoPhillips waste: carcinogenic risk of 10–6 and non-cancer hazard index of 0.1 and; carcinogenic risk of 10–5 and non-cancer hazard index of 1.0. The DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and the EPA

health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

The EPA believes the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.,* volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations, also known as delisting levels. In most cases, because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, the EPA currently believes that it is inappropriate to consider extensive site specific factors when applying the fate and transport model.

DRAS results, which calculate the maximum allowable concentration of chemical constituents in the waste, are presented in Table I. Based on the comparison of DRAS results and the maximum TCLP and Totals concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products above the delisting levels.

F. What did the EPA conclude about the ConocoPhillips waste?

ConocoPhillips's petition requests a delisting of the residual solids from processed sludge from the two storm water tanks from being considered a F037 waste. ConocoPhillips believes that the storm water tank sludge does not meet the original criteria for the hazardous waste listing. ConocoPhillips also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* RCRA 3001(f), 42 U.S.C. 6921(f); 40 CFR 260.22(d)(1)–(4). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. If the EPA, based on this review, had found that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition. The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from the ConocoPhillips Billings Refinery is based on the information submitted in support of this rule, including descriptions of the wastes and analytical chemistry data of the residual solids from the storm water tank clean-out.

The maximum reported concentrations of hazardous constituents found in the filter press solids and the filter press solids TCLP extracts are presented in Table I above. The table also presents the maximum allowable concentrations in a TCLP extract of the residual solids from storm water tank sludge processing, calculated by the DRAS program. The concentrations of all constituents in leachate from the filter press solids are below the allowable concentrations. We, therefore, conclude that the ConocoPhillips waste does not pose a potential substantial hazard to human health and the environment when disposed of in a RCRA Subtitle D landfill.

We, therefore, propose to grant exclusion for this waste. If this exclusion is finalized, ConocoPhillips must dispose of the residual solids from the processed storm water tank sludge in a RCRA Subtitle D landfill regulated by the State of Montana, or other state subject to Federal RCRA delisting, to manage industrial waste. Prior to disposal ConocoPhillips must verify that the concentrations of the constituents of concern in the residual solids do not exceed the allowable levels set forth in this exclusion. The list of constituents for verification is based on the concentration and frequency of occurrence, as presented in the ConocoPhillips petition.

IV. Conditions for Exclusion

A. When would the EPA finalize the proposed delisting exclusion?

RCRA 3001(f) specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the EPA will not grant the exclusion unless and until it addresses all timely public comments on this proposal, including any at public hearings.

RCRA 3010(b)(1), 42 U.S.C. 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon publication of the final rule because a six-month deadline is not necessary to achieve the purpose of RCRA 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

B. How will ConocoPhillips manage the waste if it is delisted?

ConocoPhillips must dispose of the residual solids from the processed storm water tank sludge in a RCRA Subtitle D landfill that is regulated by the State of

Montana, or other state subject to Federal RCRA delisting, to manage industrial waste. ConocoPhillips must verify prior to disposal that the concentrations of the COC in the residual solids do not exceed the allowable levels set forth in this exclusion.

C. What are the maximum allowable concentrations of hazardous constituents in the waste?

Concentrations measured in the TCLP extract of the waste must not exceed the values given in Table I.

D. How frequently must ConocoPhillips test the waste?

During the period of cleanout, ConocoPhillips must collect two composite samples of the residual solids from the filter pressed sludge to account for potential variability in each tank. Composite samples from the storm water tanks processed residuals must be collected each time cleanout occurs and residuals are generated. TCLP analyses for the standard acid extraction for trace elements and organic COC listed in Table I must be conducted. Concentrations of all constituents must be below the delisting limits in Table I above.

E. What data must ConocoPhillips submit?

Whenever tank cleanout is conducted, ConocoPhillips must verify that the filter press solids meet the delisting levels in 40 CFR 261, Appendix IX, Table 1, as amended by this notice. ConocoPhillips must submit the verification data to U.S. EPA Region 8, 1595 Wynkoop Street, RCRA Delisting Program, Mail code 8P–HW, Denver, CO 80202. ConocoPhillips must compile, summarize and maintain, onsite, records of operating conditions and analytical data for a period of five years.

F. What happens if ConocoPhillips waste fails to meet the conditions of the exclusion?

If ConocoPhillips violates the terms and conditions established in this exclusion, the EPA will initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the EPA will evaluate the need for enforcement activities on a case-by-case basis. The EPA expects ConocoPhillips to conduct the appropriate waste analysis and comply with the criteria detailed in 40 CFR 261, Appendix IX, Table 1, as amended by this notice.

G. What must ConocoPhillips do if the process changes?

ConocoPhillips must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. ConocoPhillips must handle wastes generated after the process change as hazardous until it has: demonstrated that the wastes continue to meet the delisting concentrations in paragraph (1); Demonstrated that no new hazardous constituents listed in Appendix VIII of 40 CFR 261 have been introduced; and it has received written approval from the EPA.

V. How would this action affect states?

Because the EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states who have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under RCRA 3009, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a federally-issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under applicable state law. Delisting petitions approved by the EPA Administrator or his delegate pursuant to 40 CFR 260.22 are effective in the State of Montana after the final rule has been published in the **Federal Register**.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, Oct. 4, 1993) this rule is not of general applicability and, therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule 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, ''Federalism'', (64 FR 43255, Aug. 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will apply to a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' (65 FR 67249, Nov. 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR. 19885, Apr. 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform'', (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: November 18, 2011.

James B. Martin,

Regional Administrator, Region 8.

For the reasons set out in the preamble, the EPA proposes to amend 40 CFR part 261 as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. In Table 1 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under 40 CFR 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
ConocoPhillips Billings Refinery.	Billings, Montana	Residual solids from centrifuge and/or filter press processing of storm water tank sludge (F037) generated at a maximum annual rate of 200 cubic yards per year must be disposed in a lined Subtitle D landfill, licensed, permitted or otherwise authorized by a state to accept the delisted processed storm water tank sludge. The exclusion becomes effective December 8, 2011. For the exclusion to be valid, the ConocoPhillips Billings Refinery must implement a verification testing program that meets the following Paragraphs: 1. *Delisting levels:* The constituent concentrations in a leachate extract of the waste measured in any sample must not exceed the following concentrations (mg/L TCLP): Acenaphthene-37.9; Antimony-.97; Anthracene-50; Arsenic-.301; Barium-100; Benz(a)anthracene-.25; Benzene-.5; Benzo(a)pyrene-1.1; Benzo(b)fluoranthene-8.7; Benzo(k) fluoranthene-50; Bis(2-ethylhexyl)phthalate-50; 2-Butanone-50; Cadmium-1.0; Carbon disulfide-36; Chromium-5.0; Chrysene-25.0; Cobalt-.763; Cyanide(total)-41.2; Dibenz(a,h)anthrancene-1.16; Di-n-octyl phthalate-50; 1,4–Dioxane-36.5; Ethylbenzene-12; Fluoranthene-8.78; Fluorene-17.5; Indeno(1,2,3-cd)pyrene-27.3; Lead-5.0; Mercury-.2; m&p-Cresol-10.3; Naphthalene-1.17; Nickel-48.2; o-Cresol-50; Phenanthrene-50; Phenol-50; Pyrene-15.9; Selenium-1.0; Silver-5.0; Tetrachloroethene-0.7; Toluene-26;Trichloroethene-.403; Vanadium-12.3; Xylenes (total)-22; Zinc-500. 2. *Verification Testing:* To verify that the waste does not exceed the specified delisting levels, ConocoPhillips must collect and analyze two composite samples of the residual solids from the processed sludge to account for potential variability in each tank. Composite samples must be collected each time cleanout occurs and residuals are generated. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. If oil and grease comprise less than 1 percent of the waste, SW–846 Method 1311 must be used for generation of the leachate extract used in the testing for constituents of concern listed above. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1 percent or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. As applicable, the SW–846 methods might include Methods 1311, 3010, 3510, 6010, 6020, 7470, 7471, 8260, 8270, 9014, 9034, 9213, and 9215. If leachate concentrations measured in samples do not exceed the levels set forth in paragraph 1, ConocoPhillips can dispose of the filter pressed sludge in a lined Subtitle D landfill which is permitted, licensed, or registered by the state of Montana or other state which is subject to Federal RCRA delisting. If constituent levels in any sample and any retest sample for any constituent exceed the delisting levels set in paragraph (1) ConocoPhillips must do the following: (A) notify the EPA in accordance with paragraph (5) and; (B) manage and dispose of the process residual solids as F037 hazardous waste generated under Subtitle C of RCRA. 3. *Changes in Operating Conditions:* ConocoPhillips must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. ConocoPhillips must handle wastes generated after the process change as hazardous until it has: demonstrated that the wastes continue to meet the delisting concentrations in paragraph (1); demonstrated that no new hazardous constituents listed in appendix VIII of part 261 have been introduced; and it has received written approval from the EPA. 4. *Data Submittal:* Whenever tank cleanout is conducted ConocoPhillips must verify that the residual solids from the processed storm water tank sludge meet the delisting levels in 40 CFR 261 Appendix IX Table 1, as amended by this notice. ConocoPhillips must submit the verification data to U.S. EPA Region 8, 1595 Wynkoop Street, RCRA Delisting Program, Mail code 8P–HW, Denver, CO 80202. ConocoPhillips must compile, summarize and maintain onsite records of operating conditions and analytical data for a period of five years. 5. *Reopener Language:* (A) If, anytime after final approval of this exclusion, ConocoPhillips possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the EPA in granting the petition, then the facility must report the data, in writing to the EPA at the address above, within 10 days of first possessing or being made aware of that data.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) If ConocoPhillips fails to submit the information described in paragraph (A) or if any other information is received from any source, the EPA will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the EPA determines that the reported information requires the EPA action, the EPA will notify the facility in writing of the actions the agency believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed the EPA action is not necessary. The facility shall have 30 days from the date of the notice to present such information. (D) If after 30 days ConocoPhillips presents no further information or after a review of any submitted information, the EPA will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the EPAs determination shall become effective immediately, unless the EPA provides otherwise. (E) Notification Requirements: ConocoPhillips must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (1) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (2) Update the one-time written notification, if it ships the delisted waste to a different disposal facility. (3) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.

[FR Doc. 2011–31533 Filed 12–7–11; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA–R10–UST–2011–0896; FRL–9502–6]

Idaho: Tentative Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Idaho has applied for final approval of its Underground Storage Tank (UST) Program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Idaho's application and made the tentative decision that the State's UST program satisfies all requirements necessary to qualify for final approval.

DATES: A public hearing will be held on December 19, 2011 from 9 a.m.–12 p.m. at the Idaho Department of Environmental Quality, Conference Room B, 1410 North Hilton, Boise, Idaho 83706. The State of Idaho will be invited to participate in any public hearing held by EPA on this subject. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–UST–2011–0896, by one of the following methods:

- *http://www.regulations.gov* Follow the online instructions for submitting comments.
- *Email: sirs.erik@epa.gov.*
- *Mail:* Erik Sirs, U.S. Environmental Protection Agency, Region 10, 1435 North Orchard, Boise, ID 83706.

Instructions: Direct your comments to Docket ID No. EPA–R10–UST–2011–0896. 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 identify 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 or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

Please see **SUPPLEMENTARY INFORMATION**, Item D, for details on the location of the documents in hard copy form.

FOR FURTHER INFORMATION CONTACT: Erik Sirs, U.S. Environmental Protection Agency, Idaho Operations Office, 1435 North Orchard, Boise, ID 83706.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve implementation of State UST programs in lieu of the Federal UST program. Approval is granted when it has been determined that the State

program: (1) Is no less stringent than the overall Federal program and includes the notification requirements of Section 9004(a)(8), 42 U.S.C. 6991c(a)(8), and (2) provides for adequate enforcement of compliance with UST standards of Section 9004(a), 42 U.S.C. 6991c(a).

B. State of Idaho

The Idaho Department of Environmental Quality (IDEQ) is the lead implementing agency for the UST program in Idaho. IDEQ has broad statutory authority to regulate UST releases under Idaho Code, Title 39, Chapter 1, Environmental Quality—Health; Title 39, Chapter 72, Idaho Land Remediation Act; Chapter 88, Idaho Underground Storage Tank Act; and the Idaho Rules for Civil Procedure. Specific authorities to regulate the installation, operation, maintenance, and closure of USTs is found under the Idaho Administrative Procedures Act 58.01.02 Water Quality Standards; 58.01.07 Rules Regulating Underground Storage Tank Systems; 58.01.18 Idaho Land Remediation Rules; 58.01.23 Rules of Administrative Procedure Before the Board of Environmental Quality; 58.01.24 Standards and Procedure for Application of Risk Based Corrective Action at Petroleum Release Sites.

Idaho is not authorized to carry out its UST program in Indian Country. This includes all lands within the exterior boundaries of the Coeur d'Alene, Duck Valley, Fort Hall, Kootenai, and Nez Perce Reservations; any land held in trust by the United States for an Indian Tribe, and any other lands that are Indian Country within the meaning of 18 U.S.C. 1151.

C. Public Hearing

It is EPA's policy to make reasonable accommodation to persons with disabilities wishing to participate in the Agency's programs and activities, pursuant to the Rehabilitation Act of 1973, 29 U.S.C. 791, *et seq.* Any request for accommodation should be made to Erik Sirs, (208) 378–5762, preferably a minimum of two weeks in advance of the public hearing date, so that EPA will have sufficient time to process the request.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

D. Location of Documents

All documents that are in the electronic docket are also available in hard copy during normal business hours at the following locations:

1. U.S. Environmental Protection Agency, Idaho Operation Office, Region 10, 1435 North Orchard, Boise, ID 83706 from 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

2. Idaho Department of Environmental Quality, 1410 North Hilton, Boise, ID 83706 from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

3. IDEQ Boise Regional Office, 1445 North Orchard, Boise, ID 83706 from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

4. IDEQ Coeur d'Alene Regional Office, 2110 Ironwood Parkway, Coeur d'Alene, ID 83814 from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; and

5. IDEQ Idaho Falls Regional Office, 900 N. Skyline, Suite B, Idaho Falls, ID 83402 from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; and

6. IDEQ Lewiston Regional Office, 1118 ''F'' Street, Lewiston, ID 83501 from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; and

7. IDEQ Pocatello Regional Office, 444 Hospital Way, #300, Pocatello, ID 83201, from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; and

8. IDEQ Twin Falls Regional Office, 1363 Fillmore Street, Twin Falls, ID 83301, from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

E. Statutory and Executive Order (EO) Review

This proposed rule only applies to Idaho's UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

1. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from its review under Executive Order 12866.

2. Paperwork Reduction Act

This proposed 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 proposed rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. 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; 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. 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 are listed in 40 CFR part 9.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR part 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. I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because the proposed rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

4. Unfunded Mandates Reform Act

This proposed rule does not have any impacts as described in the Unfunded Mandates Reform Act because this rule codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law. It does not contain any unfunded mandates or significantly or uniquely affects small governments.

5. Executive Order 13132: Federalism

This proposed rule 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 various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule proposes to authorize pre-existing State rules. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This proposed rule does not have Tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from Tribal officials.

7. Executive Order 13045: Protection of Children From Environmental Health 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 proposes to approve a state program.

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

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), 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 bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

10. 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 has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This proposed rule does not affect the level of protection provided to human health or the environment because this rule proposes to authorize pre-existing State rules which are no less stringent than existing Federal requirements.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This notice is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c.

Dated: November 30, 2011.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2011–31531 Filed 12–7–11; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NTSB is proposing to amend its regulations concerning notification and reporting requirements with regard to aircraft accidents or incidents, found at paragraph (a)(10) of section 830.5, entitled, ''Immediate notification.'' Currently, 49 CFR 830.5(a)(10) requires reports of Airborne Collision and Avoidance System (ACAS) advisories issued under certain specific circumstances. The NTSB now proposes to narrow the ACAS reporting requirement in section 830.5(a)(10).

DATES: Submit comments on or before February 6, 2012.

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

1. *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

2. *Mail:* Mail comments concerning this proposed rule to Scott Dunham, AS–30, National Transportation Safety Board, 490 L'Enfant Plaza SW., Washington, DC 20594–2000.

3. *Fax:* (202) 314–6308, Attention: Scott Dunham.

4. *Hand Delivery:* 6th Floor, 490 L'Enfant Plaza SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott Dunham, National Resource Specialist—ATC, Office of Aviation Safety, (202) 314–6387.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 7, 2010, the NTSB published a final rule entitled, ''Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records,'' in the **Federal Register** (75 FR 922). The final rule implemented several changes to section 830.5, requiring immediate notification of a variety of specific incidents, one of which was certain ACAS advisories. In accordance with the Administrative Procedure Act, prior to issuing the final rule, the NTSB published a notice of proposed rulemaking (NPRM) in the **Federal**

Register to invite comments concerning the proposed changes. (73 FR 58520; October 7, 2008). Several commenters stated they believed the language of section 830.5(a)(10), concerning ACAS advisories, would require reports of *all* ACAS advisories. In issuing the final rule, the NTSB attempted to clarify section 830.5(a)(10) by assuring commenters—in the preamble published in the **Federal Register**—that the NTSB only sought ACAS advisories in the following circumstances: ''(1) When an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or (2) to an aircraft operating in class A airspace.'' 75 FR at 923.

Although the NTSB believed the language of the final rule adequately conveyed the limited circumstances in which the NTSB would require notification of ACAS advisories, the NTSB has since determined it would achieve the same safety objective by receiving reports under a more specific set of circumstances. Therefore, the NTSB now proposes to amend the language of the rule to eliminate notifications of events where the only resolution advisory received by the flight crew is ''monitor vertical speed.'' Review of numerous TCAS events by Safety Board investigators has shown ''monitor vertical speed'' advisories typically occur in situations where there is no collision risk, and in encounters where separation between aircraft deteriorates TCAS will generate additional resolution advisories containing instructions to climb or descend. As notification of those advisories will continue to be required under the modified rule, the effect of this change will be to eliminate the need for operators to notify the NTSB of events which present no actual or potential hazard. The intent of the notification requirement is to allow the NTSB to review potentially hazardous encounters. We conclude this change will not significantly reduce our ability to do so.

Statutory and Regulatory Evaluation

This proposed rule would amend the requirements for providing immediate notification to the NTSB of certain ACAS advisories, reducing the number of required notifications by aircraft operators.

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget (OMB) has not reviewed this proposed rule under Executive Order 12866. In addition, on July 11, 2011, the President issued Executive Order 13579, ''Regulation and Independent Regulatory Agencies,'' 76 FR 41587, July 14, 2011). Section 2(a) of the Executive Order states:

> independent regulatory agencies ''should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.''

76 FR at 41587.

Consistent with Executive Order 13579, the NTSB's proposed amendments to section 830(a)(10) reflect its judgment that certain types of ACAS notifications are unnecessary and, therefore, the notification and reporting requirements should be streamlined. This proposed rule does not require an analysis under the Unfunded Mandates Reform Act, 2 United States Code (U.S.C.) 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this proposed rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. In accordance with 5 U.S.C. 605(b), the NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration.

This proposed rule would not require collection of new information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Operators have the option of notifying the NTSB of an ACAS advisory that fulfills the requirements of this rule via telephone, email, or web-based form. The NTSB is working with the Office of Information and Regulatory Affairs, OMB, to obtain an OMB control number under the Paperwork Reduction Act to display on the web-based form.

The NTSB does not anticipate that this proposed rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this proposed rule does not have implications for federalism under Executive Order 13132, Federalism. This proposed rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this proposed rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this proposed rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this proposal prompt further consideration with regard to such requirements. The NTSB invites comments relating to any of the foregoing determinations and notes that the most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data.

Discussion of Proposed Revision

As noted above, the NTSB proposes to amend section 830.5(a)(10) to require the reporting of:

Airborne Collision and Avoidance System (ACAS) advisories issued either:

i. When an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or

ii. To an aircraft operating in class A airspace, unless the advisory received only instructs the pilot to ''monitor vertical speed.''

The NTSB believes such an update will sufficiently clarify the types of reports of ACAS advisories the NTSB seeks, and adequately narrow the reporting requirement.

In addition, as the NTSB pointed out in the October 2008 NPRM proposing this requirement, the International Civil Aviation Organization (ICAO) had noted the NTSB's regulations did not previously require the notification of any air proximity events. The amendment the NTSB now proposes to section 830.5(a)(10) continues to require reports of ACAS advisories, but narrows the requirement to exclude advisories that merely instruct pilots to monitor their vertical speed.

The NTSB believes the proposed change to section 830.5(a)(10) will continue to assist in achieving the NTSB's purpose of improving aviation

safety, while ensuring the language of the rule only requires notifications regarding specific ACAS advisories that the NTSB may seek to investigate.

List of Subjects in 49 CFR Part 830

Aircraft accidents, Aircraft incidents, Aviation safety, Overdue aircraft notification and reporting, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the NTSB proposes to amend 49 CFR part 830 as follows:

PART 830—[AMENDED]

1. The authority citation for 49 CFR part 830 should continue to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101—1155); Federal Aviation Act of 1958, Pub. L. 85–726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

2. Section 830.5 is amended as follows:

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (NTSB) office,[1] when:

[1] NTSB regional offices are located in the following cities: Anchorage, Alaska; Atlanta, Georgia; West Chicago, Illinois; Denver, Colorado; Arlington, Texas; Gardena (Los Angeles), California; Miami, Florida; Parsippany, New Jersey (metropolitan New York City); Seattle, Washington; and Ashburn, Virginia. In addition, NTSB headquarters is located at 490 L'Enfant Plaza, SW., Washington, DC 20594. Contact information for these offices is available at *http://www.ntsb.gov.*

(a) An aircraft accident or any of the following listed serious incidents occur:

* * * * *

(10) Airborne Collision and Avoidance System (ACAS) resolution advisories issued either:

(i) When an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or

(ii) To an aircraft operating in class A airspace, unless the only advisory received is to ''monitor vertical speed'';

* * * * *

Dated: December 1, 2011.

Deborah A.P. Hersman,

Chairman.

[FR Doc. 2011–31423 Filed 12–7–11; 8:45 am]

BILLING CODE 7533–01–P

Notices

Federal Register
Vol. 76, No. 236
Thursday, December 8, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Cibola National Forest, Mount Taylor Ranger District, NM, Mount Taylor Combined Exploratory Drilling

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The proposed action is to approve two Plans of Operations for exploratory uranium drilling on the Cibola National Forest, Mount Taylor Ranger District. There are two areas identified for exploration; the Bajillos project area is approximately 2,894 acres and is located in T. 12 N, R. 8 W, Sections 6, 7, & 8 and T. 12 N, R. 9 W, Sections 1, 12, & . The Endy project area is approximately 3,740 acres and is located in T. 13 N, R. 7 W, Sections 7 &8, T. 13 N, R. 8 W, Secions 2, 3, 4, 5, 11, & 12 and T. 14 N, R. 8 W, Sections 31 & 32. Both project areas are located north-northeast of Grants in the vicinity of the town of San Mateo. In total, there are up to 279 drill holes that would be drilled over a period not to exceed 6 years from initiation of the project. A total of 21 drill holes are proposed within the Bajillos project area. A total of up to 258 holes are proposed for drilling within the Endy project area. The exploratory drilling in this area would be phased over the course of six years; 51 holes would be drilled during the first phase of exploration. Secondary- and later phase- drilling would consist of in-fill drilling and moving outward into newer areas.

DATES: Comments concerning the scope of the analysis must be received by 45 days after the publication of the NOI. The draft environmental impact statement is expected September 2012 and the final environmental impact statement is expected January 2013.

ADDRESSES: Send written comments to Diane Tafoya, Combined Uranium Exploratory Drilling Team Lead, Cibola National Forest, 2113 Osuna Road, NE., Albuquerque, NM 87113. Comments can also be submitted online at: *https://cara.ecosystem-management.org/Public/CommentInput?Project=33948*.

FOR FURTHER INFORMATION CONTACT: For further information, mail correspondence to Diane Tafoya, Combined Uranium Exploratory Drilling Team Lead, Cibola National Forest, 2113 Osuna Road NE., Albuquerque, NM 87113 or call (505) 346–3900.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

This action is needed to allow the Applicants to exercise their rights under U.S. mining laws. The Applicants have a right to explore their claims as set forth by the General Mining Law of 1872 as amended. These laws provide that the public has a statutory right to conduct prospecting, exploration, and development activities (1872 Mining Law and 1897 Organic Act), provided they are reasonably incident (1955 Multiple Use Mining Act and case law) to mining and comply with other Federal laws.

Proposed Action

The proposed action is to approve two Plans of Operation for uranium exploration drilling on the Mount Taylor Ranger District of the Cibola National Forest. There are two areas identified for exploration; the Bajillos project area and the Endy project area. A total of 21 drill holes are proposed within the Bajillos project area. The drill pads would be 30 by 100 feet in size (average 0.07 acres each) and drilling depths would reach down to 1200 feet. The mud pits constructed within the footprints of the drill pad would measure 4 by 20 feet and be approximately 5 feet deep. An estimated 1.45 acres of ground disturbance would be associated with all drilling activities. Access to all of the drill sites would be along existing roads. Less than 0.1 miles of routine road maintenance would be required in order for the drilling equipment to reach the sites. All of the drilling would occur over the course of 2 months.

Up to 258 holes are proposed for drilling within the Endy project area. The exploratory drilling would be phased over the course of six years; 51 holes would be drilled during the first phase of exploration. Secondary drilling would occur if, or when, further investigation is indicated by the data recovered from earlier drilling. It is possible that not all drill holes which are proposed and analyzed for this project area would be drilled. The drill pads would be 60 by 120 feet (average of 0.17 acres each) and drilling depths would reach down to 3200 feet. The mud pits constructed within the footprint of the drill pad would measure 8 by 10 feet and be approximately 6 feet deep. An estimated 42.64 acres of ground disturbance would be associated with the 258 drill hole locations.

The drill locations will be accessed using existing roads, cross country travel (where feasible) and temporary roads constructed to access drill sites on steep slopes. All temporary roads would be obliterated after use.

Information about the proposal will be posted on the project Web site at *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=33948*.

Possible Alternatives

1. No Action. 2. Approve the two plans of operations with appropriate mitigation measures, if needed.

Responsible Official

Nancy Rose, Forest Supervisor, Cibola National Forest. 2113 Osuna Road NE., Albuquerque, NM 87113.

Nature of Decision To Be Made

The Forest Supervisor will use the EIS process to develop the necessary information to make an informed decision on whether or not to approve the proposed plans as submitted, or to decide what mitigation and monitoring requirements are needed to protect resources.

Preliminary Issues

One preliminary issue has been identified: Exploration may affect the characteristics of the Mount Taylor Traditional Cultural Property eligible for inclusion on the National Register of Historic Places. Other issues that may arise include legacy health issues, reclamation concerns, and

contamination of ground and surface water.

Permits or Licenses Required

The approved Plans of Operations authorizes exploration. Operations must be consistent with Forest Service Conditions of Approval, and other applicable laws and regulations, including New Mexico state permits for exploratory drilling.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Comments are solicited and are welcome for the 45-day comment period initiating on the publication date of this notice.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: December 2, 2011.

Nancy Rose,

Forest Supervisor.

[FR Doc. 2011–31563 Filed 12–7–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 8, 2011

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on multilayered wood flooring (''wood flooring'') from the People's Republic of China (''PRC''). In addition, the Department is amending its final determination to correct certain ministerial errors.

FOR FURTHER INFORMATION CONTACT: Erin Kearney, Brandon Farlander, or Charles Riggle, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; *telephone:* (202) 482–0167, (202) 482–0182, or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (''Act''), on October 18, 2011, the Department published the final determination of sales at less than fair value in the antidumping duty investigation of wood flooring from the PRC. *See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318 (October 18, 2011) (''*Final Determination*''). On December 1, 2011, the ITC notified the Department of its affirmative determination of material injury to a U.S. industry. *See Multilayered Wood Flooring from China,* USITC Investigation Nos. 701–TA–476 and 731–TA–1179 (Final), USITC Publication 4278 (November 2011).

Correction of Scope of the Order

In the *Final Determination,* the Department stated that the scope used in the preliminary determination [1] should be amended so as to not refer to certain Harmonized Tariff Schedule of the United States (''HTSUS'') numbers under which subject merchandise may be incorrectly classified. *See Final Determination* and accompanying Issues and Decision Memorandum at Comment 12.C. However, the Department inadvertently included in its *Final Determination* the scope language used in the *Preliminary Determination.* The correct scope is provided, below.

Scope of the Order

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) [2] in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, e.g., ''engineered wood flooring'' or ''plywood flooring.'' Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.,* without a finally finished surface to protect the face veneer from wear and tear) or ''prefinished'' (*i.e.,* a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes). The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (''HDF''), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.,* circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring,

[1] *Multilayered Wood Flooring From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 76 FR 30656 (May 26, 2011) (''*Preliminary Determination*'').

[2] A ''veneer'' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (''HTSUS''): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.3175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; and 4418.72.9500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Amendment to the Final Determination

On October 18, 2011, the Department published its affirmative final determination in this proceeding. *See Final Determination.* On October 19, 2011, the petitioner in the investigation, the Coalition for American Hardwood Parity (''Petitioner''), and Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Global USA, Inc., Samling Riverside Co., Ltd. and Suzhou Times Flooring (collectively, the ''Samling Group''), Zhejiang Layo Wood Industry Co., Ltd. (''Layo Wood''), and Xinyuan Wooden Industry Co., Ltd., respondents in the investigation, submitted timely ministerial error allegations and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors in the dumping margin calculations. On October 25, 2011, Petitioner filed rebuttal comments. No other interested party submitted ministerial error allegations or rebuttal comments.

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made the following ministerial errors in our calculations for the *Final Determination* with respect to Layo Wood:

- We unintentionally applied an incorrect surrogate value for Layo Wood's corrugated paper inputs in the dumping margin calculation program.
- We incorrectly applied a cubic-meter-to-kilogram conversion to the surrogate value for Layo Wood's HDF inputs, for purposes of calculating Layo Wood's scrap byproduct value. The surrogate value for HDF was already reported on a dollars per kilogram basis, so no conversion was necessary.

For a detailed discussion of all alleged ministerial errors, as well as the Department's analysis, see Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, concerning, ''Final Determination of Antidumping Duty Investigation on Multilayered Wood Flooring from the People's Republic of China: Allegations of Ministerial Errors,'' dated November 7, 2011 (''Ministerial Error Memorandum'').

In the *Final Determination,* we determined that a number of companies, in addition to the mandatory respondents, qualified for a separate rate. *See Final Determination.* Since the cash deposit rate for the separate rate respondents is based on the average of the margins for the mandatory respondents, and the margin for Layo Wood changed as a result of the aforementioned ministerial errors, we have revised the calculation of the dumping margin for the separate rate respondents in the amended final determination. See Ministerial Error Memorandum. The amended weighted average dumping margins are provided, below.

Antidumping Duty Order

As noted above, on December 1, 2011, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation, in which it found material injury with respect to wood flooring from the PRC. Because the ITC determined that imports of wood flooring from the PRC are materially injuring a U.S. industry, all unliquidated entries of such merchandise from the PRC, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of wood flooring from the PRC. These antidumping duties will be assessed on unliquidated entries from the PRC entered, or withdrawn from warehouse, for consumption on or after May 26, 2011, the date on which the Department published its preliminary determination (*see Preliminary Determination*), but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as discussed above. *See* section 735(c)(3) of the Act. The ''PRC-wide'' rate applies to all exporters of subject merchandise not specifically listed.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of exports of wood flooring from the PRC, we extended the four-month period to no more than six months. *See* Letter from Zhejiang Yuhua Timber Co., Ltd. (April 27, 2011); *see also* Letter from Layo Wood (April 29, 2011). In the underlying investigation, the Department published the *Preliminary Determination* on May 26, 2011. *See Preliminary Determination.* Therefore, the six-month period beginning on the date of the publication of the *Preliminary Determination* ended on November 22, 2011. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of wood flooring from the PRC entered, or withdrawn from warehouse, for consumption after November 22, 2011, the date provisional measures expired, and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on and after the date of publication of the ITC's final injury determination in the **Federal Register**.

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted average margin
Zhejiang Layo Wood Industry Co., Ltd	Zhejiang Layo Wood Industry Co., Ltd	3.97
The Samling Group **	The Samling Group **	2.63
Zhejiang Yuhua Timber Co., Ltd	Zhejiang Yuhua Timber Co., Ltd	* 0.00
Jiaxing Brilliant Import & Export Co., Ltd	Zhejiang Layo Wood Industry Co., Ltd	3.30
MuDanJiang Bosen Wood Industry Co., Ltd	MuDanJiang Bosen Wood Industry Co., Ltd	3.30
MuDanJiang Bosen Wood Industry Co., Ltd	Dun Hua Sen Tai Wood Co., Ltd	3.30
Huzhou Chenghang Wood Co., Ltd	Huzhou Chenghang Wood Co., Ltd	3.30
Hangzhou Hanje Tec Co., Ltd	Zhejiang Jiechen Wood Industry Co., Ltd	3.30
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	3.30
Shenyang Haobainian Wooden Co., Ltd	Shenyang Sende Wood Co., Ltd	3.30
Shenyang Haobainian Wooden Co., Ltd	Shenyang Haobainian Wooden Co., Ltd	3.30
Shenyang Haobainian Wooden Co., Ltd	Shanghai Demeijia Wooden Co., Ltd	3.30
Dalian Dajen Wood Co., Ltd	Dalian Dajen Wood Co., Ltd	3.30
HaiLin LinJing Wooden Products, Ltd	HaiLin LinJing Wooden Products, Ltd	3.30
Dun Hua Sen Tai Wood Co., Ltd	Dun Hua Sen Tai Wood Co., Ltd	3.30
Dunhua Jisheng Wood Industry Co., Ltd	Dunhua Jisheng Wood Industry Co., Ltd	3.30
Hunchun Forest Wolf Industry Co., Ltd	Hunchun Forest Wolf Industry Co., Ltd	3.30
Guangzhou Panyu Southern Star Co., Ltd	Guangzhou Jiasheng Timber Industry Co., Ltd	3.30
Nanjing Minglin Wooden Industry Co., Ltd	Nanjing Minglin Wooden Industry Co., Ltd	3.30
Zhejiang Fudeli Timber Industry Co., Ltd	Zhejiang Fudeli Timber Industry Co., Ltd	3.30
Suzhou Dongda Wood Co., Ltd	Suzhou Dongda Wood Co., Ltd	3.30
Guangzhou Pan Yu Kang Da Board Co., Ltd	Guangzhou Pan Yu Kang Da Board Co., Ltd	3.30
Kornbest Enterprises Ltd	Guangzhou Pan Yu Kang Da Board Co., Ltd	3.30
Metropolitan Hardwood Floors, Inc	Dalian Huilong Wooden Products Co., Ltd	3.30
Metropolitan Hardwood Floors, Inc	Mudanjiang Bosen Wood Co., Ltd	3.30
Metropolitan Hardwood Floors, Inc	Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	3.30
Metropolitan Hardwood Floors, Inc	Hunchun Forest Wolf Wooden Industry Co., Ltd	3.30
Metropolitan Hardwood Floors, Inc	Kemian Wood Industry (Kunshan) Co., Ltd	3.30
Metropolitan Hardwood Floors, Inc	Shenyang Haobainian Wooden Co., Ltd	3.30
Zhejiang Longsen Lumbering Co., Ltd	Zhejiang Longsen Lumbering Co., Ltd	3.30
Xinyuan Wooden Industry Co., Ltd	Xinyuan Wooden Industry Co., Ltd	3.30
Dasso Industrial Group Co., Ltd	Dasso Industrial Group Co., Ltd	3.30
Hong Kong Easoon Wood Technology Co., Ltd	Dasso Industrial Group Co., Ltd	3.30
Armstrong Wood Products (Kunshan) Co., Ltd	Armstrong Wood Products (Kunshan) Co., Ltd	3.30
Baishan Huafeng Wooden Product Co., Ltd	Baishan Huafeng Wooden Product Co., Ltd	3.30
Changbai Mountain Development and Protection Zone Hongtu Wood Industry Co., Ltd.	Changbai Mountain Development and Protection Zone Hongtu Wood Industry Co., Ltd.	3.30
Changzhou Hawd Flooring Co., Ltd	Changzhou Hawd Flooring Co., Ltd	3.30
Dalian Jiuyuan Wood Industry Co., Ltd	Dalian Jiuyuan Wood Industry Co., Ltd	3.30
Dalian Penghong Floor Products Co., Ltd	Dalian Penghong Floor Products Co., Ltd	3.30
Dongtai Fuan Universal Dynamics LLC	Dongtai Fuan Universal Dynamics LLC	3.30
Dunhua City Dexin Wood Industry Co., Ltd	Dunhua City Dexin Wood Industry Co., Ltd	3.30
Dunhua City Hongyuan Wood Industry Co., Ltd	Dunhua City Hongyuan Wood Industry Co., Ltd	3.30
Dunhua City Jisen Wood Industry Co., Ltd	Dunhua City Jisen Wood Industry Co., Ltd	3.30
Dunhua City Wanrong Wood Industry Co., Ltd	Dunhua City Wanrong Wood Industry Co., Ltd	3.30
Fusong Jinlong Wooden Group Co., Ltd	Fusong Jinlong Wooden Group Co., Ltd	3.30
Fusong Qianqiu Wooden Product Co., Ltd	Fusong Qianqiu Wooden Product Co., Ltd	3.30
GTP International	Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	3.30
GTP International	Jiafeng Wood (Suzhou) Co., Ltd	3.30
GTP International	Suzhou Dongda Wood Co., Ltd	3.30
GTP International	Kemian Wood Industry (Kunshan) Co., Ltd	3.30
Guangdong Yihua Timber Industry Co., Ltd	Guangdong Yihua Timber Industry Co., Ltd	3.30
HaiLin LinJing Wooden Products, Ltd	HaiLin LinJing Wooden Products, Ltd	3.30

Exporter	Producer	Weighted average margin
Huzhou Fulinmen Imp & Exp. Co., Ltd	Huzhou Fulinmen Wood Floor Co., Ltd	3.30
Huzhou Fuma Wood Bus. Co., Ltd	Huzhou Fuma Wood Bus. Co., Ltd	3.30
Jiafeng Wood (Suzhou) Co., Ltd	Jiafeng Wood (Suzhou) Co., Ltd	3.30
Jiashan Hui Jia Le Decoration Material Co., Ltd	Jiashan Hui Jia Le Decoration Material Co., Ltd	3.30
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd	Jilin Forest Industry Jinqiao Flooring Group Co., Ltd	3.30
Karly Wood Product Limited	Karly Wood Product Limited	3.30
Kunshan Yingyi-Nature Wood Industry Co., Ltd	Kunshan Yingyi-Nature Wood Industry Co., Ltd	3.30
Puli Trading Ltd	Baiying Furniture Manufacturer Co., Ltd	3.30
Shanghai Eswell Timber Co. Ltd	Shanghai Eswell Timber Co. Ltd	3.30
Shanghai Lairunde Wood Co., Ltd	Shanghai Lairunde Wood Co., Ltd	3.30
Shanghai New Sihe Wood Co., Ltd	Shanghai New Sihe Wood Co., Ltd	3.30
Shanghai Shenlin Corporation	Shanghai Shenlin Corporation	3.30
Shenzhenshi Huanwei Woods Co., Ltd	Shenzhenshi Huanwei Woods Co., Ltd	3.30
Tak Wah Building Material (Suzhou) Co. Ltd	Vicwood Industry (Suzhou) Co., Ltd	3.30
Tech Wood International Ltd	Vicwood Industry (Suzhou) Co., Ltd	3.30
Xiamen Yung De Ornament Co., Ltd	Xiamen Yung De Ornament Co., Ltd	3.30
Xuzhou Shenghe Wood Co., Ltd	Xuzhou Shenghe Wood Co., Ltd	3.30
Yixing Lion-King Timber Industry Co., Ltd	Yixing Lion-King Timber Industry Co., Ltd	3.30
Jiangsu Simba Flooring Industry Co., Ltd	Yixing Lion-King Timber Industry Co., Ltd	3.30
Zhejiang Biyork Wood Co., Ltd	Zhejiang Biyork Wood Co., Ltd	3.30
Zhejiang Dadongwu GreenHome Wood Co., Ltd	Zhejiang Dadongwu GreenHome Wood Co., Ltd	3.30
Zhejiang Desheng Wood Industry Co., Ltd	Zhejiang Desheng Wood Industry Co., Ltd	3.30
Zhejiang Shiyou Timber Co., Ltd	Zhejiang Shiyou Timber Co., Ltd	3.30
Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd	Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd	3.30
Chinafloors Timber (China) Co. Ltd	Chinafloors Timber (China) Co. Ltd	3.30
Shanghai Lizhong Wood Products Co., Ltd., also known as The Lizhong Wood Industry Limited Company of Shanghai.	Shanghai Lizhong Wood Products Co., Ltd., also known as The Lizhong Wood Industry Limited Company of Shanghai.	3.30
Fine Furniture (Shanghai) Limited	Fine Furniture (Shanghai) Limited	3.30
Huzhou Sunergy World Trade Co., Ltd	Zhejiang Haoyun Wood Co., Ltd	3.30
Huzhou Sunergy World Trade Co., Ltd	Nanjing Minglin Wooden Industry Co., Ltd	3.30
Huzhou Sunergy World Trade Co., Ltd	Zhejiang AnJi XinFeng Bamboo & Wood Co., Ltd	3.30
Huzhou Jesonwood Co., Ltd	Zhejiang Jeson Wood Co., Ltd	3.30
Huzhou Jesonwood Co., Ltd	Huzhou Jesonwood Co., Ltd	3.30
A&W (Shanghai) Woods Co., Ltd	A&W (Shanghai) Woods Co., Ltd	3.30
A&W (Shanghai) Woods Co., Ltd	Suzhou Anxin Weiguang Timber Co., Ltd	3.30
Fu Lik Timber (HK) Company Limited	Guangdong Fu Lin Timber Technology Limited	3.30
Yekalon Industry, Inc./Sennorwell International Group (Hong Kong) Limited.	Jilin Xinyuan Wooden Industry Co., Ltd	3.30
Kemian Wood Industry (Kunshan) Co., Ltd	Kemian Wood Industry (Kunshan) Co., Ltd	3.30
Dalian Kemian Wood Industry Co., Ltd	Dalian Kemian Wood Industry Co., Ltd	3.30
Dalian Huilong Wooden Products Co., Ltd	Dalian Huilong Wooden Products Co., Ltd	3.30
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	3.30
PRC-wide Entity		58.84

* *de minimis.*

** The Samling Group consists of the following companies: Baroque Timber Industries (Zhongshan) Co., Ltd., Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Riverside Co., Ltd., and Suzhou Times Flooring Co., Ltd.

This notice constitutes the antidumping duty order with respect to wood flooring from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7043 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order and amended final determination are published in accordance with sections 736(a) and 735(e) of the Act and 19 CFR 351.211 and 351.224(e).

Dated: December 2, 2011.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2011–31571 Filed 12–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–971]

Multilayered Wood Flooring From the People's Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC''), the Department is issuing a countervailing duty (''CVD'') order on multilayered wood flooring from the People's Republic of China (''PRC'').

DATES: *Effective Date:* December 8, 2011.

FOR FURTHER INFORMATION CONTACT: Joshua Morris, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–1779.

Background

On October 18, 2011, the Department published its final determination that countervailable subsidies are being provided to producers and exporters of multilayered wood flooring from the PRC. *See Multilayered Wood Flooring From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 64313 (October 18, 2011) (''*Final Determination*'').

On December 1, 2011, the ITC notified the Department of its final determination pursuant to sections 705(b)(1)(A)(ii) and 705(d) of the Tariff Act of 1930, as amended (''the Act''), that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from the PRC. *See Multilayered Wood Flooring from China,* USITC Investigation Nos. 701–TA–476 and 731–TA–1179, USITC Publication 4278 (November 2011).

Scope of the Order

Multilayered wood flooring is composed of an assembly of two or more layers or plies of wood veneer(s) [1] in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a final assembled product. Multilayered wood flooring is often referred to by other terms, e.g., ''engineered wood flooring'' or ''plywood flooring.'' Regardless of the particular terminology, all products that meet the description set forth herein are intended for inclusion within the definition of subject merchandise.

All multilayered wood flooring is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face ply, thickness of back ply, thickness of core, and thickness of inner plies; width; and length); wood species used for the face, back and inner veneers; core composition; and face grade. Multilayered wood flooring included within the definition of subject merchandise may be unfinished (*i.e.,* without a finally finished surface to protect the face veneer from wear and tear) or ''prefinished'' (*i.e.,* a coating applied to the face veneer, including, but not exclusively, oil or oil-modified or water-based polyurethanes, ultra-violet light cured polyurethanes, wax, epoxy-ester finishes, moisture-cured urethanes and acid-curing formaldehyde finishes.) The veneers may be also soaked in an acrylic-impregnated finish. All multilayered wood flooring is included within the definition of subject merchandise regardless of whether the face (or back) of the product is smooth, wire brushed, distressed by any method or multiple methods, or hand-scraped. In addition, all multilayered wood flooring is included within the definition of subject merchandise regardless of whether or not it is manufactured with any interlocking or connecting mechanism (for example, tongue-and-groove construction or locking joints). All multilayered wood flooring is included within the definition of the subject merchandise regardless of whether the product meets a particular industry or similar standard.

The core of multilayered wood flooring may be composed of a range of materials, including but not limited to hardwood or softwood veneer, particleboard, medium-density fiberboard, high-density fiberboard (''HDF''), stone and/or plastic composite, or strips of lumber placed edge-to-edge.

Multilayered wood flooring products generally, but not exclusively, may be in the form of a strip, plank, or other geometrical patterns (*e.g.,* circular, hexagonal). All multilayered wood flooring products are included within this definition regardless of the actual or nominal dimensions or form of the product.

Specifically excluded from the scope are cork flooring and bamboo flooring, regardless of whether any of the sub-surface layers of either flooring are made from wood. Also excluded is laminate flooring. Laminate flooring consists of a top wear layer sheet not made of wood, a decorative paper layer, a core-layer of HDF, and a stabilizing bottom layer.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (''HTSUS''): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.3175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; and 4418.72.9500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Countervailing Duty Order

On April 6, 2011, the Department published its preliminary determination and instructed U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of subject merchandise entered or withdrawn from warehouse, for consumption, on or after April 6, 2011, except 1) Zhejiang Layo Wood Industry Co., Ltd., and its affiliate Jiaxing Brilliant Import & Export Co., Ltd., and 2) Zhejiang Yuhua Timber Co., Ltd., because their subsidies were *de minimis. See Multilayered Wood Flooring From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 76 FR 19034 (April 6, 2011). In accordance with section 703(d) of the Act, which states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months, the Department terminated suspension of liquidation effective August 4, 2011. Therefore, entries of multilayered wood flooring made on or after August 4, 2011, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of CVDs due to the Department's discontinuation of the suspension of liquidation.

In accordance with section 706(a)(1) of the Act, the Department will direct CBP to reinstitute suspension of liquidation effective the date of publication of the ITC final determination in the **Federal Register**. The Department will also direct CBP to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, CVDs for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise as noted below. Because 1) Zhejiang Layo Wood Industry Co., Ltd., and its affiliate Jiaxing Brilliant Import & Export Co., Ltd., and 2) Zhejiang Yuhua Timber Co., Ltd. received *de minimis* net subsidy rates in the *Final*

[1] A ''veneer'' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

Determination they are excluded from this CVD order.

Exporter/manufacturer	Net subsidy rate
Zhejiang Layo Wood Industry Co., Ltd.; Jiaxing Brilliant Import & Export Co., Ltd.	(1)
Zhejiang Yuhua Timber Co., Ltd.	(1)
Fine Furniture (Shanghai) Ltd.; Great Wood (Tonghua) Ltd.; Fine Furniture Plantation (Shishou) Ltd.	1.50
9 Miles Oak Flooring (China)*	26.73
Anhui HUPO Wood Industry Co., Ltd.*	26.73
Anji Tianpeng Bamboo & Wooden Floor Co., Ltd.*	26.73
Anlian Wood Co., Ltd.*	26.73
Beijing Forever Strong Construction & Decoration Material Co., Ltd.*	26.73
Beijing New Building Material (Group) Co., Ltd.*	26.73
Beijing W.A Wood Co., Ltd.*	26.73
Cairun Floor Building Material Co., Ltd.*	26.73
Changchun Zhongyi Wood Co., Ltd.*	26.73
Changzhou Credit International Trade Co., Ltd.*	26.73
Changzhou Green Spot Wood Industry Co., Ltd.*	26.73
Changzhou Jiahao Wood Trade Co., Ltd.*	26.73
Changzhou Leili Wood Industry Co., Ltd.*	26.73
Changzhou OPLS Decoration Materials Co., Ltd.*	26.73
Chaohu Great Mainland Flooring Co., Ltd.*	26.73
Chaohu Vgreen Timber Co., Ltd.*	26.73
China Xuzhou Tengmao Wood Co., Ltd.*	26.73
Chuangfu Wood Flooring Cld., Co.*	26.73
Complete Flooring Supply Corporation*	26.73
Dalian Brilliant Future International Trade Co., Ltd.*	26.73
Dalian Hongjia Imp. & Exp. Co., Ltd.*	26.73
Dalian Luming Group*	26.73
Dalian Maruni Wood Works Co., Ltd.*	26.73
Dalian Ontime International Trade Co.*	26.73
Dalian Taiyangshi International Trading Co., Ltd.*	26.73
Dalian Turuss Wood Industry Co., Ltd.*	26.73
Dongguan Forest Century Wooden Co., Ltd.*	26.73
Elegant Living Corporation*	26.73
Foshan Linguan Wood Products Co., Ltd.*	26.73
Foshan Pengbang Wood Manufacturer Co., Ltd.*	26.73
Foshan Shunde Hechengchuangzhan Wood Co., Ltd.*	26.73
Foshan Tocho Timber Co., Ltd.*	26.73
Fujian Jianou Huayu Bamboo Industry Co., Ltd.*	26.73
Fuzhou Floors China Co., Ltd.*	26.73
Gao'an City Kangli Bamboo And Wooden Products Co., Ltd.*	26.73
Giant Flooring*	26.73
Glassical Industrial Limited*	26.73
Great Forest Wood Limited*	26.73
Green Elf Flooring (also dba Hong Ding Lumber Co.)*	26.73
Guangdong Guangyang Hi-Tech Industry Co., Ltd.*	26.73
Guangdong Yingran Wood Industry*	26.73
Guangzhou Fnen Wood Flooring*	26.73
Guangzhou Homewell Trade Co., Ltd.*	26.73
Guangzhou Quanfeng Wood Industry Co., Ltd.*	26.73
Handan Global Wood Limited*	26.73
Hangzhou Dazhuang Floor Co.*	26.73
Hangzhou Fuyang Zhongjian Wood Industry Co., Ltd.*	26.73
Hangzhou Kingdom Imp & Exp Trading Corp., Ltd.*	26.73
Hangzhou Singular Group Co., Ltd.*	26.73
Hangzhou Tianlin Industrial Co., Ltd.*	26.73
Heze Lv Sen Wood Co., Ltd.*	26.73
Homewell (Xiamen) Industry Co., Ltd.*	26.73
Huidong Weikang Rubber & Plastic Products Co., Ltd.*	26.73
HU'Made Group*	26.73
Huzhou Boge Import And Export Co., Ltd.*	26.73
Huzhou Jinjie Industrial Co., Ltd.*	26.73
Huzhou Natural Forest Flooring Co., Ltd.*	26.73
Huzhou Tianlong Wood Co., Ltd.*	26.73
Huzhou Top Wood Co., Ltd.*	26.73
Huzhou Yaxin Arts & Crafts Co., Ltd.*	26.73
Jiangmen Xinhui Yinhu Woodwork Co., Ltd.*	26.73
Jiangsu Happy Wood Industrial Group Co., Ltd.*	26.73
Jiangsu Horizon Trade Co., Ltd.*	26.73
Jiangsu Kentier Wood Co., Ltd.*	26.73
Jiangsu Nanyang Wood Co., Ltd.*	26.73
Jiangsu Wanli Wooden Co., Ltd.*	26.73
Jiangxi Kangtilong Bamboo Products Co., Ltd.*	26.73
Jiashan Greenland International Trading Co., Ltd.*	26.73

Exporter/manufacturer	Net subsidy rate
Jiashan Huayu Lumber Co., Ltd.*	26.73
Jiashan Longsen Lumbering Co., Ltd.*	26.73
Jiashan On-Line Lumber Co., Ltd.*	26.73
Jiaxing Hengtong Wood Co., Ltd.*	26.73
Jilin Newco Wood Industries Co., Ltd.*	26.73
Jining Sensen Wood Industry Co., Ltd.*	26.73
Jining Sunny Wood Co., Ltd.*	26.73
Kingswood Timber*	26.73
Kornbest Enterprises Ltd.*	26.73
Lianyungang Shuntian Timber Co., Ltd.*	26.73
Longeron I&E Co., Ltd.*	26.73
Lord Parquet Industry Co., Limited.*	26.73
Lyowood Industrial Co., Ltd.*	26.73
MacDouglas Wood Flooring (Suzhou) Co., Ltd.*	26.73
Nanjing Dimac Wood Industry Co., Ltd.*	26.73
Qiaosen Wood Flooring Industry Company*	26.73
Qichuang Wood Industrial Co., Ltd.*	26.73
Qingdao Fuguichao Wood Co., Ltd.*	26.73
Quanfa Woodwork (Shenzhen) Co., Ltd.*	26.73
Shandong Fuma Commerce & Trade Co., Ltd.*	26.73
Shandong Yuncheng Jinyang Wood Industry Co., Ltd.*	26.73
Shanghai Chunna Industrial Co., Ltd.*	26.73
Shanghai Eswell Enterprise Co., Ltd.*	26.73
Shanghai Feihong Wood Products Co.*	26.73
Shanghai Guangri Flooring Co., Ltd.*	26.73
Shanghai Pinsheng Wood Industry Co., Ltd.*	26.73
Shanghai Pujiang United Wood Co., Ltd.*	26.73
Shanghai Yiming Wooden Industry Co., Ltd.*	26.73
Shenyang Bask Industry Co., Ltd.*	26.73
Shenzhen JianYuanXin Trade Co., Ltd.*	26.73
Shuanghai Shuai Yuan Wood Industry Co., Ltd.*	26.73
Sterling Pacific Wood Products Co., Ltd.*	26.73
Suifenhe Sanmulin Economic and Trade Co., Ltd.*	26.73
Suzhou Duolun Wood Industry Co., Ltd.*	26.73
Tengmao Wood Co., Ltd.*	26.73
Tianjin Zeyuan Wood Industry Co., Ltd.*	26.73
Twowins Bamboo & Wood Products Co., Ltd.*	26.73
Weifang Jiayuan Imp & Exp Co., Ltd.*	26.73
Wenzhou Timber Group Company*	26.73
Wuhan Nanhong Materials & Goods Fitting Co., Ltd.*	26.73
Wuxi Haisen Decorates Material Co., Ltd.*	26.73
Xiamen Homeshining Industry Co., Ltd.*	26.73
Xuzhou Fuxiang Wood Co., Ltd.*	26.73
Xuzhou Huanqiu Import & Export Trade Co., Ltd.*	26.73
Xuzhou Tengmao Wood Co., Ltd.*	26.73
Xuzhou Yijia Manufacture Co., Ltd.*	26.73
Xuzhou Yijia Wood Manufacture Co., Ltd.*	26.73
Yinlong Wood Products Co., Ltd.*	26.73
Ys Nature International Trading Co., Ltd.*	26.73
Zhejiang Assun Wood Co., Ltd.*	26.73
Zhejiang Gaopai Wood Co., Ltd.*	26.73
Zhejiang Huayue Wooden Products Co., Ltd.*	26.73
Zhejiang Yongji Wooden Co., Ltd.*	26.73
Zhejiang Yongyu Bamboo Development*	26.73
Zhongshan New Oasis Wood Industry Co., Ltd.*	26.73
Zhongyi Bamboo Industrial Co., Ltd. Fujian*	26.73
All-Others	1.50

* Non-cooperative company, which received an adverse facts available rate in the *Final Determination. See Final Determination,* 76 FR at 64315.

[1] None—excluded from the order.

This notice constitutes the CVD order with respect to multilayered wood flooring from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the main Commerce Building, for copies of an updated list of CVD orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act, 19 CFR 351.224(e) and 19 CFR 351.211(b).

Dated: December 2, 2011.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2011–31573 Filed 12–7–11; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Appointments to Performance Review Board for Senior Executive Service

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Appointment of Performance Review Board for Senior Executive Service.

SUMMARY: The Committee For Purchase from People Who Are Blind Or Severely Disabled (Committee) has announced the following appointments to the Committee Performance Review Board.

The following individuals are appointed as members of the Committee Performance Review Board responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executive Service employees:

Perry E. Anthony, Ph.D., Deputy Commissioner, Rehabilitation Services Administration, Department of Education.

James M. Kesteloot, Private Citizen.

J. Paul M. Laird, Assistant Director, Industries, Education and Vocational Training and Chief Operating Officer/FPI.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

DATES: *Effective Date:* December 5, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or *email: CMTEFedReg@abilityone.gov*.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2011–31495 Filed 12–7–11; 8:45 am]

BILLING CODE P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed Senior Corps Survey. Senior Corps will require all Senior Corps volunteers and recipients of Senior Companion and RSVP Independent Living services to complete the survey. Senior Corps will require all grantee organizations that participate in the survey to summarize survey results and submit those results to the Corporation.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 6, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Senior Corps; Attention: Zach Rhein, Program Officer, Room 9408–A; 1201 New York Avenue NW., Washington, DC 20525.

(2) *By hand delivery or by courier to:* The Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3475, Attention: Zach Rhein, Program Officer

(4) *Electronically through http://www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–(800) 833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Zach Rhein, (202) 606–6693, or by email at *zrhein@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Background

The proposed instrument will collect information from Senior Companion, Foster Grandparent, and RSVP volunteers as well as from Senior Companion clients and recipients of RSVP Independent Living services. The purpose of CNCS is to provide grantees with a unified performance measure data collection instrument that will facilitate both data collection and analysis. The goals of the survey are to measure the how the act of volunteering impacts Americans age 55 and older, and to measure how volunteers age 55 improve the lives of the older Americans they serve. The information may be collected using an electronic spreadsheet, the eGrants system, or using a paper collection.

The instrument uses items from the Health and Retirement Study (HRS), an ongoing study funded by the National Institute on Aging/NIH (NIA U01AG009740) and Social Security Administration.

Current Action

This is a new information collection request.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Senior Corps Survey.

OMB Number: None.

Agency Number: None.

Affected Public: Senior Corps grantee organizations, Senior Companion and Foster Grandparent volunteers, and recipients of Senior Companion and RSVP Independent Living services.

Total Respondents: 787,800.

Frequency: Once per year.

Average Time Per Response: Averages 30 minutes each for 787,800 volunteers and recipients and 2 hours each for 900 grantee organizations.

Estimated Total Burden Hours: 395,700.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 1, 2011.

Erwin Tan,

Director, Senior Corps.

[FR Doc. 2011–31466 Filed 12–7–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 6, 2012.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 5, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Rural Education Achievement Program Spreadsheet and Application.

OMB Control Number: 1810–0646.

Agency Form Number(s): N/A.

Total Estimated Number of Annual Responses: 549.

Total Estimated Annual Burden Hours: 3,377.

Abstract: This data collection is pursuant to the Secretary's authority under Part B of Title VI of the Elementary and Secondary Education Act (ESEA), to award funds under two grant programs designed to address the unique needs of rural school districts—the Small, Rural School Achievement (SRSA) Program (ESEA Section 6212) and the Rural and Low-Income School (RLIS) Program (ESEA Section 6221).

Under the Small, Rural School Achievement Program, the Secretary awards grants directly to eligible local educational agencies (LEAs) on a formula basis. Under the Rural and Low-income School Program, eligible school districts are sub-recipients of funds the Department awards to State educational agencies (SEAs) on a formula basis. For both grant programs, the Department awards funds by determining the eligibility of individual school districts and calculating the allocation each eligible district receives according to formula prescribed in the statute.

This data collection consists of two primary forms and supporting documents that are used to accomplish the grant award process each year: (1) A spreadsheet used by SEAs to submit information to identify RLIS and SRSA-eligible LEAs and to allocate funds based on the appropriate formula, and (2) an application form for SRSA-eligible LEAs to apply for funding.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4756. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–31541 Filed 12–7–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 11–128–LNG]

Dominion Cove Point LNG, LP; Application To Export Domestic Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on October 3, 2011, by Dominion Cove Point LNG, LP (DCP), requesting long-term, multi-contract authorization to export up to 7.82 million metric tons per year of domestically produced liquefied natural gas (LNG) (equivalent to approximately 365 billion cubic feet [Bcf] per year of natural gas) [1] for a 25-year period, commencing the earlier of the date of first export or six years from the date of issuance of the requested authorization. DCP seeks authorization to export LNG from the Cove Point LNG Terminal, owned by DCP, in Calvert County, Maryland, to any country (1) with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural

[1] DCP states that 7.82 million metric tons per annum is equivalent to approximately 1 Bcf per day of natural gas.

gas, (2) which has or in the future develops the capacity to import LNG via ocean-going carrier, and (3) with which trade is not prohibited by U.S. law or policy. DCP is requesting this authorization to act as an agent for others who hold title to the LNG pursuant to long-term contractual agreements with the other parties. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, February 6, 2012.

Responses to Pending Motions described in the **SUPPLEMENTARY INFORMATION** section of this notice, must be filed no later than 4:30 p.m., eastern time, December 23, 2011.

ADDRESSES:

Electronic Filing on the Federal eRulemaking Portal under FE Docket No. 11–128–LNG: http://www.regulations.gov.

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–159, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

DCP is a Delaware limited partnership with its principal place of business in Lusby, Maryland, and offices in Richmond, Virginia. DCP is a subsidiary of Dominion Resources, Inc. (DRI), a producer and transporter of energy. DRI is a Virginia corporation with its principal place of business in Richmond, Virginia.

DCP owns the Cove Point LNG Terminal (Terminal), as well as the 88-mile Cove Point Pipeline connecting the Terminal to the interstate pipeline grid. The construction and operation of the Terminal was initially authorized in 1972 as part of a project to import LNG from Algeria and transport natural gas to U.S. markets. Shipments of LNG to the Terminal began in March 1978, but ceased in December 1980. In 2001, the Federal Energy Regulatory Commission (FERC) authorized the reactivation of the Terminal and the construction of new facilities to receive imports of LNG. In 2006, the FERC authorized the Cove Point Expansion project, which nearly doubled the size of the Terminal, expanded the capacity of the Cove Point Pipeline, and provided for new downstream pipeline and storage facilities. In 2009, the FERC authorized DCP to upgrade, modify, and expand its existing off-shore pier at the Terminal to accommodate the docking of larger LNG vessels.

The Terminal currently has peak daily send-out capacity of 1.8 Bcf and on-site LNG storage capacity of the equivalent of 14.6 Bcf of natural gas (678,900 cubic meters of LNG). DCP's 88-mile Cove Point Pipeline, which has firm transportation capacity of 1.8 Bcf, connects the Terminal to the major Mid-Atlantic gas transmission system of Transcontinental Gas Pipe Line Company, LLC, Columbia Gas Transmission, LLC, and Dominion Transmission, Inc., an interstate gas transmission business unit of DRI.

DCP plans to develop, own, and operate facilities at the Terminal to liquefy domestically produced natural gas and to load the resulting LNG onto tankers for export to foreign markets. DCP anticipates placing its liquefaction project in service by the end of 2016. Following the approval and construction of the liquefaction and export facilities, DCP intends that the Cove Point LNG Terminal will be operated as a bi-directional facility with capability to both import and export LNG.

Related Applications and Authorizations

This Application is the second part of a two-phased authorization sought by DCP to export domestically produced natural gas as LNG from the Cove Point LNG Terminal. On October 7, 2011, in DOE/FE Order No. 3019 (Docket No. 11–115–LNG), FE granted DCP authorization to export domestically produced LNG up to the equivalent of 1 Bcf/day of natural gas from the Cove Point LNG Terminal for a 25-year term, beginning on the earlier date of first export or October 7, 2017, pursuant to one or more long-term contracts that do not exceed the term of the authorization. That authorization provides that LNG may be exported to Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, and Singapore, and to any nation with which the United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided that the destination nation has the capacity to import LNG via ocean going vessels. The requested export volume in that order is identical to the export volume in the current Application of 7.82 million metric tons of LNG per year, equivalent to 365 Bcf/year, or 1 Bcf/day of natural gas. The Cove Point liquefaction facilities would be limited to exports of up to the equivalent of 365 Bcf/year of natural gas, including both exports to FTA and non-FTA countries.

On August 8, 2011, in Docket No. 11–98–LNG, DCP also submitted an application to FE requesting a two year blanket authorization to export from the Terminal LNG that previously had been imported into the United States from foreign sources in an amount up to the equivalent of 150 Bcf of natural gas. The application sought authorization to export this LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. A notice of that application was published in the **Federal Register** on September 21, 2011, (76 FR 58489), and public comments were due by October 21, 2011. The application in Docket No. 11–98–LNG currently is under review by FE.

Current Application

In the instant Application, DCP seeks long-term, multi-contract authorization to export up to 7.82 million metric tons of domestically produced LNG annually from the Terminal, equivalent to approximately 365 Bcf/year of natural gas for a 25-year period, commencing the earlier of the date of first export or six years from the date the authorization is issued. DCP seeks authorization to export domestically-produced LNG to countries with which the United States does not have an FTA and with which trade is not prohibited by U.S. law or policy. DCP is requesting this

authorization to act as agent on behalf of other entities who themselves hold title to the LNG.

DCP states that its liquefaction project will be integrated with existing facilities at its Terminal. Existing facilities that may be used include the off-shore pier (with two berths), insulated LNG and gas piping from the pier to the on-shore Terminal and within the Terminal facility, the seven LNG storage tanks, on-site power generation, and control systems. In addition, DCP states that it will construct new facilities to liquefy the natural gas delivered to the Terminal through the Cove Point Pipeline. The new liquefaction facilities would be located on land already owned by DCP. DCP states that it is currently engaged in Preliminary Front End Engineering Design (''Pre-FEED'') studies for its liquefaction project and is in the process of conducting commercial negotiations with potential customers. Based on the outcome of the pre-FEED studies, DCP anticipates constructing one to three liquefaction trains, allowing the export of the equivalent of up to 365 Bcf/year, for an average of 1 Bcf/d.

DCP states that customers will be responsible for procuring their own gas supplies and holding title to the gas that they will deliver to DCP for liquefaction as well as the LNG to be exported from the Terminal. DCP states that customers may enter into long-term gas supply contracts or procure spot supplies in the very large and liquid U.S. gas market. The gas will be delivered to DCP from the interstate pipeline grid, thereby allowing gas to be sourced from a wide variety of regions. DCP states that the DTI pipeline system provides direct access to Appalachian (including Marcellus Shale) supply as well as connections to supplies from the Gulf of Mexico area, the mid-continent, the Rockies and Canada. DCP states that DTI also operates the largest underground natural gas storage system in the country, as well as a trading hub: Dominion South Point.

DCP anticipates entering into one or more long-term contractual agreements of approximately twenty years to provide natural gas liquefaction and LNG export services. DCP plans to enter into those contracts on a date that is closer to the date of first export. DCP anticipates that these contracts will allow DCP to provide its customers with options for liquefying natural gas and loading it onto LNG tankers at the Terminal for export or for importing LNG at the Terminal for vaporization and send-out as regasified LNG into the domestic market. DCP states that it will file under seal with DOE/FE any relevant long-term commercial agreements that it enters into with LNG title holders on whose behalf the exports will be performed, once the agreements are executed.

DCP states that it does not intend to hold title to the LNG itself, and is requesting authorization to act as agent on behalf of other entities who themselves hold title to the LNG. DCP states that is will register each such LNG title holder with DOE/FE consistent with registration requirements previously adopted in DOE/FE Order 2986, issued July 19, 2011, which granted blanket export authorization to Freeport LNG Development, L.P.

DCP requests that, consistent with prior orders issued by DOE/FE, the authorization requested here should be conditioned on DCP's receipt of all necessary FERC authorizations of the facilities needed for the export of LNG. Lastly, with regard to this Application, DCP urges DOE to make clear its policy on future modifications to any LNG export authorization, so that investments in these projects can be made with greater certainty.

Public Interest Considerations

In support of its Application, DCP states that Section 3(a) of the Natural Gas Act (NGA) sets forth the statutory standard for review of this Application and that Section 3(a) of the NGA creates a rebuttable presumption that proposed exports of natural gas are in the public interest. DCP states that DOE has explained that opponents of an export application must make an affirmative showing of inconsistency with the public interest in order to overcome the rebuttable presumption favoring export applications. DCP also states that DOE has repeatedly reaffirmed the continued applicability of its policy guidelines and has held that they apply equally to export applications though originally written to apply to imports. DCP contends that based on the standard of evaluation implemented by DOE, the granting of their request to export LNG will be consistent with, and will advance, the public interest.

DCP states in support of its Application, that it commissioned and submitted three studies by independent consultants: two by Navigant Consulting, Inc., and one study by ICF International. Based on these studies, DCP believes its project is in the public interest for the following reasons:

First, DCP contends that sufficient reserves now exist to satisfy domestic demand as well as the proposed LNG exports. DCP notes that the recent phenomenon of domestic shale gas has increased gas reserves and, consequently, gas production levels are projected to continue to grow steadily. In particular, DCP points to the Marcellus Shale formation, which, based on initial production, allegedly dwarfs the amount of LNG that DCP proposes to export.

Second, based on a sector-by-sector outlook for gas demand, DCP contends that LNG exports from the United States have the potential to provide a steady, reliable baseload market that will underpin on-going supply development, and help to keep domestic gas prices stable. DCP maintains that the studies conclude that given the level of North American gas reserves compared to any reasonable expectation of demand, domestic consumers will not be exposed to overseas LNG prices. DCP also contends it is very unlikely that the projected levels of LNG exports will increase the need for significant amounts of imported LNG.

Third, based on an analysis of supply reserves and demand, including the proposed gas exports, DCP maintains that current gas reserves are more than sufficient to support all expected demand at least through 2040, and that there is no ''domestic need'' for the gas that DCP seeks authority to export. DCP also contends that the proposed exports will not pose any possible threat to the security of domestic natural gas supplies.

Fourth, based on a series of four pricing model scenarios, DCP states that even with very conservative assumptions, LNG exports from the Terminal will have no more than a very modest impact on domestic gas prices. The Navigant Study, *North American Gas System Model to 2040*, submitted with the Application, reflects Henry Hub price increases of 4% to 6% in the 2020 to 2040 period, compared to a reference case. See page 5 of the Navigant Study.

Fifth, DCP states that the export of domestically produced LNG will provide the following economic benefits, as detailed in the ICF Consulting Study (Appendix C of the Application):

A. An improvement in the U.S. balance of trade of $2.8 billion to nearly $7.1 billion per year, equal to 0.6 to 1.4 percent of the trade deficit, based on the expected value of the exports.

B. Creation of about 16,450 new jobs created during the 2011 through 2040 period.

C. Value added GDP contributions related to the Cove Point LNG exports that would total about $1.6 billion annually, plus additional government taxes and royalties of approximately $850 million annually.

D. The creation of about 1,250 temporary construction jobs annually during the construction of the facilities needed for the export operations, resulting in about $120 million in annual value added GDP contributions, and about $27 million in annual government tax revenues.

E. Environmental benefits associated with the LNG export project resulting from the fact that the planned exports of LNG will result in the substitution of natural gas for coal and fuel oil in other countries, thereby reducing global greenhouse gas emissions significantly over the requested 25-year export term.

Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Environmental Impact

DCP notes that in order to accommodate the proposed export activities, construction of new facilities at the Cove Point LNG Terminal will be required. DCP states that the facilities will be designed to minimize or mitigate any environmental or other adverse impacts. DCP further states that approval of the Application would not constitute a Federal action significantly affecting the human environment under the National Environmental Policy Act (NEPA).[2]

DCP states that once it has further developed its plans concerning the facilities to be constructed for the project, it will request permission to commence the FERC's mandatory pre-filing process under NEPA and subsequently file an application for the necessary FERC authorization for the construction and operation of the facilities to liquefy and export gas. DCP acknowledges that the requested authorization to be issued by DOE/FE would not take effect until FERC has completed its NEPA review and has granted DCP authorization for the export of domestic LNG from the Cove Point facility. DCP requests that DOE/FE issue a conditional order authorizing the export of domestic LNG from the Terminal conditioned on completion of the environmental review and subsequent authorization by FERC.

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. In addition, DOE/FE notes that the Application uses the term ''reserves'' when citing the quantity of resources in some instances. This may have an impact on some of the conclusions reached in the Application since there is a significant difference between ''reserves'' and resources. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Pending Motions To Intervene and Comments

On October 20, 2011, DOE received the Motion of Coalition for Responsible Siting of LNG to Intervene in this proceeding. On November 15, 2011, DOE received the Motion of Shell NA LNG LLC to Intervene and Comments on Application to Export LNG. Section 590.303(e) of DOE's regulations (10 CFR 590.303(e)) provides that answers to motions to intervene must be filed within 15 days after the motion to intervene was filed unless the Assistant Secretary for Fossil Energy permits a later date for good cause shown. Because the two motions to intervene were submitted prior to the issuance and publication of the instant notice of application, interested persons may not have adequate notice to respond to the motions. For good cause, therefore, DOE/FE is hereby extending the due date on responses to the pending motions. Responses to those two motions must be filed no later than 4:30 p.m., eastern time, December 23, 2011.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding that has not already done so must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Submitting comments in electronic form on the Federal eRulemaking Portal at *http://www.regulations.gov*, by following the on-line instructions and submitting such comments under FE Docket No. 11–128–LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions and include only information that is intended to be publicly disclosed; (2) emailing the filing to *fergas@hq.doe.gov*, with FE Docket No. 11–128–LNG in the title line; (3) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (4) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the

[2] 42 U.S.C. 4321 *et seq.*

proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by DCP is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.* In addition, any electronic comments filed will also be available at: *http://www.regulations.gov.*

Issued in Washington, DC, on December 2, 2011.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2011–31518 Filed 12–7–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–2–000]

Commission Information Collection Activities, Proposed Collection (FERC–550); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Information Collection and Request for Comments.

SUMMARY: In compliance with the requirements of Section 3506 (c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (FERC or Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by February 6, 2012.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format. The comments should refer to Docket No. IC12–2–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp*, to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's email address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at: *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at: *http://www.ferc.gov/docs-filing/elibrary.asp*, by searching on Docket No. IC12–2–000. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, telephone at (202) 502–8663, by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The Commission uses the information collected under the requirements of FERC–550, ''Oil Pipeline Rates: Tariff Filings'' (OMB No. 1902–0089), to implement the statutory provisions of Parts 1, 6, and 15 of the Interstate Commerce Act (ICA) (Pub. L. 337, 34 Stat. 584). Jurisdiction over oil pipelines as it relates to the establishment of valuations for pipelines was transferred from the Interstate Commerce Commission (ICC) to FERC, pursuant to sections 306 and 402 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46267 (September 17, 1977).

18 CFR Parts 341–348 specifies the filing requirements for proposed oil pipeline rates. The data that oil pipelines file is the basis for Commission analyses of the rates they plan to charge to transport crude oil and petroleum products. The Commission uses its analyses: (1) To determine if the proposed charges result in just and reasonable rates for the oil pipeline's transportation services and (2) to help the Commission decide whether it should suspend, accept or reject the proposed rates.

Action: The Commission is requesting a three-year extension of the current expiration date with no changes to the existing collection. The information filed with the Commission is mandatory.

Burden Statement: Public Reporting Burden for this information collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (4)
128	4	11	5632

The total annual cost of filing FERC–550 is: 5,632 hours/2080 hours [1] × $142,372 [2] equals $385,500. The annual cost of filing FERC–550 per respondent is $3,012.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, using technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable filing instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The Commission bases the cost estimate for respondents upon salaries within the Commission for professional and clerical support. This cost estimate includes respondents' total salary and employment benefits.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology e.g. permitting electronic submission of responses.

Dated: December 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31515 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Number of hours an employee works in a year.

[2] Average annual salary per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14259–000]

Jordan Whittaker; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14259–000.

c. *Date filed:* August 25, 2011, and supplemented November 17 and 21, 2011.

d. *Applicant:* Jordan Whittaker.

e. *Name of Project:* Eightmile Hydroelectric Project.

f. *Location:* The proposed Eightmile Project would be located on an irrigation pipeline in Lemhi County, Idaho. The land on which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Nicholas E. Josten, GeoSense., 2741 St. Charles Avenue, Idaho Falls, ID 83404, phone (208) 528–6152.

i. *FERC Contact:* Robert Bell, (202) 502–6062, *robert.bell@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian Tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Eightmile Project would consist of: (1) A proposed powerhouse containing one proposed generating unit with an installed capacity of 460 kilowatts; and (2) appurtenant facilities. The applicant estimates the project would have an average annual generation of 1.12 gigawatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number, P–14259, in the docket number field to access the document. For assistance, call toll-free 1–(866) 208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for

preliminary permits will not be accepted in response to this notice.

p. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: December 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31513 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13953–002]

Western Technical College; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 13953–002.

c. *Date filed:* November 22, 2011.

d. *Applicant:* Mahoning Hydropower, LLC.

e. *Name of Project:* Lake Milton Hydroelectric Project.

f. *Location:* The project would be located on the Mahoning River, in Mahoning County, Ohio at an existing dam owned by the Ohio Department of Natural Resources. The project would not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mahoning Hydropower, LLC, c/o Anthony J. Marra III, General Manager, 11365 Normandy Lane, Chagrin Falls, Ohio 44023, Phone (440) 804–6627.

i. *FERC Contact:* Isis Johnson, (202) 502–6346, *isis.johnson@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing requests for cooperating agency status:* December 22, 2011.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1 (866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. The project would be located at the existing Lake Milton Dam, currently owned by the Ohio Department of Natural Resources. Lake Milton Dam is a concrete gravity dam approximately 54 feet high and 760 feet long, with a 650-foot-long spillway and four, 60-inch-diameter gate valves. The project would also consist of the following new facilities: (1) A tubular S-Type propeller, 650-kilowatt turbine-generating unit; (2) a trash rack with a 1-inch clear bar spacing over the existing trashrack; and (3) a 25-foot by 35-foot powerhouse at the base of the dam, over the existing discharge pipe. No new penstock or tailrace are proposed as the turbine would utilize the existing 70-foot-long 60-inch diameter cast iron conduit through the dam, and the flows exiting the turbine would be discharged directly into an existing concrete stilling basin. The proposed project would also include a new 12.5-kilovolt transmission line approximately 320 feet in length that would be constructed and interconnect with an existing distribution line to the west.

The two-mile-long reservoir has a surface area of 1,685 acres at a normal pool elevation of 948 feet above mean sea level. The project would operate in a run-of-river mode and generate power using flows between 25 cubic feet per second (cfs) and 250 cfs. Flows above 250 cfs can be discharged through the three remaining 60-inch discharge pipes. The estimated annual generation of the Lake Milton Project would be 3,659 megawatt-hours at a head range of 26–40 feet.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Ohio State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

q. Procedural schedule: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of Acceptance	January 2011.
Scoping Document 1 issued for comments.	March 2012.
Comments on Scoping Document 1.	April 2012.
Scoping Document 2 and additional information request, if necessary.	May 2012.
Notice of Ready for Environmental Analysis.	July 2012.
Commission issues a single EA.	February 2013.

Dated: December 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31516 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14066–001]

Inside Passage Electric Cooperative; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14066–001.

c. *Date Filed:* October 28, 2011.

d. *Submitted By:* Inside Passage Electric Cooperative (IPEC).

e. *Name of Project:* Gartina Falls Hydroelectric Project.

f. *Location:* On Gartina Creek, near Hoonah, Alaska, on Chichagof Island. No federal lands are occupied by the project works.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Peter Bibb, Inside Passage Electric Cooperative, P.O. Box 210149, 12480 Mendenhall Loop Rd, Auke Bay 99821; (907) 789–3196; email—*pbibb@ak.net.*

i. *FERC Contact:* Ryan Hansen at (202) 502–8074; or email at *ryan.hansen@ferc.gov.*

j. IPEC filed its request to use the Traditional Licensing Process on October 28, 2011. IPEC provided public notice of its request on November 22, 2011. In a letter dated December 2, 2011, the Director of the Division of Hydropower Licensing approved IPEC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Alaska State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating IPEC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. IPEC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCONlineSupport@ferc.gov or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: December 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31517 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–18–000]

Questar Pipeline Company; Notice of Application

Take notice that on November 16, 2011, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed with the Federal Energy Regulatory Commission an application under sections 7(b) and 7(c) of the Natural Gas Act seeking authority to expand its interstate natural-gas transmission system by abandoning 8.3 miles of 14-inch diameter pipeline and replacing it with 8.5 miles of 20-inch diameter pipeline located within Uintah County, Utah. Questar states it has no firm Transportation Service Agreements with shippers for the incremental 7,500 Dth/d of incremental capacity created by the Project. However, Questar states that it will accept the economic risk associated with construction of the Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the application should be directed to L. Bradley Burton, General Manager, Federal Regulatory Affairs Division Counsel and Chief Compliance Officer Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City,

Utah 84145–0360, or telephone (801) 324–2459 or by e-mail *brad.burton@questar.com* or to Tad M. Taylor, Division Counsel, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360 or telephone (801) 324–5531 or by email *tad.taylor@questar.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: December 22, 2011.

Dated: December 1, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31489 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–206–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: ConEd 2011–12–01 Releases #3 to be effective 12/1/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5112.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–207–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Negotiated Rate Filing—CIMA to be effective 12/2/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5119.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–208–000.

Applicants: MarkWest Pioneer, L.L.C.

Description: MarkWest Pioneer—Quarterly FRP Filing to be effective 1/1/2012.

Filed Date: 12/1/11.

Accession Number: 20111201–5147.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–209–000.

Applicants: ANR Pipeline Company.

Description: Dynamic Offshore Resources ITS Agreement to be effective 12/1/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5149.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–210–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Total 37900–2 Amendment to Negotiated Rate Agreement Filing to be effective 12/1/2011.

Filed Date: 12/1/11.

Accession Number: 20111201–5150.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–211–000.

Applicants: Gas Transmission Northwest LLC.

Description: Gas Transmission Northwest LLC Annual Fuel Charge Adjustment Filing.

Filed Date: 12/1/11.

Accession Number: 20111201–5175.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–212–000.

Applicants: El Paso Natural Gas Company.

Description: Annual FL&U, to be effective 1/1/2012.

Filed Date: 12/1/11.

Accession Number: 20111201–5180.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–213–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. Notice of Operational Flow Order.

Filed Date: 12/1/11.

Accession Number: 20111201–5193.

Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–214–000.

Applicants: Colorado Interstate Gas Company LLC.

Description: Quarterly Lost, Unaccounted for and Other Fuel Gas Reimbursement Percentage (FL&U) of Colorado Interstate Gas Company LLC.

Filed Date: 12/1/11.

Accession Number: 20111201–5198.
Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–215–000.
Applicants: Steckman Ridge, LP.
Description: ROFR Cleanup to be effective 1/1/2012.
Filed Date: 12/1/11.
Accession Number: 20111201–5210.
Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–216–000.
Applicants: Egan Hub Storage, LLC.
Description: ROFR Cleanup to be effective 1/1/2012.
Filed Date: 12/1/11.
Accession Number: 20111201–5212.
Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–217–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/01/11 Negotiated Rate—Freepoint Commodities, LLC to be effective 12/1/2011.
Filed Date: 12/1/11.
Accession Number: 20111201–5219.
Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–218–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/01/11 Negotiated Rates—Conoco Phillips Company to be effective 12/1/2011.
Filed Date: 12/1/11.
Accession Number: 20111201–5220.
Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–219–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/01/11 Negotiated Rates—Citigroup Energy Inc. to be effective 12/1/2011.
Filed Date: 12/2/11.
Accession Number: 20111202–5000.
Comments Due: 5 p.m. ET 12/14/11.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1942–001.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Quality Interchangability—Settlement to be effective 1/1/2012.
Filed Date: 12/1/11.
Accession Number: 20111201–5151.
Comments Due: 5 p.m. ET 12/13/11.

Docket Numbers: RP12–134–001.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/01/11 Negotiated Rates—Constellation Energy—Amendment to be effective 11/3/2011.
Filed Date: 12/1/11.
Accession Number: 20111201–5118.
Comments Due: 5 p.m. ET 12/13/11.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2011–31487 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP12–220–000]

Brian Hamilton; El Paso Natural Gas and El Paso Western Pipelines; Notice of Complaint

Take notice that on December 2, 2011, pursuant to 49 CFR 192.61, 192.7 and 31.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedures, the Pipeline Safety Improvement Act of 2002, and the Pipeline Hazardous Material Safety Administration, Brian Hamilton (Complainant) filed a formal complaint against El Paso Natural Gas and El Paso Western Pipelines (Respondents) alleging that the Respondents failed to properly maintain the property of Complainant where the Respondents have right of way privileges to operate a high pressure interstate natural gas pipeline.

The Complainant certifies that copies of the complaint were served upon Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 21, 2011.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31504 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–6–000]

El Paso Natural Gas Company: Notice of Intent To Prepare an Environmental Assessment for the Proposed Willcox Lateral 2013 Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Willcox Lateral 2013 Expansion Project (Project) involving modification, construction, and operation of certain meter, compressor and lateral facilities by El Paso Natural Gas Company (EPNG) in Cochise County, Arizona. The

Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on January 2, 2012.

You may submit comments in written form. Further details on how to submit written comments are in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

EPNG provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

The Project involves the modification of EPNG's existing pipeline system and installation of new facilities including:

- A new 400-foot long, 16-inch diameter lateral pipeline to connect the Douglas Meter Station to EPNG's existing Line No. 2164;
- The replacement of compressor modules and station yard piping at the existing Willcox Compressor Station;
- Expansion of the existing Douglas Meter Station by installing updated flow control and pressure regulation equipment; and
- The replacement of the existing two 8-inch orifice meters with two 8-inch ultrasonic meters to increase the capacity at the El Fresnal meter Station.

The general location of the Project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the Project would disturb about 27 acres. Most of the construction would be temporary. Less than one acre of new permanent easement would be required for this project.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology and soils;
- Land use and recreation;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary (FERC's records information system, see the Additional Information section of this Notice). To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. Comments on the EA will be considered before we make our recommendations to the Commission.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Arizona State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian Tribes, and the public on the Project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status on consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to

[1] The appendices referenced in this notice are not printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call 9 (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before January 2, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the Project docket number (CP12–6–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at (*http://www.ferc.gov*) under the link to *Documents and Filings.* This is an method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at (*http://www.ferc.gov*) under the link to *Documents and Filings.* With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister''. You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits, in the Docket Number field i.e., CP12–6–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information

Dated: December 2, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31514 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12642–003 North Carolina]

Wilkesboro Hydroelectric Company, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the W. Kerr Scott Hydropower Project that would be located at the existing U.S. Army Corps of Engineers' (Corps) W. Kerr Scott Dam and Reservoir on the Yadkin River, near the Town of Wilkesboro, in Wilkes County, North Carolina. The project would occupy 3.5 acres of federal lands administered by the Corps.

Commission staff has prepared an environmental assessment (EA) for the project. The EA contains staff's analysis of the potential environmental effects of the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1-(866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://*

www.ferc.gov/docs-filing/efiling.asp. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support.

Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jennifer Adams at (202) 502–8087, or by email at *jennifer.adams@ferc.gov.*

Dated: December 1, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31488 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6731–000]

Burr, Sharon L.; Notice of Filing

Take notice that on December 1, 2011, Sharon L. Burr submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and part 45 of title 18 of the Code of Federal Regulations, 18 CFR part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 22, 2011.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31508 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6730–000]

Merritt, Beck C.; Notice of Filing

Take notice that on December 1, 2011, Beck C. Merritt submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 22, 2011.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31509 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6541–001]

Baine, Edward H.; Notice of Filing

Take notice that on December 1, 2011, Edward H. Baine submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the

''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 22, 2011.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31511 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–515–000]

Sperian Energy Corp; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sperian Energy Corp's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 22, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31510 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–32–003]

DCP Raptor Pipeline, LLC; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on November 30, 2011, DCP Raptor Pipeline, LLC (Raptor) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five year period. The Commission in Order No. 735 modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, Raptor requests that the date for its next rate filing be extended to September 1, 2014, which is five years from the date of Raptor's most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 13, 2011.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31506 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–23–003]

Overland Trail Transmission, LLC; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on November 30, 2011, Overland Trail Transmission, LLC (OTTCO) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five year period. The Commission in Order No. 735 modified

its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, OTTCO requests that the date for its next rate filing be extended to March 31, 2014, which is five years from the date of OTTCO's most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 13, 2011.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31507 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–2–002]

Pelico Pipeline, LLC; Notice of Motion for Extension of Rate Case Filing Deadline

Take notice that on November 30, 2011, Pelico Pipeline, LLC (PELICO) filed a request for an extension consistent with the Commission's revised policy of periodic review from a triennial to a five-year period. The Commission in Order No. 735 modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[1] Therefore, PELICO requests that the date for its next rate filing be extended to November 1, 2014, which is five years from the date of PELICO's most recent rate filing with this Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 13, 2011.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31503 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Contract Reporting Requirements of Intrastate Natural Gas Companies, Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Markets and Operations Policy Committee Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting of the Southwest Power Pool, Inc. Markets and Operations Policy Committee. Their attendance is part of the Commission's ongoing outreach efforts.

The meeting will be held on December 6, 2011, from 8 a.m. to 3: p.m. at the Omni Dallas Hotel Park West, 1590 LBJ Freeway, Dallas, TX 75234. The hotel phone number is (972) 869–4300.

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, *Southwest Power Pool, Inc.*
Docket No. ER08–1419, *Southwest Power Pool, Inc.*
Docket No. ER09–659, *Southwest Power Pool, Inc.*
Docket No. ER09–1050, *Southwest Power Pool, Inc.*
Docket No. ER10–941, *Southwest Power Pool, Inc.*
Docket No. ER11–2736, *Southwest Power Pool, Inc.*
Docket No. ER11–2758, *Southwest Power Pool, Inc.*
Docket No. ER11–2781, *Southwest Power Pool, Inc.*
Docket No. ER11–2783, *Southwest Power Pool, Inc.*
Docket No. ER11–2787, *Southwest Power Pool, Inc.*
Docket No. ER11–2837, *Southwest Power Pool, Inc.*
Docket No. ER11–3627, *Southwest Power Pool, Inc.*
Docket No. ER11–3958, *Southwest Power Pool, Inc.*

Docket No. ER11–3967, *Southwest Power Pool, Inc.*
Docket No. ER11–4405, *Southwest Power Pool, Inc.*
Docket No. ER12–5, *Southwest Power Pool, Inc.*
Docket No. ER12–16, *Southwest Power Pool, Inc.*
Docket No. ER12–25, *Southwest Power Pool, Inc.*
Docket No. ER12–74, *Southwest Power Pool, Inc.*
Docket No. ER12–140. *Southwest Power Pool, Inc.*
Docket No. ER12–149, *Southwest Power Pool, Inc.*
Docket No. ER12–227, *Southwest Power Pool, Inc.*
Docket No. ER12–235, *Southwest Power Pool, Inc.*
Docket No. ER12–277, *Southwest Power Pool, Inc.*
Docket No. ER12–430, *Southwest Power Pool, Inc.*
Docket No. ER12–443, *Southwest Power Pool, Inc.*
Docket No. ER12–444, *Southwest Power Pool, Inc.*
Docket No. ER12–455, *Southwest Power Pool, Inc.*
Docket No. ER12–457, *Southwest Power Pool, Inc.*
Docket No. ER11–3728, *Midwest Independent System Operator, Inc.*
Docket No. EL11–34, *Midwest Independent System Operator, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Dated: December 1, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–31490 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4580–000]

California Independent System Operator Corporation; Notice of Technical Conference

By order dated November 25, 2011, in Docket No. ER11–4580–000, the Federal Energy Regulatory Commission (Commission) directed staff to convene a technical conference regarding California Independent System Operator Corporation's (CAISO) proposal to eliminate convergence bidding at intertie scheduling points. Take notice that such conference will be held on February 2, 2012 at the Commission's headquarters at 888 First Street NE., Washington, DC 20426, beginning at 9 a.m. (Eastern Time) in Hearing Room 1. The technical conference will be led by Commission staff.

The purpose of the technical conference is to discuss the issues raised by CAISO's proposal to eliminate convergence bidding at intertie scheduling points. A subsequent notice detailing the topics to be discussed and agenda will be issued in advance of the conference.

Parties will have an opportunity to listen to the conference by telephone. Further call-in information will be provided in a subsequent notice.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 208–8659 (TTY); or send a fax to (202) 208–2106 with the required accommodations.

For more information on this conference, please contact Moon Athwal at *moon.athwal@ferc.gov* or (202) 502–6272, or Colleen Farrell at *colleen.farrell@ferc.gov* or (202) 502–6751.

Dated: December 2, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–31505 Filed 12–7–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0901; FRL–9503–1]

Agency Information Collection Activities; Proposed Collections; Comment Request; Prevention of Significant Deterioration and Nonattainment Area New Source Review (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 this 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 February 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0901, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Agency Information Collection Activities; Proposed Collection; Comment Request; Prevention of Significant Deterioration and Nonattainment Area New Source Review (Renewal) Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0901. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. David Painter, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5515; fax number: (919) 541–5509; email address: *painter.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2011–0901, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation 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 Public Reading Room is (202) 566–1744.

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 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, the EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, the EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that the EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by the EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity does this apply to?

Affected entities: Entities potentially affected by this action are those which must apply for and obtain a preconstruction permit under part C or D or section 110(a)(2)(C) of title I of the Clean Air Act (Act).

Title: Prevention of Significant Deterioration and Nonattainment Area New Source Review (Renewal).

ICR number: EPA ICR No. 1230.29, OMB Control No. 2060–0003.

ICR status: This ICR is scheduled to expire on April 30, 2012.

Abstract: Part C of the Clean Air Act (Act)—''Prevention of Significant Deterioration,'' and Part D—''Plan Requirements for Nonattainment Areas,'' require all states to adopt preconstruction review programs for new or modified stationary sources of air pollution. In addition, the provisions of section 110 of the Act include a requirement for states to have a preconstruction review program to manage the emissions from the construction and modification of any stationary source of air pollution to assure that the National Ambient Air Quality Standards (NAAQS) are achieved and maintained. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15. Section 176(c) of the Clean Air Act (42 U.S.C. 7401 *et seq.*) requires that all federal actions conform with the state implementation plans (SIPs) to attain and maintain the NAAQS. Depending on the type of action, the federal entities must collect information themselves, hire consultants to collect the information, or require applicants/sponsors of the federal action to provide the information.

Implementing regulations for these three programs are promulgated at 40 CFR 51.160 through 51.166; 40 CFR part 51, Appendix S; and 40 CFR 52.21 and 52.24. In order to receive a construction permit for a major new source or major modification, the applicant must conduct the necessary research, perform the appropriate analyses and prepare the permit application with documentation to demonstrate that their project meets all applicable statutory and regulatory New Source Review requirements. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

State, local, or federal reviewing authorities review permit applications and provide for public review of proposed projects and issue permits based on their consideration of all technical factors and public input. The EPA, more broadly, reviews a fraction of the total applications and audits the state and local programs for their effectiveness. Consequently, information prepared and submitted by sources is essential for sources to receive permits, and for federal, state, and local environmental agencies to adequately review the permit applications and thereby properly administer and manage the NSR programs.

Since the previous renewal of this ICR, the EPA has filled regulatory voids that existed in Indian country (where state NSR programs do not apply) by promulgating a Part D program and a minor NSR program for Indian country.

(The EPA was already implementing a Part C program in Indian country.) The implementing regulations for these programs are at 40 CFR 49.151 through 49.173. The EPA acts as the reviewing authority for these programs.

Information that is collected is handled according to EPA's policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2). See also section 114(c) of the Act.

Burden Statement: 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; 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 annual public reporting and recordkeeping burden for this collection of information is broken down as follows:

Type of permit action	Major PSD	Major Part D	Minor
State Programs:			
Number of Sources	1,610	486	72,841
Burden Hours per Response:			
Industry	1,006	642	39
Reviewing Authorities	336	128	29
Total Annual Burden Hours			
Industry	1,619,660	312,012	2,822,885
Reviewing Authorities	540,960	62,208	2,095,140
Indian Country Program			
Number of Sources	([a])	([a])	12,432
Industry Burden Hours per Response	([a])	([a])	39
Industry Total Annual Burden Hours	([a])	([a])	479,435

Any minor discrepencies are due to rounding.
[a] The PSD and Part D programs in Indian country are included in the state program figures.

In addition, we estimate that the 112 state and local reviewing authorities will prepare and submit an average of 51 SIP revisions per year to conform to changes in the NSR regulations, for a total annual burden of 2,040 hours. Besides the burden hours tallied above for permitting and SIP revisions, we estimate that 34 of the sources subject to PSD permitting are required to conduct pre-construction monitoring which they outsource, representing start-up costs totaling $12,444,204.

Respondents/Affected Entities: Industrial plants; state and local reviewing authorities.

Estimated Number of Respondents: 87,481, including 87,369 industry sources and 112 state and local reviewing authorities generating a total of 162,357 responses.

Estimated Total Annual Burden: 7,934,340 hours and $12,444,204.

Are there changes in the estimates from the last approval?

Since the last renewal of this ICR (October 2008), the estimated number of responses has increased by 11,536 due primarily to the addition of the minor NSR program for Indian country which requires all existing minor sources to register within the first 3 years of the program. In addition, actions under the Act unrelated to NSR rule changes brought greenhouse gases into the prevention of significant deterioration (PSD) program, but the potentially overwhelming increase in permit actions that this might have caused was limited to a manageable level (fewer than 1,350 sources) by the Greenhouse Gas Tailoring Rule. Partially counteracting these increases, the Flexible Air Permitting Rule had the effect of reducing the number of respondents under the PSD, Part D, and minor NSR programs.

The burden per PSD permit has increased due to the addition of greenhouse gases to the program. In addition, provisions were added to the PSD regulations that allow for full implementation of the program for particulate matter less than 2.5 micrograms ($PM_{2.5}$), which has resulted in an increase in the modeling required for PSD permits and, thus, an increase in the per-permit burden. The Flexible Air Permitting Rule marginally increased the per-permit burden for the PSD and Part D programs, although the overall effect of the rule was to reduce total burden because of the reduction in the number of permit actions. The Flexible Air Permitting Rule also slightly reduced the burden per minor NSR permit.

As a result of all these changes to the NSR program, the total burden for the program has increased by 1,983,272 hours.

What is the next step in the process for this ICR?

The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs 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: December 5, 2011.

Mary E Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–31528 Filed 12–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9502–3; EPA–HQ–OW–2011–0141 and EPA–HQ–2011–0150]

Draft National Pollutant Discharge Elimination System (NPDES) General Permits for Discharges Incidental to the Normal Operation of a Vessel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit issuances and notice of public hearing.

SUMMARY: EPA Regions 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are publishing for comment a draft NPDES Vessel General Permit (VGP) that would authorize discharges incidental to the normal operation of non-military and non-recreational vessels greater than or equal to 79 feet in length. If finalized, this draft VGP would replace the current VGP, which was issued in December 2008 and expires on December 19, 2013. EPA is also proposing a draft NPDES Small Vessel General Permit (sVGP) to authorize discharges incidental to the normal operation of non-military and non-recreational vessels less than 79 feet in length. EPA is proposing the sVGP to authorize discharges from vessels less than 79 feet in length, because the P.L. 110–299 moratorium (subsequently extended by P.L. 111–215) expires on December 18, 2013. These laws generally provide that no NPDES permits shall be required for incidental discharges (except discharges of ballast water) from vessels less than 79 feet and commercial fishing vessels. EPA is soliciting comment on today's draft VGP and draft sVGP. Comments on any aspect of the permit, including the fact sheet discussions and economic analyses supporting the Agency's tentative decisions, are welcome. Note that in many places, EPA requests comments on specific aspects of today's draft permits; these specific solicitations are meant to highlight for commenters areas on which they may wish to focus, most often because these areas involve provisions not contained in the 2008 VGP. The requests for comment on specific aspects of the permit should not be interpreted as discouraging comment on other provisions or aspects of the draft permits.

DATES: Comments must be submitted on or before February 21, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2011–0141 for the VGP or Docket ID No. EPA–HQ–OW–2011–0150 for the sVGP, by one of the following methods:

- *www.regulations.gov:* Follow on-line instructions for submitting comments.
- *Email: ow-docket@epa.gov.*
- *Mail:* Original and three copies to: Water Docket, Environmental Protection Agency, *Mail Code:* 4101T, 1200 Pennsylvania Ave. NW., Washington DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, Room B102, EPA West Building, 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.

FOR FURTHER INFORMATION CONTACT: For further information on the VGP, including how to obtain copies of the draft general permit and fact sheet, contact Ryan Albert at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave. NW., Washington DC 20460; or at tel.: (202) 564–0763; or email at *vgp@epa.gov.* For further information on the sVGP, including how to obtain copies of the draft general permit and fact sheet, contact Robin Danesi at EPA Headquarters, Office of Water, Office of Wastewater Management, mail code 4203M, 1200 Pennsylvania Ave, NW., Washington DC 20460; or at tel.: (202) 564–1846; or e-mail at *svgp@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

Table of Contents

I. General Information

A. Does this action apply to me?

This action applies to vessels operating in a capacity as a means of transportation that have discharges incidental to their normal operation into waters subject to this permit, except recreational vessels as defined in Clean Water Act section 502(25) and vessels of the Armed Forces as defined in Clean Water Act section 312(a)(14). Affected vessels are henceforth referred to as non-military, non-recreational vessels. Unless otherwise excluded from coverage by Part 6 of the VGP and Part 5 of the sVGP, waters subject to this permit means waters of the U.S. as defined in 40 CFR section 122.2. That provision defines ''waters of the U.S.'' as certain inland waters and the territorial sea, which extends three miles from the baseline. More specifically, CWA section 502(8) defines ''territorial seas'' as ''the belt of the seas measured from the line of the ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.'' Note that the Clean Water Act (CWA) does not require NPDES permits for vessels or other floating craft operating as a means of transportation beyond the territorial seas, i.e., in the contiguous zone or ocean as defined by the CWA sections 502(9), (10). *See* CWA section 502(12) and 40 section CFR section 122.2 (definition of ''discharge of a pollutant''). This permit, therefore, does not apply in such waters.

Non-military, non-recreational vessels greater than 79 feet in length operating in a capacity as a means of transportation that need NPDES coverage for their incidental discharges will generally be covered under the VGP. Similarly situated vessels less than 79 feet in length may be covered under the VGP, or may instead opt for coverage under the sVGP (unless those vessels have 8 or more cubic meters of ballast water capacity, in which case, they must seek coverage under the VGP).

B. How can I get copies of these documents and other related information?

1. Docket. EPA has established an official public docket for this action: Docket ID No. EPA–HQ–OW– 2011–0141 for the VGP and Docket ID No. EPA–HQ–OW– 2011–0150 for the sVGP. The official public docket is the collection of materials, including the administrative record required by 40 CFR 124.18, for the final permit. It is

available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *http://www.regulations.gov* and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at *http://www.regulations.gov*. You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once at the Web site, enter the appropriate Docket ID No. in the ''Search'' box to view the docket.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this section.

C. Tips for Preparing Your Comments

Please follow these guidelines as you prepare your comments so that EPA can better address them in a timely manner.

1. Identify the permit by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

2. Explain why you agree or disagree with any proposed provisions; suggest alternatives and substitute language for your requested changes.

3. Describe any assumptions, and provide any technical information and/or data that you used.

4. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

5. Provide specific examples to illustrate your concerns, and suggest alternatives.

6. Explain your views as clearly as possible.

7. Make sure to submit your comments by the comment period deadline. EPA is not obligated to accept or consider late comments.

D. How and to whom do I submit comments?

The opportunity to raise issues and provide information on the general permits is during the public comment period (see 40 CFR 124.13 for more information). You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or section in the fact sheet or part of the permit to which each comment refers. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments (see, however, Section 3.15 of the fact sheet, where EPA expresses an intent to consider late comments with specific, narrow issue).

For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. A reasonable fee may be charged for copying. The 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 Water Docket is (202) 566–1744.

Comments may be submitted to EPA in the following ways:

EPA Dockets. Use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to *www.regulations.gov* and follow the online instructions for submitting comments. Once in the system, select ''search'' and then Docket ID No. EPA–HQ–OW– 2011–0141 for the VGP and Docket ID No. EPA–HQ–OW– 2011–0150 for the sVGP. The system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

E-mail. Comments may be sent by electronic mail (email) to *ow-docket@epa.gov*, Attention: Docket ID No. EPA–HQ–OW– 2011–0141 for the VGP and Docket ID No. EPA–HQ–OW–2011–0150 for the sVGP. In contrast to EPA's electronic public docket, EPA's email system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through EPA's electronic public docket, EPA's email system automatically captures your email address. Email addresses that are automatically captured by EPA's email system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Disk or CD–ROM. You may submit comments on a disk or CD–ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in Microsoft Word or ASCII file format. 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. Avoid the use of special characters and any form of encryption.

By Mail. Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, *Mailcode:* 4101T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, *Attention:* Docket ID No. EPA–HQ–OW–2011–0150.

By Hand Delivery or Courier. Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–OW–2011–0141 for the VGP and Docket ID No. EPA–HQ–OW–2011–0150 for the sVGP. Such deliveries are only accepted during the Docket's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

E. Public Hearing

Because EPA anticipates a significant degree of public interest in the draft VGP and the draft sVGP, EPA will hold a public hearing on Wednesday January 11, 2012 to receive public comment and answer questions concerning the draft

VGP and draft sVGP, and will present the proposed requirements of the draft VGP and the draft sVGP and the basis for those requirements. The hearing will be held at EPA East Room 1153, 1201 Constitution Ave. NW., Washington DC 20460, from 9 a.m. to 5 p.m. (EST) or until all comments have been heard. Any person may provide written or oral statements and data pertaining to the draft permits at the public hearing. Depending on the number of people who desire to make an oral statement, EPA may impose limits on the time allowed for oral statements, which may result in the full statement not being heard. Therefore, EPA recommends that all those planning to present oral statements also submit written statements. Any person not making an oral statement may also submit a written statement. Please note that the public hearing may close early if all business is finished.

F. Public Meeting

The focus of the public meeting is to present the proposed requirements of the draft VGP and draft sVGP and the basis for those requirements, as well as to answer questions concerning the draft permits. At this meeting, any person may provide written or oral statements and data pertaining to the draft permits. The date, time, and location of the public meeting is as follows:

Monday January 23, 2012, 10 a.m. to 5 p.m. CST or until all comments have been heard, Ralph H. Metcalfe Federal Building, Room 331, 77 West Jackson Blvd., Chicago IL 60604.

Depending on public interest, EPA may host at least one additional public meeting. Please see EPA's Web page at *www.epa.gov/npdes/vessels,* which will announce any additional public meetings. EPA will announce the public meeting on its Web page at least four weeks before it is scheduled to occur.

EPA encourages interested and potentially affected stakeholders to attend one of the scheduled public meetings or hearings and provide oral or written comments. These meetings are open to the public. Please note that the public meeting may end early if all business is finished. Oral or written comments received at the public meeting will be entered into the Docket. If you are unable to attend, you may submit comments to the EPA Water Docket at the address listed under Section D.

G. Webcast

EPA is scheduling a webcast to provide information on the draft permits and to answer questions for interested parties that are unable to attend the public meetings or public hearing. For information on the time, how to register, and how to attend the webcast, see EPA's Web site at *http://www.epa.gov/npdes/vessels.* EPA plans to schedule this webcast in the latter half of January and will announce it on its Web page at least four weeks before it is scheduled to occur. EPA also plans to make a recording of this webcast available on its Web page for future playback.

H. Finalizing the Permits

After the close of public comment period, EPA will issue final permit decisions. These decisions will not be made until after all public comments have been considered and appropriate changes are made to the permits, fact sheet, and other supporting documents. EPA's response to comments received will be included in the docket as part of the final permit decisions. EPA plans to take final action on the draft VGP and sVGP by November 30, 2012. Note that EPA plans to take final action on the permit a year prior to expiration of the current VGP. EPA believes this approach makes sense, as it will give the regulated community substantial time to prepare for the application of new requirements.

I. Who are the EPA regional contacts for these draft permits?

For EPA Region 1, contact John Nagle at US EPA, Region 1, New England/Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Mail Code: OEP 06–1, Boston, MA 02109–3912; or at tel.: (617) 918–1054; or email at *nagle.john@epa.gov.*

For EPA Region 2, contact Sara Sorenson at US EPA, Region 2, 290 Broadway, 24th Floor, New York, NY 10007–1866; or at tel.: (212) 637–3877; or email at *sorenson.sara@epa.gov.*

For EPA Region 3, contact Mark Smith at US EPA, Region 3, 1650 Arch St., Mail Code: 3WP41, Philadelphia, PA 19103–2029, or at tel.: (215) 814–3105; or email at *smith.mark@epa.gov.*

For EPA Region 4, contact Marshall Hyatt at US EPA, Region 4/Water Permits Division, Atlanta Federal Center, 61 Forsyth St. SW., Atlanta, GA 30303–3104; or at tel.: (404) 562–9304; or email at *hyatt.marshall@2epa.gov.*

For EPA Region 5, contact Sean Ramach at US EPA, Region 5, 77 W. Jackson Blvd., Mail Code: WN16J, Chicago, IL 60604–3507; or at tel.: (312) 886–5284; or email at *ramach.sean@epa.gov.*

For EPA Region 6, contact Josh Waldmeier at U.S. EPA, Region 6, 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733; or at tel.: (214) 665–8064; or email at *waldmeier.joshua@epa.gov.*

For EPA Region 7, contact Alex Owutaka at US EPA, Region 7, 901 N. 5th St., Kansas City, KS 66101; or at tel.: (913) 551–7584; or email at *owutaka.alex@epa.gov.*

For EPA Region 8, contact Lisa Luebke at US EPA, Region 8, 1595 Wynkoop St., Mail Code: 8P–W–WW, Denver, CO 80202; or at tel.: (303) 312–6256; or email at *luebke.lisa@epa.gov.*

For EPA Region 9, contact Eugene Bromley at US EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105–3901; or at tel.: (415) 972–3510; or email at *bromley.eugene@epa.gov.*

For EPA Region 10, contact Cindi Godsey at US EPA, Region 10, 222 W. 7th Ave., Box 19, Anchorage, AK 99513; or at tel.: (907) 271–6561; or email at *godsey.cindi@epa.gov.*

II. Background Information

A. Statutory and Regulatory History

The Clean Water Act (CWA) section 301(a) provides that ''the discharge of any pollutant by any person shall be unlawful'' unless the discharge is in compliance with certain other sections of the Act. 33 USC 1311(a). The CWA defines ''discharge of a pollutant'' as ''(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.'' 33 USC 1362(12). A ''point source'' is a ''discernible, confined and discrete conveyance'' and includes a ''vessel or other floating craft.'' 33 USC 1362(14).

The term ''pollutant'' includes, among other things, ''garbage * * * chemical wastes * * * and industrial, municipal, and agricultural waste discharged into water.'' The Act's definition of ''pollutant'' specifically excludes ''sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces'' within the meaning of CWA section 312.33 USC 1362(6).

One way a person may discharge a pollutant without violating the CWA section 301 prohibition is by obtaining authorization to discharge (referred to herein as ''coverage'') under a CWA section 402 National Pollutant Discharge Elimination System (NPDES) permit (33 USC section 1342). Under CWA section 402(a), EPA may ''issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)'' upon certain conditions required by the Act.

EPA issued the original Vessel General Permit in response to a District Court ruling which vacated a longstanding regulatory exemption for

discharges incidental to the normal operation of vessels at 40 CFR 122.3(a). *Northwest Envtl. Advocates et al.* v. *United States EPA,* 2006 U.S. Dist. LEXIS 69476 (N.D. Cal. 2006). EPA developed the VGP to regulate incidental discharges from vessels operating in a capacity as a means of transportation. That permit was issued on December 18, 2008, with an effective date of December 19, 2008. 73 FR 79,473 (Dec. 29, 2008). Subsequently, the U.S. District Court for the Northern District of California issued an order providing that ''the exemption for discharges incidental to the normal operation of a vessel, contained in 40 CFR 122.3(a), is vacated as of February 6, 2009.'' *Northwest Environmental Advocates et al.* v. *United States EPA,* No. C 03–05760–SI (December 17, 2008). Therefore, the date when the regulated community was required to comply with the VGP was February 6, 2009.

In 2010, Congress enacted Public Law 111–215 which extended the moratorium (Pub. L. 110–299) prohibiting NPDES permitting for discharges incidental to the normal operation of commercial fishing vessels (regardless of size) and those other non-recreational vessels less than 79 feet in length until December 2013. That moratorium does not include ballast water discharges. That moratorium also does not apply to other incidental discharges, which on case-by-case basis, EPA or the State, as appropriate, determines contribute to a violation of water quality standards or pose an unacceptable risk to human health or the environment. The original legislation called for a two-year moratorium on permitting until July 31, 2010, during which time EPA was to study the relevant discharges and submit a report to Congress. EPA finalized this Report to Congress, entitled ''Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet'' in August 2010, and it can be viewed at: *http://cfpub.epa.gov/npdes/vessels/background.cfm.*

B. The 2008 VGP

The 2008 VGP addresses 26 potential vessel discharge streams by establishing effluent limits, including Best Management Practices (BMPs), to control the discharges of waste streams and constituents found in those waste streams. For these discharges, the permit establishes effluent limits pertaining to the constituents found in the effluent and BMPs designed to decrease the amount of constituents entering the waste stream. A vessel might not produce all of these discharges, but a vessel owner or operator is responsible for meeting the applicable effluent limits and complying with all the effluent limits for every listed discharge that the vessel produces.

To obtain authorization, the owner or operator of a vessel that is either 300 or more gross registered tons or has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water is required to submit a Notice of Intent (NOI) to receive permit coverage, beginning six months after the permit's issuance date, but no later than nine months after the permit's issuance date. Owners or operators of vessels that meet the applicable eligibility requirements for permit coverage but are not required to submit an NOI, including vessels less than 300 gross registered tons with no more than 8 cubic meters of ballast water capacity are automatically authorized by the permit to discharge according to the permit requirements.

The VGP requires owners or operators of vessels to conduct routine self-inspections and monitoring of all areas of the vessel that the permit addresses. The routine self-inspections are required to be documented in the ship's logbook. Analytical monitoring of certain discharges is required for certain types of vessels. The VGP also requires owners or operators of vessels to conduct comprehensive annual vessel inspections, to ensure even the hard-to-reach areas of the vessel are inspected for permit compliance. If the vessel is placed in dry dock while covered under the permit, a dry dock inspection and report is required to be completed. Additional monitoring requirements are imposed on owners or operators of certain classes of vessels, based on their unique characteristics.

For additional information on the VGP, please go to *www.epa.gov/npdes* or see Docket ID. No. EPA–HQ–OW–2008–0055 at *www.regulations.gov.*

C. National Research Council and Science Advisory Board Ballast Water Studies

As part of its strategy for improving the Agency's understanding of ballast water discharges, EPA, in partnership with the United States Coast Guard, commissioned two ballast water studies from highly respected, independent scientific entities. EPA commissioned these studies in order to produce the best possible scientific compendium of ballast water information relevant to the development of today's VGP. EPA commissioned these studies believing that they would help inform the Agency's decisions about what effluent limits to set for ballast water discharges.

The first study was led by the National Research Council (which functions under the auspices of the National Academy of Sciences (NAS), the National Academy of Engineering, and the Institute of Medicine) and addressed how to assess risk to water quality associated with ballast water discharges (NAS, 2011). EPA designed this study to inform the Agency's development of water quality-based effluent limits for ballast water and related provisions for today's draft VGP. The NAS panel consisted of nine experts with extensive knowledge of issues surrounding invasive species. That panel found that they could not evaluate the risk associated with a variety of regulatory discharge limits because of ''a profound lack of data and information to develop and validate models'' and ''it was not possible with any certainty to determine the risk of nonindigenous species establishment under existing discharge limits'' (NAS 2011, pp. 3). The NAS report noted that setting a concentration based, ballast water discharge standard that is consistent with the International Maritime Organization (IMO) D–2 standard (the standard expressed in the 2004 International Convention for the Control and Management of Ships Ballast Water and Sediments) is ''clearly a first step forward'' (103), and that it ''represents a significant reduction in concentrations beyond ballast water exchange'' (98). Furthermore, the report stated that the IMO D–2 standard ''now provides a manageable baseline for developing scientific models that can be used to quantitatively determine ballast water discharge standards'' (101). Of further note, the report proposed a coordinated, large scale research program, consisting of two major parts: the first involving ''[a] well-designed ship discharge sampling program to measure propagule supply'' and the second involving an experimental, mesocosm based approach to calibrate models which should yield results in ''a three to five year time horizon'' (111). The NAS panel estimated that different elements of this research program would take between 3–10 years to complete. For a copy of the NAS report, please go to: *http://www.nap.edu/catalog.php?record_id=13184.*

The second study was led by EPA's autonomous Science Advisory Board (SAB) and evaluated the status of ballast water treatment technologies. EPA designed the SAB study to inform EPA's understanding of appropriate technology-based limits for ballast water provisions for today's draft VGP. The

SAB panel was made up of 22 scientists and engineers, a significant number of which are recognized as experts in evaluating ballast water treatment systems. The SAB found, among other things, that at least five types of ballast water treatments systems are available which treat to the limits found in the International Maritime Organization (IMO) Ballast Water Convention and proposed in today's permit. For a copy of the SAB report, please see: *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/BW%20discharge!OpenDocument&TableRow=2.3#2*

III. Summary of Today's Permits

A. Summary of Significant Proposed Changes to the 2008 VGP

For purposes of highlighting significant proposed changes to the 2008 VGP, EPA is organizing this discussion into 3 sections: changes to ballast water requirements; changes to other incidental discharge effluent requirements; and changes to administrative requirements.

1. Ballast Water. In today's draft permit, EPA is proposing new, more stringent numeric technology-based effluent limitations that are applicable to vessels with ballast water tanks and will largely replace the non-numeric effluent limitations for ballast water in the 2008 VGP. These limitations will achieve significant reductions in the number of living organisms discharged via ballast water into waters subject to this permit. Ballast water discharges are widely recognized as one of the primary sources (or vectors) for the spread of aquatic invasive species, also known as aquatic nuisance species (ANS). When species in ballast tanks are transported between waterbodies and discharged, they have potential for establishing new, non-indigenous populations that can cause severe economic and ecological impacts. EPA has expressed the numeric effluent limit for ballast water discharges as numbers of living organisms per cubic meter (i.e. as a maximum acceptable concentration) because reducing the concentration of living organisms will reduce inoculum densities of potential invasive species discharged in a vessel's ballast water, i.e., thereby reducing the risk posed by the discharge. EPA has proposed a staggered implementation schedule for certain existing vessels for achieving the numeric limitation by the first drydocking after January 1, 2014 or January 1, 2016 (depending upon vessel size), which may extend beyond the permit term for some vessels. Vessels newly constructed after January 1, 2012 that are subject to the numeric limitation must meet those limits upon entering U.S. waters upon the effective date of the permit. EPA notes that this time schedule is consistent with the timelines in the standards set forth in regulation D–2 of the International Ballast Water Convention established by the IMO. Also as part of today's draft permit, EPA has proposed maximum discharge limitations for certain biocides and residuals to limit the impact of these pollutants to waters subject to this permit. The draft permit would also allow for most vessels which meet the treatment requirements to no longer perform ballast water exchange.

Under the draft VGP, vessel owner/operators subject to the concentration-based numeric discharge limitations would be able to meet their obligations in one of four ways: discharge ballast water meeting the applicable numeric limits of the VGP; transfer the ship's ballast water to a third party treatment at an NPDES permitted facility; use treated municipal/potable water as ballast water; or not discharge ballast water. As in the 2008 VGP, vessels enrolled in, and meeting the requirements of the US Coast Guard's Shipboard Technology Evaluation Program (STEP) would be deemed to be in compliance with the numeric limitations.

In today's draft permit, the numeric concentration-based treatment limits for ballast water discharges would not apply to some vessels. Special requirements would apply to the following vessel classes: vessels operating exclusively within a limited area on short voyages; unmanned, unpowered barges; and existing bulk carrier vessels (commonly known as ''Lakers'') built before January 1, 2009 that operate exclusively in the Great Lakes upstream of the Welland Canal (referred to as existing ''confined Lakers''). See discussion below regarding specific draft requirements for Lakers.

Due to the challenges of installing ballast water treatment systems currently available on the existing confined Lakers, and the lack of currently available ballast water treatment systems appropriate for these vessels, alternative technologies are being researched. If these issues can be appropriately addressed, e.g., if an active substance and disinfection regime is identified, such technology might be a potentially useful treatment technology for the confined Lakers. EPA is specifically seeking comment as to whether the numeric ballast water treatment limits should be applicable to existing confined Lakers. All confined Lakers built after January 1, 2009, however, would be required to meet ballast water treatment numeric technology-based effluent limits found in the VGP.

EPA has determined that Best Available Technology Economically Achievable (BAT) over time will be a function of a vessel's construction date, size, and class. For certain existing vessels, EPA has proposed a staggered implementation schedule that requires the vessel to meet the numeric effluent limitations by the first drydocking after January 1, 2014 or January 1, 2016 depending on vessel size, which may extend beyond the permit term for certain vessels.

The draft VGP would impose several best management practices (BMPs) for vessels until they are required to meet the numeric ballast water limits that EPA has found to be available, practicable and economically achievable. These interim requirements are substantially similar to those in the 2008 VGP.

One of the interim management measures is that all vessels that are equipped to carry ballast water and enter the Great Lakes via the Saint Lawrence Seaway System must conduct saltwater flushing of ballast water tanks 200 nautical miles from any shore before entering either the U.S. or Canadian waters of the Seaway System. Additionally, vessels entering the Great Lakes utilizing a ballast water treatment system would also be required to conduct ballast water exchange or saltwater flushing (as applicable) in addition to meeting the numeric limits for ballast water once they apply if they meet the following requirements: (1) The vessel operates outside the Exclusive Economic Zone (EEZ) and more than 200 nm from any shore and then enters the Great Lakes, and (2) the vessel has taken on ballast water that has a salinity of less than 18 ppt from a coastal, estuarine, or freshwater ecosystem within the previous month. If a vessel affected by these draft conditions has not taken on ballast water with a salinity of less than 18 ppt in the previous month, the master of the vessel would be required to certify to this effect as part of the ballast water recordkeeping requirements before entering the Great Lakes.

EPA has included in today's draft VGP three management measures specific to existing confined Lakers. EPA believes these requirements are economically practicable and achievable, and represent common sense approaches to managing ballast water discharges for vessels when they have not installed ballast water treatment systems. If existing confined

Lakers are retrofitted to meet the numeric effluent limits in the draft VGP, these vessels would no longer be required to perform these management measures.

As in the 2008 VGP, EPA has included certain mandatory requirements for all vessels. These requirements are consistent with EPA's Science Advisory Board's recommendations to reduce risks at multiple points in the ballast's operations (See EPA SAB 2011, available at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/6FFF1BFB6F4E09FD852578CB006E0149/$File/EPA–SAB–11–009-unsigned.pdf*). Some of the mandatory requirements for all vessels equipped with ballast water tanks that operate in waters of the U.S. would be to: avoid the discharge of ballast water into waters subject to this permit that are within or that may directly affect marine sanctuaries, marine preserves, marine parks, shellfish beds, or coral reefs; minimize or avoid uptake of ballast water in the listed areas and situations; clean ballast tanks regularly to remove sediments in mid-ocean or under controlled arrangements in port, or at dry dock; when the vessel is equipped with high and low suction, utilize the high suction for ballast tank discharge to minimize the discharge of entrained sediment; and minimize the discharge of ballast water essential for vessel operations while in the waters subject to this permit. EPA estimated the cost and burden of the ballast water requirements in its economic analysis for the permit.

2. Non-Ballast Water. Today's proposed VGP would impose more stringent technology-based effluent limits in the form of Best Management Practices for discharges of oil to sea interfaces. The draft VGP would require that all powered new build vessels (those constructed after December 19, 2013) must use ''environmentally acceptable lubricants'' in their oil-to-sea interfaces. Additionally, the draft VGP would authorize the discharge of fish hold effluent and establish appropriate Best Management Practices for this discharge type. EPA has also included numeric limits for exhaust gas scrubber effluent that are consistent with those established by International Maritime Organization guidelines for this discharge type. EPA is also specifically seeking input as to whether to include more stringent numeric limits for bilgewater for certain vessels, which would decrease the amount of oil (and potentially other pollutants) discharged into U.S. waters.

The proposed VGP contains monitoring requirements for certain larger vessels for ballast water, graywater, and exhaust gas scrubber effluent if they discharge into waters subject to the permit. EPA has included this monitoring requirement to assure treatment systems are performing as required (when applicable) and to generate additional information for EPA's future analyses. EPA estimated the cost and burden of these requirements in its economic analysis for the permit.

3. Administrative Improvements. EPA has made several efficiency improvements in the draft permit, including clarifying that electronic recordkeeping is allowed under the permit, eliminating duplicative reporting, and allowing consolidated reporting for certain vessels.

Under this draft VGP, permittees not required to submit a NOI would be required to complete and keep a Permit Authorization and Record of Inspection (PARI) Form onboard their vessel at all times. EPA is proposing the PARI form requirement because the Agency believes it is an efficient way for the owner/operator to certify that they have read and agreed to comply with the terms of the permit, and demonstrate basic understanding of the permit's terms and conditions. In addition, the form will provide EPA (or its authorized representative) with a standardized foundation for conducting inspections.

Under the draft VGP, EPA would consolidate the one-time report and annual noncompliance report into one annual report. As discussed in the fact sheet for today's permit, EPA found that the 2008 VGP reporting requirements resulted in confusion among some permittees. EPA believes that having a single annual report that permittees must file, which can include all of the permittee's analytical monitoring results (as applicable) for the previous year, would reduce this confusion and result in better information for the Agency. Additionally, the draft VGP would authorize a combined annual report for unmanned, unpowered barges if they meet specified criteria to maximize efficiency and reduce burden on a significant portion of the regulated universe. EPA believes that many of these barges are fundamentally similar and have a limited number of discharges. Furthermore, vessel owner/operators may have several thousand barges with these similar characteristics. Hence, EPA identified this provision as an efficient way to gather information by the agency without sacrificing data quality.

EPA is specifically seeking comment on the administrative improvements in today's draft VGP, and soliciting suggestions for other efficiency improvements.

B. Summary of the Draft sVGP

EPA is today proposing the Small Vessel General Permit (sVGP) for vessels less than 79 feet and all commercial fishing vessels. EPA is proposing the sVGP to provide coverage for vessels less than 79 feet in length because the Public Law 110–299 moratorium (subsequently extended by Pub. L. 111–215) expires on December 18, 2013. EPA recognizes that small commercial vessels are different in operation than larger commercial vessels, they generally have fewer discharge types, and that owner/operators of smaller vessels have particularized expertise and different resources available to manage their vessels than owner/operators of larger vessels; hence, the draft sVGP is structured differently for this class of permittees.

The draft sVGP would not require the vessel owner or operator to submit an NOI to receive permit coverage. However, as with vessels not required to submit an NOI under the VGP, sVGP permittees would be required to complete and keep a Permit Authorization and Record of Inspection (PARI) form onboard their vessel at all times. EPA also notes that vessel owner/operators of vessels less than 79 feet that have less than 8 cubic meters of ballast water may choose whether they wish to seek coverage under the sVGP or the VGP. The PARI form would document under which permit the owner/operator has sought coverage.

The discharges covered in the draft sVGP are categorized into several broad categories listed in the permit. The management categories regulated under the draft sVGP are divided into general requirements, fuel management, engine and oil control, solid and liquid waste management, deck washdown and runoff and above water line hull cleaning, vessel hull maintenance, graywater management, fish hold effluent management, and ballast water management. Additionally, vessel owner/operators would be required to comply with practices to reduce pollutant concentrations in their discharges.

The draft sVGP includes non-numeric effluent limits in the form of Best Management Practices (BMPs), which were developed for these discharges because EPA has determined that it is infeasible to calculate numeric effluent limits at this time. The BMPs are designed to minimize the amount of any discharge produced as well as reduce the likelihood the discharge would enter a waterbody. In addition to required

BMPs, the permit includes a section of encouraged BMPs. EPA believes that for most small vessel discharges, minimization of pollutants in those discharges can be achieved without using highly engineered, complex treatment systems.

C. Draft Permit Provisions on Which EPA Is Specifically Soliciting Comment

While EPA encourages the public to review and comment on all aspects and provisions of the draft permits, EPA has included in the body of the draft VGP and sVGP several specific requests for comment on draft conditions. Note that in many places in this notice and the fact sheet for the draft permit, EPA requests comments on specific aspects of today's draft permit; these specific solicitations are meant to highlight for commenters areas on which they may wish to focus, most often because they involve provisions not contained in the 2008 VGP. They should not be interpreted as discouraging comment on other provisions of the draft permit. The following list summarizes many of these conditions and the nature of the Agency's specific request for comment, and indicates where they are included in the proposed permit:

1. A four year permit term for the VGP, specifically, what are the merits of a four year permit term instead of the standard five year permit term? See Section 2.4 of the VGP fact sheet.

2. The approach of not requiring vessels that are smaller than 300 gross tons, and do not have the capacity to carry more than 8 cubic meters (2113 gallons) of ballast water to submit an NOI. See Part 1.5.1.1 of the VGP and Section 3.7.1 of the VGP fact sheet.

3. The requirement that vessel owner/operators that are not required to submit NOIs must complete, sign and maintain onboard the VGP PARI Form contained in Appendix K of the permit. See Part 1.5.1.2 of the VGP and Section 3.7.2.2 of the VGP fact sheet.

4. The inclusion of revised language in the proposed VGP regarding what may constitute new information with respect to ballast water discharges for the purposes of potentially modifying the permit during its term (the ''reopener'' provision). See Part 1.9.1 of the VGP and Section 3.11 of the VGP fact sheet.

5. Whether the controls in this permit represent the BPT, BCT and BAT levels of control. If commenters believe that the proposed controls do not, or that other controls would better represent the BPT, BCT or BAT levels of control, explicitly provide data and information about the applicability of such controls to all types of commercial vessels in all weather/operating situations, and the costs and non-water quality environmental impacts, including energy impacts, of such options. See Part 2.1 of the VGP and Section 4.2. of the VGP fact sheet.

6. The requirement that vessel owner/operators must outline their training plans in their recordkeeping documentation to show they have made good faith efforts to assure their crews can adequately maintain and use pollution prevention equipment and otherwise meet the terms of this permit. See Part 4.2 of the VGP and Section 4.3.1.6 of the VGP fact sheet.

7. Whether to include more stringent bilgewater requirements for new build vessels and whether to provide existing vessels with additional bilgewater management options in the final VGP. See Part 2.2.2 of the VGP and Section 4.4.2.2 of the VGP fact sheet.

8. Whether ballast water management plans should be made available to the public, considering any benefits that might accrue from making the plans available to the public and any increases in administrative burdens on both permittees and the Agency that might result from such a requirement. See Part 2.2.3.2 of the VGP and Section 4.4.3.2 of the VGP fact sheet.

9. Whether additional management measures which reduce risks at various stages of ballasting are appropriate to include in the final VGP. Specifically, what additional management measures the VGP should include, costs associated with those measures, and how well those measures reduce the risk from ballast water discharges. Also, any additional measures discussed by the NAS (2011) or SAB (2011) reports that EPA should consider incorporating in this permit. Please submit any data or other information supporting your recommendations. See Part 2.2.3.3 of the VGP and Section 4.4.3.3 of the VGP fact sheet.

10. The appropriateness of the biocide discharge limits, in particular, whether the limit for peracetic acid is adequately protective of coldwater environments. See Part 2.2.3.5.1.1.5.1 of the VGP and Section 4.4.3.5.1.1.4 of the VGP fact sheet.

11. The approach of requiring owner/operators of ballast water treatment systems which use a biocide or biocide derivative that is not specifically authorized by the VGP to notify EPA at least 120 days in advance of its use, and the option of conducting whole effluent toxicity testing for those biocides or biocide derivatives that are not specifically authorized in the VGP in lieu of notification. See Part 2.2.3.5.1.1.5.1 of the VGP and Section 4.4.3.5.1.1.6 of the VGP fact sheet.

12. Whether the use of potable water generated by shipboard treatment systems on vessels which use small quantities of ballast water, for example utilizing potable water ballast to offset fuel consumption on research vessels, is an appropriate approach to meeting the numeric technology-based effluent limits of the 2013 VGP. See Part 2.2.3.5.1.3 of the VGP and Section 4.4.3.5.3 of the VGP fact sheet.

13. New definition of ''short distance voyage.'' Are these the appropriate definitions of such a voyage? Are these definitions workable for vessel operators? Are there alternative suggestions? For instance, is there an existing approach to defining geographic boundaries based upon ecological criteria which would be appropriate? If so, why are these appropriate? Please provide any supporting data and rationale with your comments. See Part 2.2.3.5.3.1 of the VGP and Section 4.4.3.5.6.1 of the VGP fact sheet.

14. Whether unmanned, unpowered barges have technologies available to meet numeric ballast water treatment limits. Also, any information about how these vessels utilize ballast water, and whether the Agency's understanding of their ballasting patterns is correct. See Part 2.2.3.5.3.2 of the VGP and Section 4.4.3.5.6.2 of the VGP fact sheet.

15. Whether ''existing confined Lakers'' built before January 1, 2009 that operate exclusively in the Great Lakes upstream of the Welland Canal should be required to use a ballast water treatment system to meet the ballast water discharge standards found in this permit under the implementation schedule. The applicability and availability of ballast water treatment systems for existing confined Lakers built before January 1, 2009. Given the constraints noted by the SAB, can the confined Lakers implement the technologies evaluated by the SAB? Are there unique technologies that are available or that would potentially be available during the permit term for the confined Lakers? Are there other treatment technologies and/or methods that can be implemented by confined Lakers that can reliably treat ballast water to reduce the concentration of living organisms upon discharge? Please provide appropriate supporting documentation, including applicable data and sources for your information. See Part 2.2.3.4 and 2.2.3.5.3.3 of the VGP and Section 4.4.3.5.6.3 of the VGP fact sheet.

16. The appropriateness of the technology-based ballast water controls

proposed in this VGP, and whether there are data sources which indicate that certain ballast water treatment systems reliably exceed the limits established in this permit. Whether the numeric discharge limits can be applied to those vessel classes to which, under the proposed VGP, such limits would not apply. See Part 2.2.3.5 and 2.2.3.5.3 of the VGP and Sections 4.4.3.5.6 and 4.4.3.5.7 of the VGP fact sheet.

17. The appropriateness of including alternative treatment limits used by other regulatory agencies, specifically limits promulgated by the State of California and whether the numeric limits for ballast water discharges from the Performance Standards for the Discharge of Ballast Water For Vessels Operating in California Waters, California Code of Regulations Title 2, Division 3, Chapter 1, Article 4.7 sections 2293–2294 as codified as of March 4, 2011, should be included in the final VGP. As discussed in VGP fact sheet in Section 4.4.3.5.8, those limits are:

(a) No detectable living organisms that are greater than 50 micrometers in minimum dimension;

(b) Less than 0.01 living organisms per milliliter that are less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;

(c) For living organisms that are less than 10 micrometers in minimum dimension:

(1) Less than 1,000 bacteria per 100 milliliter;

(2) Less than 10,000 viruses per 100 milliliter;

(3) Concentrations of microbes that are less than:

(A) 126 colony forming units per 100 milliliters of *Escherichia coli;*

(B) 33 colony forming units per 100 milliliters of Intestinal enterococci; and

(C) 1 colony forming unit per 100 milliliters or 1 colony forming unit per gram of wet weight of zoological samples of Toxicogenic *Vibrio cholerae* (serotypes O1 and O139).

See Section 4.4.3.5.7 of the VGP fact sheet.

18. The requirement for vessels entering the Great Lakes from freshwater and brackish ecosystems to conduct ballast water exchange or saltwater flushing in addition to treatment with a ballast water treatment system. Also, whether BWE should be required for all vessels entering the Great Lakes that are subject to the numeric TBEL, regardless of origin, whether this requirement should be considered for other freshwater destinations in U.S. waters, and/or whether this requirement should be considered for other destinations in U.S. waters, regardless of whether those vessels took on ballast water from saltwater or freshwater ports. See Part 2.2.3.7 of the VGP and Section 4.4.3.9.4.2 of the VGP fact sheet.

19. EPA's determination, including the detailed explanation, that water quality-based effluent limits for ballast water discharges are infeasible to calculate at this time. See Section 4.4.3.9.4.1 of the VGP fact sheet.

20. Inclusion of factors associated with electronic recordkeeping to ensure that records created and/or maintained in such systems are readable and legally dependable with no less evidentiary value than their paper equivalent and the implementation guidance provided in the fact sheet. See Part 4.2.1 of the VGP and Section 6.3.1 of the VGP fact sheet.

21. The authorization to combine the annual report for unmanned, unpowered barges because many of these vessels are fundamentally similar and have a limited number of discharges. Specifically, EPA is seeking comment on whether there are any other categories of vessels for which owner/operators should be allowed to submit a combined annual report instead of the annual report for each of their vessels. Please submit specific information as to why such an approach is appropriate for certain vessel types. See Part 4.4.2 and Section 6.4.2 of the VGP fact sheet.

22. Several new definitions, including ''biodegradable,'' ''environmental acceptable lubricants,'' and ''voyage.'' See Appendix A of the VGP and Section 9 of the VGP fact sheet.

23. The approach that allows vessels which have 8 or more cubic meters of ballast water capacity, but which do not discharge ballast water, to maintain coverage under the sVGP. Additionally, EPA is seeking comment on whether larger or smaller volumes of ballast water discharge should be regulated under the sVGP and whether additional best management practices should be required for these small volumes of ballast water from sVGP vessels. Please submit any supporting information, data sources, and rationale. See Part 2.9 of the sVGP and Section 4.9 of the sVGP fact sheet.

24. Definition section as a whole in the sVGP and the specific definitions contained therein. See Part 6 of the sVGP and Section 8 of the sVGP fact sheet.

D. Analysis of Economic Impacts of the Draft VGP and the Draft sVGP

EPA performed an economic analysis for both the draft VGP and draft sVGP to evaluate the incremental costs of requirements in each permit. Both of these analyses are available in the docket for today's permits. A summary of each follows.

1. Analysis of draft VGP costs. EPA estimates that approximately 60,000 domestic flag and 12,400 foreign flag vessels would be covered under the draft VGP, but only a subset of these vessels would incur incremental costs as a result of the revised VGP requirements. To estimate the effect of revised permit requirements on an industry as a whole, EPA's VGP analysis takes into account previous conditions and determines how the industry would act in the future in the absence of revised Permit requirements. The baseline for this analysis is full industry compliance with existing federal and state regulations, including the 2008 VGP in the case of vessels currently covered by the permit; and current industry practices or standards that exceed current regulations to the extent that they can be empirically observed. In addition, a number of laws and associated regulations (including the National Invasive Species Act; the Act to Prevent Pollution from Ships; the Comprehensive Environmental Response, Compensation, and Liability Act; the Organotin Anti-fouling Paint Control Act; and others) already cover certain discharges that would be subject to the new permitting regime. The overlap between revised permit requirements and existing regulations and practices is discussed at greater length in the economic analysis.

EPA estimated compliance costs to commercial vessels associated with each of the permit's practices and discharge categories identified and the paperwork burden costs. Incremental costs are understood to result from the inclusion of all commercial fishing vessels 79 feet or larger under the VGP As noted above, the moratorium on coverage for commercial fishing vessels and vessels less than 79 feet expires on December 18, 2013. Commercial fishing vessels 79 feet or larger will be covered by this permit, and most non-recreational vessels less than 79 feet, including commercial fishing vessels, are expected to be covered by the Small Vessel General Permit, and from revised, more stringent requirements for certain discharge categories and practices. Changes in compliance costs also result from streamlining selected requirements, which is expected to reduce compliance costs for owners of certain vessels. Overall, EPA finds that revisions in the VGP requirements could result in aggregate annual incremental costs for domestic vessels ranging between $6.5 and $20.9 million (2010). This includes the paperwork burden

costs and the sum of all practices for applicable discharge categories for all vessels estimated to be covered by the revised VGP. The ballast water provisions of this permit for domestically flagged vessels are expected to cost between $1.1 and $2.5 million annually (excluding the cost of purchasing and maintaining a ballast water treatment system: see Section 4.4.3 of this fact sheet and part 4.2.3 of the economic and benefits analysis prepared for this permit for additional discussion). The average per vessel cost ranges from $26 to $3,933. There is considerable uncertainty in the assumptions used for several practices and discharge categories and these estimates therefore provide illustrative ranges of the costs potentially associated with the 2013 rather than incremental costs incurred by any given vessel owner.

To evaluate economic impacts of revised VGP requirements on the water transportation, fishing, and mining industries, EPA performed a firm-level analysis. The firm-level analysis examines the impact of any incremental cost per vessel to comply with the revised VGP requirements on model firms that represent the financial conditions of ''typical'' businesses in each of the examined industry sectors. More than ninety percent of the firms in the water transportation and fishing industries, and in the drilling oil and gas wells segment of the mining industry, are small, and EPA believes it is unlikely that firm-level impacts would be significant among large firms in this industry. Therefore, a firm-level analysis focuses on assessment of impacts on small businesses. To evaluate the potential impact of the Vessel General Permit on small entities, EPA used a cost-to-revenue test to evaluate the potential severity of economic impact on vessels and facilities owned by small entities. The test calculates annualized pre-tax compliance cost as a percentage of total revenues and uses a threshold of 1 and 3 percent to identify facilities that would be significantly impacted as a result of this Permit.

EPA applied a cost-to-revenue test which calculates annualized pre-tax compliance cost as a percentage of total revenues and used a threshold of 1 and 3% to identify entities that would be significantly impacted as a result of this Permit. The total number of entities expected to exceed a 1% cost ratio ranges from 52 under low cost assumptions to 360 under high cost assumptions. Of this universe, the total number of entities expected to exceed a 3% cost ratio ranges from 0 under low cost assumptions to 11 under high cost assumptions. This is based out of 5,480 total small firms. Accordingly, EPA concludes that this permit will not, if issued result in a significant economic impact on any businesses, and in particular, small businesses.

2. Analysis of draft sVGP costs. EPA estimates that between 115,000 and 138,000 vessels are potentially affected by the draft sVGP requirements. The establishments that own and operate vessels that will be subject to the sVGP are primarily associated with the fishing and water transportation industries, and with the oil and gas sector within the mining industry. To estimate the effect of sVGP requirements on an industry as a whole, EPA's analysis takes into account previous conditions and determines how the industry would act in the future in the absence of Permit requirements. The baseline for this analysis is full industry compliance with existing federal and state regulations and with current industry practices or standards that exceed current regulations to the extent that they can be empirically observed. EPA estimated potential compliance costs to vessels associated with each of the practices and discharge categories identified in the sVGP, and with the inspection and recordkeeping requirements. Overall, EPA finds that sVGP requirements could result in total annual incremental costs for domestic vessels ranging between $7.0 million and $12.1 million (2010$), in the aggregate. This includes the paperwork burden costs and the sum of all practices for applicable discharge categories. Per vessel incremental compliance costs average between $17 and $98 per year, depending on the number of applicable discharge categories and baseline practices. As with the VGP economic analysis, EPA evaluated economic impacts of sVGP requirements on the affected industries, and performed a firm-level analysis. Since nearly all firms in the affected industries are small, the firm-level analysis focuses on assessment of impacts on small businesses. Further, given the distribution of revenue among firms in the affected industry sectors which suggests a relatively greater potential for impacts to small firms in the commercial fishing industry, EPA looked more specifically at this industry when assessing the significance of impacts. As with the VGP, to evaluate the potential impact of the sVGP on small entities, EPA used a cost-to-revenue test to evaluate the potential severity of economic impact on vessels and facilities owned by small entities. The test calculates annualized pre-tax compliance cost as a percentage of total revenues and uses a threshold of 1 and 3 percent to identify facilities that would be significantly impacted as a result of this Permit. Based on this firm-level analysis, EPA concludes that the sVGP will not, if issued, have a significant economic impact on a substantial number of small entities based on information showing that few firms have revenue below those where the compliance costs would exceed the one percent cost-to-revenue threshold under high end cost assumptions.

3. Benefits of the draft VGP and draft sVGP. Although EPA was unable to evaluate the expected benefits of the permits in dollar terms due to data limitations, the Agency collected and considered relevant information to enable qualitative consideration of ecological benefits and to assess the importance of the ecological gains from the revisions. EPA expects that reductions in vessel discharges will benefit society in two broad categories: (1) Enhanced water quality from reduced pollutant discharges and (2) reduced risk of invasive species introduction.

Because many of the nation's busiest ports are considered to be impaired by a variety of pollutants found in vessel discharges, reducing pollutant loadings from these discharges is expected to have benefits associated with the reduction of concentrations of nutrients, metals, oil, grease, and toxics in waters with high levels of vessel traffic.

E. Executive Orders 12866 and 13563

Under Executive Order (EO) 12866 (58 FR 51735 (October 4, 1993)) this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: November 30, 2011.

Ira W. Leighton,

Deputy Regional Administrator, EPA Region 1.

Dated: November 30, 2011.

John Filippelli,

Acting Division Director, Division of Environmental Planning and Protection, EPA Region 2.

Dated: November 30, 2011.

José C. Font,

Acting Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: November 30, 2011.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: November 30, 2011.

Douglas F. Mundrick,

Deputy Director, Water Protection Division, EPA Region 4.

Dated: November 30, 2011.

Timothy C. Henry,

Acting Director, Water Division, EPA Region 5.

Dated: November 30, 2011.

Troy C. Hill,

Acting Director, Water Quality Protection Division, EPA Region 6.

Dated: November 30, 2011.

Karen Flournoy,

Director, Water, Wetlands and Pesticides Division, EPA Region 7.

Dated: November 30, 2011.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.

Dated: November 30, 2011.

Alexis Strauss,

Director Water Division, EPA Region 9.

Dated: November 30, 2011.

Michael A. Bussell,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. 2011–31576 Filed 12–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9502–7]

Notification of a Public Meeting of the Clean Air Scientific Advisory Committee (CASAC); Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the CASAC Ozone Review Panel to conduct a peer review of EPA's *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Second External Review Draft—September 2011*).

DATES: The CASAC Ozone Review Panel meeting will be held on Monday January 9, 2012 from 8:30 a.m. to 5:30 p.m. (Eastern Time) and on Tuesday January 10, 2012 from 8:30 a.m. to 12:30 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the Marriott at Research Triangle Park hotel, 4700 Guardian Drive, Durham, North Carolina 27703 (919) 941–6200.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public meeting may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), via telephone at (202) 564–2050 or email at *yeow.aaron@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Ozone Review Panel will hold a public meeting to peer review EPA's second external review draft of the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (September 2011*). This is being prepared as part of the review of the National Ambient Air Quality Standards (NAAQS) for ozone. The CASAC Ozone Review Panel and the CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including ozone. EPA is currently reviewing the primary (health-based) and secondary (welfare-based) NAAQS for ozone. The CASAC Ozone Review Panel previously reviewed EPA's first external review draft of the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (March 2011*) as reported in a letter to the EPA Administrator, dated August 10, 2011 (EPA–CASAC–11–009).

Technical Contacts: Any technical questions concerning the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Second External Review Draft—September 2011*) should be directed to Dr. James Brown (*brown.james@epa.gov*).

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments for a federal advisory committee to consider pertaining to EPA's charge to the panel or meeting materials. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via email) at the contact information noted above by January 3, 2012, to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements should be supplied to the DFO via email at the contact information noted above by January 3, 2012 for the meeting so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested

to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or *yeow.aaron@epa.gov.* To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: December 1, 2011.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–31398 Filed 12–7–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice and Request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 9, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1151.

Title: Sections 1.1420, 1.1422 and 1.1424, Pole Attachment Access Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,278 respondents; 54,932 responses.

Estimated Time Per Response: 20–45 hours.

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

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. section 224.

Total Annual Burden: 683,169 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension (no change in the reporting, recordkeeping and/or third party disclosure requirements).

There is no change in the Commission's previous burden estimates.

In Report and Order and Order on Reconsideration, FCC 11–50, the Commission adopted rules that related to implementation of section 224 pole attachment access rules. Specifically, the pole attachment access rules create a series of deadlines or ''timelines'' by which communications providers (''attachers'') request and receive permission from electric utilities and incumbent LECs (''pole owners'' or ''utilities'') to attach facilities to utility poles (''access''). A denial (or partial grant) of access by a utility must include all relevant evidence and information, and explain how the evidence and information relate to lack of capacity, safety, reliability, or engineering standards. In practice, this requirement causes the utility to survey the requested poles where access is requested and to perform an engineering analysis.

Other paperwork burdens are triggered during the pole-preparation stage of the timeline (''make-ready''). These include sending letters of notification to any known entities with existing attachments and the requesting attacher. Such notification letters are sent when a make-ready schedule is established. If the make-ready period is interrupted; and if the pole owner asserts its right to one 15-day extension of time, notification letters are also required. Pole owners both perform and coordinate make-ready work.

Additionally, the Order adopted a rule requiring utilities to post a list of approved contractors, and required new attachers that use contractors to perform pole attachment surveys or make-ready work in lieu of the utility using its own workers to choose from among approved contractors. If an attacher uses a utility-approved contractor, it must notify the utility, and invite the utility to send a representative to oversee the work.

Finally, the Order also broadens the existing enforcement process by permitting incumbent local exchange carriers (LECs) to file complaints alleging that the attachment rates demanded by electric utilities are unreasonable. The Order also encourages incumbent LECs that benefit from lower pole attachment costs to file data at the Commission that demonstrate that the benefits are being passed on to consumers.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–31526 Filed 12–7–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before January 9, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax (202) 395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1035.

Title: Part 73, Subpart F–International Broadcast Stations.

Form No.: FCC Forms 309, 310 and 311.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents/Responses: 225 respondents; 225 responses.

Estimated Time per Response: 2–720 hours.

Frequency of Response: Recordkeeping requirement; on occasion, semi-annual, weekly and annual reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. Sections 154, 303, 307, 334, 336 and 554.

Total Annual Burden: 20,096 hours.

Annual Cost Burden: $92,605.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This information collection is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. The Commission collects this information pursuant to 47 CFR part 73, subpart F. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. Therefore, the information collection requirements are as follows:

FCC Form 309—Application for Authority To Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station—The FCC Form 309 is filed on occasion when the applicant is requesting authority to construct or make modifications to the international broadcast station.

FCC Form 310—Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License—The FCC Form 310 is filed on occasion when the applicant is submitting an application for a new international broadcast station.

FCC Form 311—Application for Renewal of an International or Experimental Broadcast Station License—The FCC Form 311 is filed by applicants who are requesting renewal of their international broadcast station licenses.

The Commission has not developed the FCC Forms 309, 310 and 311 due to a lack of budget funds and technical staff. The Commission stated previously that the above referenced applications will be available to applicants in the International Bureau Filing System (''MyIBFS'') after implementation in the system. However, the Commission plans to develop a new Consolidated Licensing System (CLS) within the next five years that will replace MyIBFS. Therefore, the applications will be made available to the public in CLS instead of MyIBFS.

47 CFR 73.702(a) states that six months prior to the start of each season, licensees and permittees shall by informal written request, submitted to the Commission in triplicate, indicate for the season the frequency or frequencies desired for transmission to each zone or area of reception specified in the license or permit, the specific hours during which it desires to transmit to such zones or areas on each frequency, and the power, antenna gain,

and antenna bearing it desires to use. Requests will be honored to the extent that interference and propagation conditions permit and that they are otherwise in accordance with the provisions of section 47 CFR 73.702(a).

47 CFR 73.702(b) states that two months before the start of each season, the licensee or permittee must inform the Commission in writing as to whether it plans to operate in accordance with the Commission's authorization or operate in another manner.

47 CFR 73.702(c) permits entities to file requests for changes to their original request for assignment and use of frequencies if they are able to show good cause. Because international broadcasters are assigned frequencies on a seasonal basis, as opposed to the full term of their eight-year license authorization, requests for changes need to be filed by entities on occasion.

47 CFR 73.702 (note) states that permittees who during the process of construction wish to engage in equipment tests shall by informal written request, submitted to the Commission in triplicate not less than 30 days before they desire to begin such testing, indicate the frequencies they desire to use for testing and the hours they desire to use those frequencies.

47 CFR 73.702(e) states within 14 days after the end of each season, each licensee or permittee must file a report with the Commission stating whether the licensee or permittee has operated the number of frequency hours authorized by the seasonal schedule to each of the zones or areas of reception specified in the schedule.

47 CFR 73.782 requires that licensees retain logs of international broadcast stations for two years. If it involves communications incident to a disaster, logs should be retained as long as required by the Commission.

47 CFR 73.759(d) states that the licensee or permittee must keep records of the time and results of each auxiliary transmitter test performed at least weekly.

47 CFR 73.762(b) requires that licensees notify the Commission in writing of any limitation or discontinuance of operation of not more than 10 days.

47 CFR 73.762(c) states that the licensee or permittee must request and receive specific authority from the Commission to discontinue operations for more than 10 days under extenuating circumstances.

47 CFR 1.1301 cover certifications of compliance with the National Environmental Policy Act and how the public will be protected from radio frequency radiation hazards.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–31527 Filed 12–7–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GC Docket No. 10–44; DA 11–1950]

Benefits and Burdens of Requiring Commenters To File Cited Materials in Rulemaking Proceedings as Further Reform To Enhance Record-Based Decisionmaking

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on procedures to improve transparency and efficiency in Commission proceedings. In particular, the Public Notice seeks comment on whether the Commission should require commenters to file materials they cite in pleadings submitted in rulemaking proceedings, so that those materials are more easily accessible to all interested parties.

DATES: Comments may be filed on or before January 9, 2012, and reply comments may be filed on or before January 23, 2012.

ADDRESSES: You may submit comments, identified by GC Docket No. 10–44, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* See the **SUPPLEMENTARY INFORMATION** section of this document.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For further information regarding this proceeding, contact Elizabeth Lyle, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released by the Office of General Counsel on November 29, 2011. The full text of this document is available for public inspection and copying during regular business hours in the Commission's Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563 or via email *FCC@BCPIWEB.com.* The full text may also be downloaded at *http://www.fcc.gov*.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

Documents will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, email *fcc@bcpiweb.com*. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). The Commission has designated this proceeding as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.; Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization,* Notice of Proposed Rulemaking, 25 FCC Rcd 2430, 2439–40 (2010). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Summary of Public Notice

This Public Notice seeks comment on additional procedures to improve transparency and efficiency in Commission proceedings. In particular, the Public Notice seeks comment on whether the Commission should require commenters to file materials they cite in pleadings submitted in rulemaking proceedings, so that those materials are more easily accessible to all interested parties. The Commission bases its decisions on record evidence, properly disclosed, with the least possible burden on filers, and strives to tailor its procedures to those ends. Transparency, robust public participation, and informed decision-making are key values that the Commission and its staff strive to uphold in all proceedings. In some proceedings, particularly large and complicated rulemakings, staff may analyze materials that parties have not submitted in the record, including materials such as state statutes, academic articles, blog posts, and company financial reports. This material may or may not contribute to the Commission's final decision, and seeking comment specifically on all the sources viewed by staff would greatly enlarge the record and tax the time and resources of the Commission and parties, with potentially little benefit.

In an effort to balance these considerations, staff has submitted collections of materials into the record of at least two major proceedings. In the *Preserving the Open Internet* proceeding, staff added the full text of various sources, including FCC working papers, transcripts from FCC workshops, comments submitted in other Commission rulemaking proceedings, public financial filings, academic literature, news articles, blog posts, corporate and non-profit research reports, material from industry participants' Web sites, and investment firm conference call transcripts. *See* Letter from Carol Simpson, Deputy Chief, Competition Policy Division, Wireline Competition Bureau, FCC, to Marlene S. Dortch, Secretary, FCC, GN Docket No. 09–191, WC Docket No. 07–52 (Dec. 13, 2010); Letter from Carol Simpson, Deputy Chief, Competition Policy Division, Wireline Competition Bureau, FCC, to Marlene S. Dortch, Secretary, FCC, GN Docket No. 09–191, WC Docket No. 07–52 (Dec. 10, 2010). In the *Connect America Fund* proceeding, staff added citations to similar materials, including material from other federal and state government entities, books, and data already released by the Commission or the Universal Service Administrative Company. *See* Letter from Jennifer Prime, Legal Counsel, Wireline Competition Bureau, FCC, to Marlene Dortch, Secretary, FCC, WC Docket No. 10–90 *et al.* (Oct. 19, 2011); Letter from Jennifer Prime, Legal Counsel, Wireline Competition Bureau, FCC, to Marlene Dortch, Secretary, FCC, WC Docket No. 10–90 *et al.* (Oct. 17, 2011); Letter from Jennifer Prime, Legal Counsel, Wireline Competition Bureau, FCC, to Marlene Dortch, Secretary, FCC, WC Docket No. 10–90 *et al.* (Oct. 7, 2011). Materials also included such things as state statutes, pleadings and decisions from state administrative proceedings, and data and reports available on the Commission's Web site. In many instances, filings that the Commission staff placed in the record had been cited by commenters in their filings, and the staff's submission was intended to make the materials more accessible. In both proceedings, however, a small number of commenters voiced concern that such submissions, toward the end of the proceeding, might not serve their intended purpose of promoting transparent decision-making and might, indeed, limit opportunities for meaningful responsive comment. *See, e.g.,* Letter from Todd D. Daubert & J. Isaac Himowitz, Counsel for SoutherinLINC Wireless and the Universal Service for America Coalition, to Chairman Genachowski, WC Docket No. 10–90 *et al.,* at 3 (Oct. 21, 2011); Letter from David A. LaFuria, Counsel to Allied Wireless Communications Corp. *et al.,* WC Docket No. 10–90 *et al.* (Oct. 20, 2011); *see also Preserving the Open Internet, Broadband Industry Practices,* Report and Order, 25 FCC Rcd 17905, 18049–50 (2010) (dissenting Stmt. of Cmmr. McDowell), *recon. and pets. for review pending.*

In light of these developments, the Public Notice seeks comment on filing requirements that may improve transparency and informed decision-making in future rulemaking proceedings. In particular, the Public Notice seeks comment on requiring parties to submit full copies of any materials cited in their pleadings or *ex parte* submissions. Such a requirement may be viable under the Commission's current electronic filing processes, when it would not previously have been feasible. Further, it could help to ensure

that the record timely and unambiguously includes those materials that parties to our proceedings believe to be germane and informative. In the context of formal complaint proceedings, the Commission's rules already require parties to provide ''all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.'' *See* 47 CFR 1.721(f).

What would be the benefits and burdens of such a new procedural requirement in rulemaking proceedings? Should any such rule distinguish among types of documents cited? For example, should data be treated differently from other forms of information and should economic analysis be treated differently from a law review article, court decision, or other government publication? Should ease of access to the cited information matter? If so, how should ease of access be determined? Are there some circumstances in which materials could not practically be placed in the record, such as when third parties do not permit copying (*e.g.,* daily newsletters), the material is very bulky, or the material is in the form of a database? Would parties need to place an entire document in the record or would an excerpt suffice? Should the inclusion of an Internet address (URL) where the document can be viewed be deemed sufficient to satisfy the filing requirement for that document? Might this proposal diminish the quality of the comments received by the Commission, for instance if the additional burden of providing supporting materials outweighs their perceived value to the commenter? Would this proposal impose an undue paperwork burden on filers? Should the proposal be adopted in additional, or different, categories of proceedings?

Federal Communications Commission.

Julie A. Veach,

Deputy General Counsel, Office of General Counsel.

[FR Doc. 2011–31545 Filed 12–7–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, December 13, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–31649 Filed 12–6–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 6, 2012.

ADDRESSES: You may submit comments, identified by *FR 2644, FR 2835, FR 2835a, or FR 2502q,* by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB control number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed —Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829). Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the

proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information 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.

Proposals To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision of the Following Reports

1. *Report title:* Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2644.

OMB control number: 7100–0075.

Frequency: Weekly.

Reporters: Domestically chartered commercial banks and U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 120,575 hours.

Estimated average hours per response: 2.65 hours.

Number of respondents: 875.

General description of report: The FR 2644 is authorized by section 2A and 11(a)(2) of the Federal Reserve Act (12 U.S.C. 225(a) and 248(a)(2)) and by section 7(c)(2) of the International Banking Act (12 U.S.C. 3105(c)(2)) and is voluntary. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2644 is the primary source of high-frequency data used in the analysis of current banking developments. The FR 2644 collects sample data that are used to estimate universe levels using data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036) and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032) (Call Reports). Data from the FR 2644, together with data from other sources, are used to construct weekly estimates of bank credit, balance sheet data for the U.S. banking industry, sources and uses of banks' funds, and to analyze banking developments.

Current actions: No changes are proposed to the FR 2644; however, going forward, the Federal Reserve would modify the FR 2644 instructions as needed to maintain consistency with any instructional revisions to the Call Reports that might occur during the three year extension period.

2. *Report title:* Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans; Quarterly Report of Credit Card Plans.[1]

Agency form number: FR 2835; FR 2835a.

OMB control number: 7100–0085.

Frequency: Quarterly.

Reporters: Commercial banks.

Estimated annual reporting hours: FR 2835, 132 hours; FR 2835a: 100 hours.

Estimated average hours per response: FR 2835, .22 hours; FR 2835a: .50 hours.

Number of respondents: FR 2835, 150; FR 2835a, 50.

General description of report: These information collections are voluntary (12 U.S.C. 248(a)(2)). The FR 2835a individual respondent data are given confidential treatment (5 U.S.C. 552 (b)(4)). The FR 2835 data, however, are not given confidential treatment.

Abstract: The FR 2835 collects information from a sample of commercial banks on interest rates charged on loans for new vehicles and loans for other consumer goods and personal expenses. The data are used for the analysis of household financial conditions.

The FR 2835a collects information on two measures of credit card interest rates from a sample of commercial banks with $1 billion or more in credit card receivables and a representative group of smaller issuers. The data are used to analyze the credit card market and draw implications for the household sector.

[1] This family of reports also contains the following voluntary reports, which have fewer than 10 respondents and do not require an OMB control number: Automobile Finance Terms (FR 2005) and the Passenger Auto Contract Collection Trends (FR 2012). The Federal Reserve proposes to combine FR 2005 and the FR 2012 into one reporting form, the Automobile Finance Company Report (FR 2512) with no changes to the data items reported.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision of the Following Report

1. *Report title:* Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks.

Agency form number: FR 2502q.

OMB control number: 7100–0079.

Frequency: Quarterly.

Reporters: Major foreign branches and banking subsidiaries of U.S. depository institutions that are located in the Caribbean or the United Kingdom.

Estimated annual reporting hours: 574 hours.

Estimated average hours per response: 3.5 hours.

Number of respondents: 41.

General description of report: This information collection is required (12 U.S.C. 248(a)(2), 461, 602, and 625) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2502q collects data quarterly on the geographic distribution of the assets and liabilities of major U.K. or Caribbean branches and subsidiaries of U.S. commercial banks, bank holding companies, including financial holding companies, and of banking Edge and agreement corporations. Data from this reporting form comprise a piece of the flow of funds data that are compiled by the Federal Reserve. FR 2502q data also helps the Federal Reserve understand the nature of activities of foreign offices of U.S. banks, particularly the scope of cross-border activity that is conducted by different foreign offices in the United Kingdom and the Caribbean.

Current Actions: The Federal Reserve proposes several revisions to the FR 2502q reporting form and instructions. The reporting form would be modified by removing Netherland Antilles (Country code: 37206) from the list of reportable countries and adding Curacao and Saint Maarten to the country list with Bonaire, St. Eustatius and Saba to be covered in Other Latin America and Caribbean. These proposed changes to the FR 2502q country list are necessary since Netherland Antilles was dissolved in October 2010 and the dissolution resulted in the creation of Curacao and Saint Maarten as separate countries and Bonaire, St. Eustatius and Saba as municipalities of the Netherlands.

In addition, the Federal Reserve proposes the following revisions to the FR 2502q instructions: (1) Clarify that entities located outside of the United Kingdom and the Caribbean are not required to file the report and (2) clarify that securities purchased and sold under resale and repurchase agreements can be netted if they meet the

requirements outlined in FASB Interpretation No. 41, ''Offsetting of Amounts Related to Certain Repurchase and Reverse Repurchase Agreements'' (FIN 41).

The FR 2502q instructions would also be modified to indicate that countries or dependencies not listed on the reporting form should be summed in each proposed regional subtotal, rather than current data item, ''UNALLOCATED''. In addition, the Federal Reserve would make minor changes to the FR 2502q instructions to enhance clarity.

Board of Governors of the Federal Reserve System, December 2, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–31431 Filed 12–7–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0937–0198]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Public Health Service Polices on Research Misconduct (42 CFR part 93)—OMB No 0937–0198–Extension—Office of Research Integrity.

Abstract: This is a request for an extension of the currently approved collection. The purpose of the Annual Report on Possible Research Misconduct (Annual Report) form is to provide data on the amount of research misconduct activity occurring in institutions conducting PHS supported research. In addition this provides an annual assurance that the institution has established and will follow administrative policies and procedures for responding to allegations of research misconduct that comply with the Public Health Service (PHS) Policies on Research Misconduct (42 CFR part 93). Research misconduct is defined as receipt of an allegation of research misconduct and/or the conduct of an inquiry and/or investigation into such allegations. These data enable the ORI to monitor institutional compliance with the PHS regulation. Lastly, the form will be used to respond to congressional requests for information to prevent misuse of Federal funds and to protect the public interest.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PHS–6349	Awardee Institutions	6096	1	10/60	1,016

Keith A.Tucker,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2011–31468 Filed 12–7–11; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nominations to the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office of Assistant Secretary for Health (OASH) is seeking nominations of qualified individuals to be considered for appointment as members of the Advisory Committee on Blood Safety and Availability (ACBSA). ACBSA is a Federal advisory committee in the Department of Health and Human Services (HHS). Management support for the activities of this Committee is the responsibility of the OASH. The qualified individuals will be nominated to the Secretary of HHS for consideration of appointment as members of the ACBSA. Members of the Committee, including the Chair, are appointed by the Secretary. Members are invited to serve on the Committee for up to four-year terms.

DATES: All nominations must be received no later than 4 p.m. EDT on January 27, 2012, at the address listed below.

ADDRESSES: All nominations should be mailed or delivered to Mr. James Berger, Acting Director, Blood Safety and Availability, Office of the Assistant Secretary for Health, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852. *Telephone:* (240) 453–8803.

FOR FURTHER INFORMATION CONTACT: Dr. Melissa Greenwald, Associate Public Health Advisor for Blood, Organ and Tissue Safety Policy, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852. *Telephone:* (240) 453–8803.

A copy of the Committee charter and roster of the current membership can be obtained by contacting Dr. Greenwald or by accessing the ACBSA Web site at *http://www.hhs.gov/bloodsafety.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Blood Safety and Availability shall provide advice to the Secretary and to the Assistant Secretary for Health. The Committee shall advise on a range of policy issues to include: (1) Definition of public health parameters around safety and availability of the blood and blood products, (2) broad public health, ethical, and legal issues related to transfusion and transplantation safety, and (3) the implications for safety and

availability of various economic factors affecting product cost and supply.

The ACBSA consists of 20 voting members. The Committee is composed of 14 public members, including the Chair, and six (6) representative members. The public members are selected from State and local organizations, advocacy groups, provider organizations, academic researchers, ethicists, private physicians, scientists, consumer advocates, legal organizations, and from among communities of persons who are frequent recipients of blood or blood products. The six individuals who are appointed as official representative members are selected to serve the interests of the blood and blood products industry or professional organizations associated with transfusion or transplantation safety. The representative members are selected from the following groups: The AABB, the plasma protein fraction community, one of the two major distributors of blood on a rotating basis, a trade organization or manufacturer of blood, plasma, or other tissue test kits or equipment, and a purchaser of blood and blood products from major hospital organization.

All ACBSA members are authorized to receive the prescribed per diem allowance and reimbursement for travel expenses that are incurred to attend meetings and conduct Committee-related business, in accordance with Standard Government Travel Regulations. Individuals who are appointed to serve as public members are authorized to also receive a stipend for attending Committee meetings and to carry out other Committee-related business. Individuals who are appointed to serve as representative members for a particular interest group or industry are not authorized to receive a stipend for the performance of these duties.

This announcement is to solicit nominations of qualified candidates to fill positions on the ACBSA that are scheduled to be vacated in both membership categories. Qualified applicants are being sought to represent the specific interests of the following blood and blood products industries or professional organizations: State and local organizations, advocacy groups, provider organizations, academic researchers, private physicians, scientists, consumer advocates, legal organizations, one of the two major distributors of blood, a trade organization, or manufacturer of blood, plasma, infectious disease screening assays or other tissue test kits or equipment and a major health care organization that purchases blood and blood products. The positions are scheduled to be vacated between March 30, 2012 and May 29, 2012.

Nominations

In accordance with the charter, persons nominated for appointment as members of the ACBSA should be among authorities knowledgeable in blood banking, transfusion medicine, plasma therapies, transfusion organ and tissue transplantation, bioethics, and/or related disciplines. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration of appointment: (a) The name, return address, daytime telephone number, and affiliation(s) of the individual being nominated, the basis for the individual's nomination, the category for which the individual is being nominated, and a statement bearing an original signature of the nominated individual that, if appointed, he or she is willing to serve as a member of the Committee; (b) the name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to the contact; and (c) a copy of a current curriculum vitae or resume for the nominated individual.

Individuals can nominate themselves for consideration of appointment to the Committee. All nominations must include the required information. Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable.

The Department of Health and Human Services is committed to ensuring that women, minority groups, and physically challenged individuals are adequately represented on the Committee. Nominations of qualified candidates from these categories are encouraged. The Department also seeks to have geographic diversity reflected in the composition of the Committee.

The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as public members of Federal advisory committees. Individuals appointed to serve as public members of Federal advisory committees are classified as special Government employees (SGEs). SGEs are Government employees for purposes of the conflict of interest laws. Therefore, individuals appointed to serve as public members of the ACBSA are subject to an ethics review. The ethics review is conducted to determine if the individual has any interests and/or activities in the private sector that may conflict with performance of their official duties as a member of the Committee. Individuals appointed to serve as public members of the Committee will be required to disclose information regarding financial holdings, consultancies, and research grants and/or contracts.

Dated: November 30, 2011.

James J. Berger,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 2011–31534 Filed 12–7–11; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day-12–12AZ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

World Trade Center Health Program Enrollment, Appeals, Reimbursement and Certification—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act), promulgated on December 22,2010, establishes a Federal program to support health monitoring and treatment for emergency responders; recovery and cleanup workers; and residents, building occupants, and area workers in New York City who were directly impacted and adversely affected by the terrorist attacks of September 11, 2001. In order to provide medical monitoring and treatment to eligible individuals, the World Trade Center (WTC) Health Program will collect

eligibility and appeals data as well as information from medical and prescription pharmaceutical providers.

All responders to the New York City attack who will be newly seeking medical monitoring and treatment and survivors of the attack who were not covered by the Medical Monitoring and Treatment Program (MMTP) (for responders) or the Community Program (for survivors) prior to January 2, 2011, may apply to obtain coverage under the new WTC Health Program. In order to begin the determination eligibility process, an enrollment form must be completed. After an eligibility application is submitted to the Program, an unsuccessful applicant has an opportunity to appeal the decision; enrolled participants have further appeal rights. Health care and prescription pharmaceutical providers will be required to submit medical determinations to the WTC Program Administrator and request reimbursement.

Data are being collected in order to determine the eligibility of applicants. If an applicant is denied enrollment based on the information provided, the applicant will receive a letter that gives the reason for the denial and the opportunity to appeal the decision.

Once someone is enrolled, he or she may request approval for reimbursement of travel if the individual must travel more than 250 miles to receive healthcare services. Healthcare providers and pharmacies will file claims electronically or by paper form to be paid for their services. There are three separate enrollment forms for each population of responders (Fire Department of New York City responders, general responders, and survivors). The following information includes the definition of each population:

''FDNY responder'' is defined as a member of the Fire Department of New York City (whether fire or emergency personnel, active, or retired) who participated at least one day in the rescue and recovery effort at any of the former World Trade Center sites.

''General Responder'' is a worker or volunteer who provided Rescue, Recovery, Demolition, Debris, Removal and related support services in the aftermath of the September 11, 2001 attacks on the World Trade Center but was not affiliated with the Fire Department of New York.

''Survivor'' is a person who was present in the disaster area in the aftermath of the September 11, 2001 attacks on the World Trade Center as a result of his or her work, residence, or attendance at school, childcare, or adult daycare.

The eligibility application form will collect general contact information as well as information regarding the WTC disaster area experience. Some of the information provided will be shared with the Federal Bureau of Investigation in order to screen an individual against the terrorist watch list maintained by the Federal government. This information will also be shared with the WTC Program Administrator and will be kept in a secure manner.

WTC Health Program applicants and enrolled participants have opportunities to appeal adverse decisions made by the WTC Program Administrator. The first opportunity to appeal arises after a determination that an applicant does not meet the eligibility requirements.

Once enrolled in the Program, participants will also have the opportunity to appeal a decision not to certify a WTC-related health condition or a determination that treatment will not be authorized as medically necessary. In the notification letter explaining the adverse determination, the applicant will be advised that an appeal can be requested by submitting in writing his or her name, contact information, and an explanation for the basis of the appeal.

Certain enrolled participants may be reimbursed for necessary and reasonable transportation and expenses incident to the securing of medically necessary treatment through the nationwide network if the care involves travel of more than 250 miles. Individuals requesting reimbursement must fill out a 1-page written form requesting such information as date of travel, distance, and total expense.

Pharmacies will transmit reimbursement claims to the WTC Health Program. The following data elements will be collected for pharmacy reimbursement: Pharmacy name, pharmacy address, drug name, prescription number, patient name, patient ID number, and cost. Pharmacies utilize Electronic Data Interchange (EDI) processing at the point-of-sale to transmit claims to the World Trade Center Health Program (WTCHP). The EDI transmission conforms to ANSI standards developed by the National Council for Prescription Drug Programs. The information collection burden occurs as the WTCHP member information is copied from the membership card at the point-of-sale. The EDI transmission occurs in real-time as the prescription transaction is made.

The Zadroga Act of 2010 requires that all qualifying WTC-related health conditions or health conditions medically associated with a WTC-related health condition be certified by member to enable reimbursement of treatment services for care rendered to that member for a given qualifying condition(s). To meet the requirement for certification and maintain continuity of care for an individual who had been enrolled in the prior MMTP or Community Program, the WTC Health Program physician shall attest that a prior determination was rendered in the previous federally sponsored program. The attestation will include the physician's name and signature, the name of the patient, and the name of the health condition and its diagnostic (ICD–9) code.

An individual who is new to the WTC Health Program must have a certified WTC-related health condition or health condition medically associated with WTC-related health condition to receive reimbursement for treatment and other services. If a new medical determination is being made, the Program clinician must provide to the WTC Health Program the patient's name and program identification number, the name and diagnostic code of the health condition, and a brief narrative explaining the key exposure findings. The narrative will include information such as the time and duration of the individual's presence in defined geographic areas (of exposure), whether the individual was caught in the dust cloud on September 11, 2001, whether the individual conducted strenuous activity while in the exposure zone(s), the individual's symptom time course relative to September 11, 2001, and the reasons a person might be more likely to get sick from given exposures (family history or coexisting medical problems).

A Program physician will also submit a form to the WTC Health Program when a member needs medical treatment for a condition that has not yet been certified. In that case, the physician will request authorization to treat the condition because of the urgency of the medical scenario. The physician will sign a form attesting that a determination was made, and indicate the patient's name and the name of the health condition and its diagnostic code. Physicians will be compensated through administrative expenses invoiced by their respective Clinical Center of Excellence that is under contract with the Federal government. There are no costs to respondents other than their time. The total estimated annual burden hours are 19,161.

Estimated Annualized Burden Hours

Currently Identified Responders and Currently Identified Survivors: HHS estimates that approximately .5 percent of responders and survivors who had been enrolled in the prior MMTP or Community Program (currently identified responders and survivors), or 290, will be asked to provide the Program with additional information to ensure that the individual meets all criteria to be eligible for the program. There is no form associated with this request. Rather, the Program staff will collect the information provided and make a note of it in the patient files. We expect responding to this inquiry to take no more than 10 minutes.

World Trade Center Health Program Eligibility Application: Three different eligibility forms were developed to address the different criteria for each group covered by the WTC Health Program: Fire Department of New York responders, general responders, and survivors. We expect that to receive approximately 4,728 applications per year. The burden table reflects the annualized total burden broken into the three separate applicant groups: we estimate that 189 Fire Department of New York (FDNY) responders (4% of applicants); 2,979 general responders (63%); and 1,560 survivors (33%) will submit written applications. The burden estimates for these three different forms are: FDNY responders = 95 hours; general responders = 1,490 hours; and survivors = 390 hours.

Denial Letter and Appeal Notification—Eligibility: Of the 4,728 applications we expect to receive per year, we expect that 10% will fail due to ineligibility. We further assume that 10% of those individuals, or 47 respondents, will appeal the decision. The burden estimate is 24 hours (Attachment F)

Denial Letter and Appeal Notification—Health Condition: We expect that program participants (enrolled responders and survivors) will request certification for 32,361 health conditions each year. Of those 32,361, we expect that .001% (32) of certification requests will be denied by the WTC Program Administrator. We further expect that 95% of denied certifications, or 30 individuals, will be appealed. The burden estimate is 15 hours (Attachment G).

Denial Letter and Appeal Notification—Treatment: Of the projected 19,596 enrollees who will receive medical care, it is estimated that 3 percent (588) will appeal a determination by the WTC Health Program that the treatment being sought is not medically necessary. We estimate that the appeals letter will take no more than 30 minutes. The burden estimate is 294 hours (Attachment H).

WTC Health Program Medical Travel Refund Request: WTC responders or certified eligible survivors who travel more than 250 miles to a nationwide network provider for medically necessary treatment may be provided necessary and reasonable transportation and other expenses. These individuals may submit a travel refund request form, which should take respondents 10 minutes to complete. HHS expects no more than 10 claims per year. The burden estimate is 2 hours (Attachment I).

WTC Health Condition Certification Request: Physicians will report this data electronically and on paper. HHS expects that 2,300 program physicians will spend approximately 30 minutes extracting the required elements from the patient records and transmitting them to NIOSH, and that approximately 32,361 diagnoses, or 14 per provider, will be reported to the WTC Health Program each year. The burden estimate is 16,100 hours (Attachment J).

Outpatient prescription pharmaceuticals: Pharmacies will electronically transmit reimbursement claims to the WTC Health Program. HHS estimates that 150 pharmacies will submit reimbursement claims for 39,192 prescriptions per year, or 261 per pharmacy; we estimate that each submission will take 1 minute. The burden estimate is 653 hours.

Standard Form 3881, for reimbursement for medically necessary treatment, monitoring, initial health evaluations: Standard U.S. Treasury form SF 3881 (OMB No. 1510–0056) will be used to gather necessary information from Program healthcare providers so that they can be reimbursed directly from the Treasury Department. HHS expects that approximately 200 providers and provider groups will submit SF 3881, which is estimated to take 15 minutes to complete. Providers will submit only one SF 3881.

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Currently Identified Responders and Currently Identified Survivors.	No Form	290	1	10/60	48
FDNY Responder	World Trade Center Health Program FDNY Responder Eligibility Application.	189	1	30/60	95
General Responder	World Trade Center Health Program Responder Eligibility Application (Other than FDNY).	2979	1	30/60	1490
WTC Survivor	World Trade Center Health Program Survivor Eligibility Application.	1560	1	15/60	390
FDNY Responder, General Responder and WTC Survivor.	Denial Letter and Appeal Notification—Eligibility	47	1	30/60	24
FDNY Responder, General Responder and WTC Survivor.	Denial Letter and Appeal Notification—Health Conditions.	30	1	30/60	15
FDNY Responder, General Responder and WTC Survivor.	Denial Letter and Appeal Notification—Treatment.	588	1	30/60	294
FDNY Responder, General Responder and WTC Survivor.	WTC Health Program Medical Travel Refund Request.	10	1	10/60	2
Physician	WTC Health Condition Certification Request	2,300	14	30/60	16,100
Pharmacy	Outpatient prescription pharmaceuticals	150	261	1/60	653

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Physician	Standard Form 3881, for reimbursement for medically necessary treatment, monitoring, initial health evaluations.	200	1	15/60	50

Dated: December 2, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–31562 Filed 12–7–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30–Day–12–11GU]

Agency Forms Undergoing Paperwork Reduction Act Review

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Proposed Project

Survey of Rapid Influenza Diagnostic Test (RIDT) Practices in Laboratories-NEW—the Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Survey of Rapid Influenza Diagnostic Testing Practices in Laboratories is a national systematic study investigating rapid influenza diagnostic testing practices in clinical laboratories. The survey will be funded in full by the Office of Surveillance, Epidemiology, and Laboratory Services (OSELS) of the Centers for Disease Control and Prevention (CDC).

Influenza epidemics usually cause an average of more than 200,000 hospitalizations and 36,000 deaths per year in the U.S. Respiratory illnesses caused by influenza viruses are not easily differentiated from other respiratory infections based solely on symptoms. Also influenza viruses may adversely affect different subpopulations. The effective use of rapid influenza diagnostic testing practices is an important component of the differential diagnosis of influenza-like-illness in both inpatient and outpatient treatment facilities. Test results are used for making decisions about antiviral vs. antibiotic use, and in making admission or discharge decisions. In many cases, rapid influenza tests are the only tests that can provide results while the patient is still present in the facility. Thus, the appropriate use of the tests, and interpretation of test results is critical to the treatment and control of influenza. More than a dozen rapid tests have been approved by the U.S. Food and Drug Administration and are in widespread use. The reliability of rapid influenza tests is influenced by the individual test product used and the setting. Reported sensitivities range from 10–75%; while the median specificities reported are 90–95%. Other factors influencing accuracy are the stage (or duration) of illness when the diagnostic specimen is collected, type and adequacy of the specimen collected, variability in user technique for specimen collection or assay performance, and disease activity in the community. Given these and other collective findings, it is imperative for public health and for response planning that CDC develops sector-specific guidance and effective outreach to the clinicians on appropriate use of RIDT in their practices.

Previous studies by CDC of outpatient facilities showed that clinical laboratories usually perform the rapid tests for emergency departments, and provide results for both inpatient and outpatient treatment. Thus, understanding the use of rapid influenza testing in clinical laboratories, how the laboratories report results to emergency departments and treatment facilities and health departments, and what quality assurance practices are used will guide future efforts of the CDC to develop appropriate influenza testing guidelines and sector-specific training materials for clinicians and improve health outcomes of the American public.

The survey covers basic laboratory demographic characteristics, specimen collection and processing, testing practices, reporting of results to emergency departments and other treatment facilities, reporting results to health departments, quality assurance practices, and methods of receiving updated influenza-related information. The majority of the questions request information about laboratory influenza testing practices.

To date, no systematic study has been conducted to investigate how laboratories use these tests, how they report results, or how they interact with outpatient treatment facilities. The survey will be conducted on a national sample of clinical laboratories. There are no costs to respondents except their time. The total estimated annual burden hours are 1020.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)
Clinical Laboratory Supervisors	Survey of Rapid Influenza Diagnostic Test Practices in Laboratories.	2040	1	30/60

Dated: December 1, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–31561 Filed 12–7–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier CMS–10417]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

ACTION: Notice.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review to ensure compliance with section 1862(a)(1)(A) of the Social Security Act. We cannot reasonably comply with the normal clearance procedures in that public harm is reasonably likely to result if normal clearance procedures are followed as stated in 5 CFR 1320.13(a)(2)(i).

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Fee-for-Service Prepayment Medical Review; *Use:* The information required under this collection is requested by Medicare contractors to determine proper payment or if there is a suspicion of fraud. Medicare contractors request the information from providers or suppliers submitting claims for payment from the Medicare program when data analysis indicates aberrant billing patterns or other information which may present a vulnerability to the Medicare program; *Form Number:* CMS–10417 (OMB 0938–New); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 2,700,000; *Total Annual Responses:* 2,700,000; *Total Annual Hours:* 1,360,000. (For policy questions regarding this collection contact Debbie Skinner at (410) 786–7480. For all other issues call (410) 786–1326.)

CMS is requesting OMB review and approval of this collection by December 19, 2011, with a 180-day approval period. Written comments and recommendations will be considered from the public if received by December 15, 2011.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be received via one of the following methods by December 15, 2011.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier CMS–10417, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. *By Email to OMB.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Email: *OIRA_submission@omb.eop.gov.*

Dated: December 2, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–31536 Filed 12–5–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

Proposed Information Collection Activities; Comment Request

Proposed Projects

Title: 45 CFR 1301 Head Start Grant Administration.

OMB No. 0980–0243.

Description: The Office of Head Start is proposing to renew without changes authority to collect information pursuant to 45 CFR 1301. These provisions are applicable to program administration and grants administration under the Head Start Act, as amended. The provisions specify the requirements for grantee agencies for insurance and bonding, the submission of audits, matching of federal funds, accounting systems certifications and other provisions applicable to personnel management.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 1301	2700	1	2	5400

Estimated Total Annual Burden Hours: 5400.

In compliance with the requirements of Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comments on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All Requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–31493 Filed 12–7–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities Notice of Committee Meeting via Conference Call

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID), Administration for Children and Families, HHS.

ACTION: Notice of Committee meeting via conference call.

DATE: Wednesday, February 1, 2012, from 1 p.m. to 2:30 p.m. EST. This meeting, to be held via audio conference call, is open to the public.

Details for accessing the full Committee Conference Call, for the public, are cited below:

Toll Free Dial-In Number: (888) 989–0724

Pass Code: 1939592

Individuals who will need accommodations in order to participate in the PCPID Meeting via audio conferencing (assistive listening devices, materials in alternative format such as large print or Braille) should notify Genevieve Swift, PCPID Executive Administrative Assistant, at *Edith.Swift@acf.hhs.gov*, or by telephone at (202) 619–0634, no later than Wednesday, January 25, 2012. PCPID will attempt to meet requests for accommodations made after that date, but cannot guarantee ability to grant requests received after this deadline.

Agenda: Committee Members will discuss plans for developing the PCPID 2012 Report to the President.

Additional Information: For further information, please contact Laverdia Taylor Roach, Senior Advisor, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor West, 370 L'Enfant Promenade SW., Washington, DC 20447. *Telephone:* (202) 619–0634. *Fax:* (202) 205–9519. *Email: LRoach@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services, through the Administration on Developmental Disabilities, on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: December 1, 2011.

Jamie Kendall,

Deputy Commissioner, Administration on Developmental Disabilities.

[FR Doc. 2011–31539 Filed 12–7–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0381]

Generic Drug User Fee; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting to discuss proposed recommendations for enactment of a Generic Drug User Fee Act (GDUFA), which will authorize FDA to collect fees and use them for the process for the review of human generic drug applications and associated Type II Active Pharmaceutical Ingredient Drug Master Files (DMFs) and for conducting associated inspections for fiscal years (FYs) 2013–2017. New legislation would be required for FDA to establish and collect user fees under such a program. FDA and the regulated industry have developed a proposal for Congressional consideration. In the interest of transparency, and in an effort to voluntarily follow a process similar to the ones set forth in the Federal Food, Drug, and Cosmetic Act for FDA's other user fee programs, FDA is publishing the negotiated recommendations (the goals letter), holding a meeting at which the public may present its views on such recommendations, and providing an opportunity for the public to provide written comments on such recommendations.

Date and Time: The public meeting will be held on December 19, 2011, from 10 a.m. to 5 p.m. Registration to attend the meeting must be received by December 12, 2011. The meeting will also be Web cast. See Section III. B. of this document for information on how to register for the meeting and Section III.C. on information about how to access the Web cast. Please submit any comments that you plan to present at the public meeting to the docket by the date of the public meeting but note that written or electronic comments must be submitted by January 6, 2011.

ADDRESSES: The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 2, rm. 2047, Silver Spring, MD 20993. 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 should be identified with the docket number found in brackets in the

heading of this document. Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.fda.gov* and *http://www.regulations.gov* as soon as they are prepared after the public meeting (see Section III.C. of this document).

FOR FURTHER INFORMATION CONTACT: Mari Long, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4237, Silver Spring, MD 20993, (301) 796–7574, FAX: 301 847–3541, *mari.long@fda.hhs.gov;* or Peter C. Beckerman, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4238, Silver Spring, MD 20993, (301) 796–4830, FAX: (301) 847–3541, *peter.beckerman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing its intention to hold a public meeting to discuss proposed recommendations for the enactment of a GDUFA that would authorize FDA to collect user fees related to human generic drugs and use them for the process of the review of human generic drug applications and associated submissions, to conduct related inspections, and to engage in other related activities for FYs 2013 to 2017. New legislation is required for FDA to establish and collect user fees for generic drugs. In furtherance of such a program, FDA engaged in negotiations with three industry trade associations over aspects of a joint proposal for a generic drug user fee program, including fees and performance goals, from February through September 2011. The Agency held four prior public meetings on the topic before and during this process, posted meeting minutes after each negotiation session as well as posting other related materials, held a public docket open during the negotiation, and considered all comments that were submitted.

FDA and industry were able to reach agreement on a GDUFA program that, if enacted, is expected to place FDA's generic drug program on a sound financial footing and would further the fundamental interests of safety, access, and transparency. The GDUFA proposal that resulted from this process is focused on three key aims:

- Safety: To ensure that industry participants, foreign or domestic, who participate in the U.S. generic drug system are held to consistent high quality standards and are inspected biennially, using a risk-based approach, with foreign and domestic parity.
- Access: To expedite the availability of low-cost, high-quality generic drugs by bringing greater predictability to the review times for abbreviated new drug applications, amendments and supplements, increasing predictability, and timeliness in the review process.
- Transparency: To enhance FDA's ability to protect Americans in the complex global supply environment by requiring the identification of facilities involved in the manufacture of generic drugs and associated active pharmaceutical ingredients and improving FDA's communications and feedback with industry in order to expedite product access.

Generic drugs play a critical role in providing more affordable, therapeutically equivalent medicine, and the GDUFA program is designed to keep individual fee amounts as low as possible to supplement appropriated funding to ensure that consumers continue to receive the significant benefits offered by generic drugs. Generic drugs provided more than $824 billion dollars in savings to the nation's health care system in the last decade alone. The additional resources called for under the agreement, an inflation-adjusted $299 million annually for each of the 5 years of the program, will provide FDA with the ability to perform critical program functions that could not otherwise occur. This program is not expected to add significantly to the cost of generic drugs: Given that a reported 3.99 billion retail prescriptions per year were dispensed in the United States in 2010 and assuming that 78 percent of these prescriptions were filled by generic drugs, it equates to less than a dime per prescription for the average cost of a prescription filled by a generic drug in the United States. Moreover, with the adoption of user fees and the associated savings in development time, the overall expense of bringing a product to market may decline and result in reduced costs.

In addition to the public health benefits, the proposed program is expected to provide significant value to companies, and in particular to small companies and first time entrants in the generic market, who will benefit significantly from the certainty associated with performance review metrics that offer the potential to dramatically reduce the time needed to commercialize a generic drug when compared to pre-GDUFA review times.

Because FDA remains interested in hearing from nonaffiliated companies in addition to patient and consumer stakeholders, the Agency is holding this final public meeting prior to providing recommendations to Congress. The meeting will provide an explanation of the negotiated joint recommendations and provide an opportunity for additional stakeholder reaction and input.

II. The Proposed GDUFA Program

A. Recommendations

Key attributes of the proposed GDUFA Program, as negotiated, are memorialized in a goals letter that FDA has posted on its generic drug user fee Web page, which is accessible at *http://www.fda.gov/ForIndustry/UserFees/GenericDrugUserFees/default.htm.*

B. Summary of the Program

If enacted as negotiated, the program would provide FDA with additional funding for all aspects of the generic drug program in the amount of $299 million per year, adjusted for inflation, for 5 years. With those additional user fee funds, FDA would agree to undertake a series of immediate program enhancements and performance goals. A nonexclusive list of major end goals for the program includes:

1. Application metrics that increase to an eventual year 5 goal of FDA reviewing and acting on 90 percent of complete electronic abbreviated new drug applications (ANDAs) within 10 months after the date of submission;
2. Backlog metrics of FDA reviewing and acting on 90 percent of all ANDAs, ANDA amendments, and ANDA prior approval supplements pending on October 1, 2012, by the end of FY 2017; and
3. Current good manufacturing practice (CGMP) inspection metrics under which FDA will conduct risk-adjusted biennial CGMP inspections of generic active pharmaceutical ingredient (API) and generic finished dosage form (FDF) manufacturers with the goal of achieving parity of inspection frequency between foreign and domestic firms in FY 2017.

Many additional, and interim, performance metrics and efficiency enhancements are set forth in the negotiated documents.

Under the program, fees would derive from two primary sources: Generic drug-related submissions and generic drug-related facilities. Submission fees would include fees for ANDAs and prior approval supplements, as well as for DMFs (for first reference only, as DMFs may be referenced multiple times by different sponsors). Facility fees would include fees for facilities that manufacture APIs for generic drugs as well and facilities that manufacture

generic FDFs. In the first year of the program, there would also be a fee assessed for applications that are pending on October 1, 2012, the so-called ''backlog''.

As under the prescription drug user fee act (PDUFA), individual fee amounts would be set annually, with the total annual revenue provided by the user fee specified in statute. Of the total generic drug user fee revenue, 80 percent would be provided by the FDF manufacturers and 20 percent by API manufacturers. Additionally, 70 percent of the overall GDUFA revenue would be generated by facility fees and 30 percent would be generated by submission fees; though in the first year those splits will be slightly different because of the one-time backlog fee.

While it is not possible to provide actual individual fee amounts until such fees are set by a **Federal Register** notice, it is expected that individual GDUFA fees will be orders of magnitude less than PDUFA fees, a factor due to the larger fee paying base in GDUFA. In negotiating the program, FDA was cognizant that generic drugs are a tremendous public health success story, responsible for saving $824 billion over the last decade. Consequently, the Agency worked to achieve a program that would not appreciably add to the cost of generic drugs, change the structure of the industry, or advantage any particular industry sector, regardless of size or location.

The program, as negotiated, is aimed at putting FDA's generic drugs program on a firm financial footing and providing additive resources necessary to assure timely access to safe, high-quality, affordable generic drugs.

III. What information should you know about the meeting?

A. When and where will the meeting occur? What format will FDA use?

Through this notice, we are announcing a public meeting to update stakeholders and hear stakeholder views on the negotiated proposal for a generic drug user fee program. We will conduct the meeting on December 19, 2011, from 10 a.m. to 5 p.m. at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 2, rm. 2047, Silver Spring, MD 20993. In general, the meeting format will include a presentation by FDA and presentations by stakeholders and members of the public who have registered in advance to present at the meeting. The amount of time available for presentations will be determined by the number of people who register to make a presentation. We will also provide an opportunity for organizations and individuals to submit written comments to the docket after the meeting. FDA policy issues are beyond the scope of this initiative. Accordingly, the presentations should focus on process and funding issues, and reactions to the GDUFA recommendations, and not focus on policy.

B. How do you register for the meeting or submit comments?

If you wish to attend and/or present at the meeting, please register by email to *GDUFA_Meeting4@fda.hhs.gov* by December 12, 2011. Your email should contain 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. FDA may limit the number of participants from each organization, as well as the total number of participants, based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. We will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak, and if the entire meeting time is not needed for presentations, FDA reserves the right to terminate the meeting early. If you need special accommodations because of disability, please contact Mari Long or Peter Beckerman (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

In addition, any person may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies 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 document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. To ensure consideration, all comments must be received by January 6, 2012. Submission of comments prior to the meeting is strongly encouraged.

C. Will the meeting be Web cast?

For those unable to attend in person, FDA will Web cast and provide a telephone audio link to the meeting. To join the Web meeting, please go to *https://collaboration.fda.gov/gdufa/*. For audio, please call 301–796–2700 and enter participant code 121947. If you have never attended a Connect Pro meeting before, you may wish to test your connection by going to: *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm*.

D. Will meeting transcripts be available?

Please be advised that as soon as a transcript is available it will be accessible at *http://www.regulations.gov* and *http://www.fda.gov*. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be made available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM)-1029, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: December 5, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–31630 Filed 12–6–11; 4:15 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Secretary's Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, codified at 5 U.S.C. app. 2), notice is hereby given of the following meeting:

Name: Secretary's Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times: January 26, 2012, 8:30 a.m. to 5 p.m. January 27, 2012, 8:30 a.m. to 3:30 p.m.

Place: Park Hyatt Hotel, 1201 24th Street NW., Washington, DC 20037.

Status: The meeting will be open to the public, but attendance will be limited by the space available. Participants are asked to register for the meeting by going to the registration Web site at *http://altarum.cvent.com/event/sachdncjan2012*. The registration deadline is Monday, January 23, 2012. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate their needs on the registration Web site. The deadline for special accommodation requests is Tuesday, January 24, 2012. If there are technical problems gaining access to the Web site, please contact Maureen Ball, Meetings Coordinator, at *conferences@altarum.org.*

Purpose: The Secretary's Advisory Committee on Heritable Disorders in

Newborns and Children (Advisory Committee), as authorized by Public Law 106–310, which added section 1111 of the Public Health Service Act, codified at 42 U.S.C. 300b–10, was established by Congress to advise the Secretary in connection with the development of newborn screening activities, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having or at risk for heritable disorders. Recommendations for screenings that are adopted by the Secretary are included in the Recommended Uniform Screening Panel (RUSP), which forms a part of the Comprehensive Guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans are required to cover screenings provided for in the Comprehensive Guidelines without charging a co-payment, co-insurance, or deductible for plan years (in the individual market these are known as policy years) beginning on or after the date that is one year from the Secretary's adoption of a screening(s). The Advisory Committee also provides advice and recommendations concerning grants and projects authorized under section 1109 of the Public Health Service Act (42 U.S.C. 300b–8).

Agenda: The meeting will include: (1) An orientation for all new Committee members including overviews of the Department of Health and Human Services, the Health Resources and Services Administration (HRSA), and the Maternal and Child Health Bureau; (2) the history of the Advisory Committee; (3) an overview of the authorizing legislation for the Advisory Committee; (4) updates from the Nomination and Prioritization workgroup, Public Health Impact Matrix workgroup and the Evidence Review workgroup; and (5) presentations on the continued work and reports of the Advisory Committee's subcommittees: Laboratory Standards and Procedures; Follow-up and Treatment; and Education and Training. Tentatively, the Advisory Committee is expected to review and/or vote on the following items: (1) Forwarding the 22q11 condition nomination package to the Evidence Review Workgroup for further evaluation; (2) reviewing the draft Public Health Impact Matrix; (3) forwarding the Hyperbilirubinemia condition nomination to the Public Health Impact Workgroup for further evaluation; (4) reviewing the report on Linking Birth Certificates and Serial Numbers; and (5) reviewing the report on Implementing Point of Care Newborn Screening.

Proposed agenda items are subject to change as priorities dictate. The Agenda, Committee Roster and Charter, presentations, and meeting materials can be found at the home page of the Advisory Committee's Web site at *http://www.hrsa.gov/heritabledisorderscommittee/.*

Public Comments: Members of the public can submit written comments and/or present oral comments during the public comment periods of the meeting. Time for public comments has been scheduled to occur during the afternoon of January 26, 2012. Those individuals who want to make oral comments are requested to register online by Monday, January 23, 2012 at *http://altarum.cvent.com/event/sachdncjan2012.* In order to be considered, written comments should be emailed no later than Tuesday, January 24, 2012. All comments, whether oral or written, should contain the name, address, telephone number, and any professional or business affiliation of the author. Groups having similar interests are requested to combine their comments and present them through a single representative. Submit written comments to Maureen Ball, Meetings Coordinator, Conference and Meetings Management, Altarum Institute, 1200 18th Street NW., Suite 700, Washington, DC 20036. Comments may also be faxed (202) 785–3083 or emailed (*conferences@altarum.org*). If you have additional questions regarding the submission of comments, please contact Ms. Ball at (202) 828–5100.

Contact Person: Anyone interested in obtaining other relevant information should contact or write to Debi Sarkar, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; *telephone:* (301) 443–1080; *email: dsarkar@hrsa.gov.* More information on the Advisory Committee is available at *http://mchb.hrsa.gov/heritabledisorderscommittee.*

Dated: December 2, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–31522 Filed 12–7–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* (301) 496–7057; *fax:* (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel NSAIDs for the Treatment of Human Diseases

Description of Technology: The invention relates to novel compounds which are hybrids between two moieties, *i.e.* non-steroidal anti-inflammatory drugs (NSAID) and Nitroxyl (HNO) releasing agents as well as Nitroxide (an antioxidant and superoxide scavenger). Such modified NSAIDs have shown to be advantageous to conventionally used NSAID, as their toxicity is significantly reduced and they can thus be used in medical treatment for extended periods of time without severe side effects. The adverse side effects (*i.e.* heart attack, thrombosis and severe gut toxicity) presented by conventional NSAIDs are well documented and some of them (*i.e.* Vioxx) were therefore withdrawn from the market. The present compounds may alleviate these problems, and may render more anti-inflammatory agents suitable for human use. The HNO releasing moiety of these novel compounds will expand the medical utility of these compounds, as HNO releasing agents possess anticancer activity as well as good antioxidant activities, a property that is beneficial for a variety of human diseases, including acute and chronic inflammation. In summary, the hybrid compounds provided in the invention can be useful in treatment of variety of human diseases (*i.e.* inflammatory diseases, heart diseases and cancer) with relatively low level of side effects.

Potential Commercial Applications: The drugs of this invention will be useful in treatment of anti-inflammatory diseases, and as therapeutic or preventative drugs for cardiovascular diseases, diabetes and cancer.

Competitive Advantages: The hybrid structure of the present drugs will render them useful in therapy and prevention of a wide variety of disorders, with reduced toxicity.

Development Stage: In vitro data available.

Inventors: David A. Wink *et al.* (NCI).

Publication: Flores-Santana W *et al.* Redox-Modified Non-Steroidal Anti-Inflammatory Drugs as Potential Anti-Cancer Agents with the SOD Mimetic Nitroxide. Br J Pharmacol. 2011 Jun 9; doi: 10.1111/j.1476–5381.2011.01527.x (Epub ahead of print). [PMID 21658022].

Intellectual Property: HHS Reference No. E–131–2011/0—U.S. Provisional

Application No. 61/472,770 filed 07 Apr 2011.

Licensing Contact: Betty Tong, Ph.D.; (301) 594–6565; *tongb@mail.nih.gov.*

Fibroblast Growth Factor Receptor 1 (Fgfr1) Conditional Knock Out Mouse

Description of Technology: Scientists at NIDDK have developed a fibroblast growth factor receptor 1 (Fgfr1) conditional knock out mouse. Fgfr1 is a member of the Fgfr family of transmembrane protein receptors with intrinsic tyrosine kinase activity. Fgfr1 is important in multiple biological processes, including mesoderm induction and patterning, cell growth and migration, organ formation and bone growth. Fgfr1 is highly expressed in central nervous system tissues and plays a critical role in proliferation, migration, and survival of neurons and glial cells. Additionally, overexpression of Fgfr1 has been associated with mammary gland transformation and may be crucial for the development of some cancers. The Fgfr1 conditional knockout mouse can be used to study development and biological processes in a variety of tissues and can provide information on signaling pathways that interact with Fgfr1 to induce genes important for critical cellular events, such as proliferation, differentiation, adhesion, movement, survival, and transformation.

Potential Commercial Applications

- Basic research tool to investigate intracellular pathways dependent on Fgfr1.
- Tool to study skeletal and neural development.
- Model of stress-related environments such as bone fractures or tumorigenic induction.

Competitive Advantages

- Unlike Fgfr1 null mice that are embryonic lethal, Fgfr1 conditional knockout mice are viable and can be used to study the role of Fgfr1 in tissue and organ development.
- Mice carrying the Fgfr1 conditional knockout mutation can be cross-bred using, for example, Cre-expressing mice to generate tissue specific knockouts of Fgfr1 and used for more detailed tissue studies of Fgfr1 signaling.

Development Stage: In vivo data available (animal).

Inventor: Chu-Xia Deng (NIDDK).

Publication: Xu X, Qiao W, Li C, Deng CX. Generation of Fgfr1 conditional knockout mice. Genesis. 2002 Feb;32(2):85–86. [PMID 11857785].

Intellectual Property: HHS Reference No. E–071–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jaime M. Greene; (301) 435–5559; *greenejaime@mail.nih.gov.*

Biomarkers for Cancer-Related Fatigue and Their Use in the Management of Such Fatigue (CRF)

Description of Technology: The invention relates to the diagnosis and management of cancer-related fatigue (CRF). More specifically the invention relates to identification and measurement of a single Biomarker or a group of biomarkers (*e.g.* genes) that are associated with cancer related fatigue. The identification and measurement of such biomarkers can be utilized in the diagnosis and management of fatigue and may facilitate the development of therapy for such fatigue. In particular, the invention provides for a method of diagnosing a subject with CRF by detecting expression of at least one gene associated with CRF in a sample obtained from the subject; and comparing expression of the gene to a control. The invention also describes a method of treating a patient with CRF by administering to the subject an agent that alters expression or activity of a gene associated with CRF. Further provided in the invention is array that includes a plurality of genes associated with CRF, such as TNFRSF25, SLC6A8, OGT, SNCA, APBA2, CASK, OR2W3, MYL4, IL7R, ARHGEF10 and ITGA6. Some of these genes are over expressed in a CRF patient (*e.g.,* SNCA and SLC6A8) while others (*e.g.,* IL7R, ARHGEF10) are under expressed. The array can provide detailed and comprehensive information that can result in improved diagnostics and in increased options for therapeutic treatment.

Potential Commercial Applications: Diagnostics and therapeutics of cancer-related fatigue.

Competitive Advantages: The technology provides for an array of multiple biomarkers, all associated with CRF. Thus it may offer a more detailed and accurate diagnosis of CRF as well as a larger number of therapeutic options.

Development Stage

- *In vitro* data available (animal).
- *In vivo* data available (human).

Inventor: Leorey Saligan (NINR).

Intellectual Property: HHS Reference E–280–2010/0 — U.S. Provisional Application No. 61/442,605 filed 14 Feb 2011.

Licensing Contact: Betty Tong, Ph.D.; (301) 594–6565; *tongb@mail.nih.gov.*

Characterizing Compartment Distributions From Diffusion Weighted Magnetic Resonance (MR) Data

Description of Technology: The National Institutes of Health seeks licensees with MR software expertise to commercialize a method of imaging the structural and dimensional characteristics (microstructure) of microscopic specimens. Microstructure is elucidated using MR scanning and the diffusion weighted MR signal is transformed into statistical moments of the underlying compartment size distribution associated with restricted diffusion. Essentially, the method includes the steps of: (1) Acquiring diffusion weighted image or spectroscopic data, (2) applying the new modeling framework relating pore size distribution to the diffusion weighted (DW) data, and (3) using this framework to estimate moments of the pore diameter distribution from the DW data.

Potential Commercial Applications: Examination of tissue/cellular microstructures.

Competitive Advantages: Refined imaging.

Development Stage: In vitro data available.

Inventors: Evren Ozarslan and Peter J. Basser (NICHD).

Publications

1. Assaf Y, *et al.* AxCaliber: a method for measuring axon diameter distribution from diffusion MRI. Magn Reson Med. 2008 Jun;59(6):1347–1354. [PMID 18506799].

2. Shemesh N, *et al.* Accurate noninvasive measurement of cell size and compartment shape anisotropy in yeast cells using double-pulsed field gradient MR. NMR Biomed. 2011 July 22. E-pub ahead of print, doi: 10.1002/nbm.1737. [PMID 21786354].

3. Ozarslan E, *et al.* NMR characterization of general compartment size distributions. New J Phys. 2011 Jan;13:15010. [PMID 21709780].

4. Komlosh ME, *et al.* Pore diameter mapping using double pulsed-field gradient MRI and its validation using a novel glass capillary array phantom. J Magn Reson. 2011 Jan;208(1):128–135. [PMID 21084204].

5. Nevo U, *et al.* A system and mathematical framework to model shear flow effects in biomedical DW-imaging and spectroscopy. NMR Biomed. 2010 Aug;23(7):734–744. [PMID 20886564].

6. Shemesh N, *et al.* From single-pulsed field gradient to double-pulsed field gradient MR: gleaning new microstructural information and developing new forms of contrast in MRI. NMR Biomed. 2010 Aug;23(7):757–780. [PMID 20690130].

7. Shemesh N, *et al.* Noninvasive bipolar double-pulsed-field-gradient NMR reveals signatures for pore size and shape in polydisperse, randomly oriented, inhomogeneous porous media. J Chem Phys. 2010 Jul 28;133(4):044705. [PMID 20687674].

Intellectual Property: HHS Reference No. E–273–2010/0—U.S. Provisional Patent Application No. 61/522,421 filed 11 Aug 2011.

Related Technologies

• HHS Reference No. E–079–2003/0—U.S. Patent 7,643,863 issued 05 Jan 2010; International Patent Application PCT/US2004/22027 filed 08 Jul 2004, which published as WO 2005/012926 on 10 Feb 2005.

• HHS Reference No. E–079–2003/1—U.S. Patent Application 12/114,713 filed 02 May 2008.

Licensing Contact: Michael Shmilovich, Esq.; (301) 435–5019; *mish@codon.nih.gov.*

One Step Fluorine-18 Peptide Labeling Strategy of Biological Substrates

Description of Technology: A one-step process is now available for licensing that allows direct 18F labeling of any biological substrate that is modified with 4-nitro-3-trifluoromethyl arene. Normally, 18F labeling requires several time-consuming radio synthesis steps using prosthetic groups, resulting in a low labeling yield. Other attempts at one step labeling methods have also shown relatively low yields.

This new process eliminates time-consuming radiosynthesis steps and associated low labeling yields with a single step process that displaces a nitro group in an arene. Relatively low amounts of precursor and short time radiosynthesis times are required compared to direct peptide-labeling. Higher yields by this simplified process improve time and cost efficiencies and may make 18F labeling more amenable for automation.

Potential Commercial Applications

• Radiological imaging.
• Radiological diagnosis.
• Radiological therapy.

Competitive Advantages

• Significantly shorter reaction and synthesis times.
• Lower amounts of precursor required.
• Relatively high yield of specific activity product.

Development Stage

• Early-stage.
• Pre-clinical.
• *In vitro* data available.
• *In vivo* data available (animal).

Inventors: Xiaoyuan (Shawn) Chen and Orit J. Weiss (NIBIB).

Publication: Jacobson O, *et al.* Rapid and simple one-step F–18 labeling of peptides. Bioconjug Chem. 2011 Mar 16;22(3):422–428. [PMID 21338096].

Intellectual Property: HHS Reference No. E–238–2010/0—U.S. Provisional Patent Application No. 61/429,671 filed 04 Jan 2011.

Licensing Contact: Tedd Fenn; (301) 435–5031; *Tedd.Fenn@NIH.gov.*

Collaborative Research Opportunity: The NIBIB is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the technology for One Step Fluorine-18 Peptide Labeling Strategy of Biological Substrates. For collaboration opportunities, please contact Shawn Chen, Ph.D. at *shawn.chen@nih.gov*.

Dated: December 2, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–31553 Filed 12–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Licensing and Collaborative Research Opportunity: Chemotoxins for Targeted Treatment of Diseased Cells

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patents and patent applications listed below may be obtained by contacting Patrick McCue, Ph.D. at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852; *telephone:* (301) 496–7057; *e-mail: McCuepat@mail.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Inquiries related to Collaborative Research Opportunities may be directed to Nikki Guyton, Ph.D. at the Technology Transfer Center, National Cancer Institute, 6120 Executive Boulevard, Suite 450, Rockville, MD 20852; *telephone:* (301) 435–3101; *email: darackn@mail.nih.gov*.

SUPPLEMENTARY INFORMATION:

Technology

Researchers at the National Institute on Aging (NIA) have developed a straightforward method to elicit immune responses to specific cancers and AIDS by using a chemoattractant-based antigen delivery strategy. The strategy uses formulations composed of chemokines fused to toxic moieties (aka ''chemotoxins'') to preferentially and specifically eliminate chemokine receptor-expressing cells. The method uses the natural ability of the chemokines to stimulate measurable and improved humoral and immune responses.

• Chemokines can be of viral or microbial (B–Defensin) origin.
• This method can also be used to cause inflammation to specifically target immune cells to increase immunogenicity for malignant tumors using SPANX–B and Laminin tumor antigens.

Potential Commercial Applications

• A potential immunotherapeutic antigen for the treatment of several malignancies including lymphoma, breast, lung, and ovarian.
• Use as a monoclonal antibody.
• Antigens, such as SPANX–B and Laminin, can also be used as prognostic and diagnostic agents for the monitoring of disease.

Competitive Advantages

• In contrast to recombinant proteins, these small peptides can be more easily manufactured.
• They help to facilitate the activation of cells in a more specific and therapeutically effective way.
• Active immune system will do a better job attacking cancer cells.
• Simple and less invasive.

Collaborative Research Opportunity

The National Institute on Aging (NIA) is seeking parties interested in collaborative research to further evaluate or commercialize effective vaccines that target bacterial, viral, or tumor antigens. Any or all of the inventions in this announcement are available for co-development and collaboration.

Intellectual Property and Developmental Status

• Viral Chemokine Antigen Fusion Proteins (E–194–2000).

Patent Status: US Patent No. 6,562,347 issued 13 May 2003.

Developmental Status: Proof of concept and pre-clinical development ongoing.

• Anti-Tumor Immunity Elicited by Defensin Tumor Antigen Fusion Proteins (E–196–2000).

Patent Status: US Patent No. 7,754,676 issued 13 Jul 2010; US Patent No. 7,915,040 issued 29 Mar 2011; US Patent Application No. 13/019,160 filed 01 Feb 2011.

Developmental Status: Clinical Trials Pending.

• Vaccine for the Treatment of Malignancies Expressing Immature Laminin Receptor Protein (OFA–iLRP) (E–271–2006).

Patent Status: US Patent Application No. 11/899,165 filed 03 Sep 2007; US Provisional Application No. 60/841,927 filed 01 Sep 2006.

Developmental Status: Pre-clinical with ongoing clinical tests in patients with NSCLC.

• Tumor Associated Antigen SPANX–B for Cancer Immunotherapy (E–089–2009).

Patent Status: US Provisional Application No. 61/156,435 filed 27 Feb 2009.

Developmental Status: Ongoing In vitro pre-clinical studies on human tumor cells.

References

1. A Biragyn *et al.* Genetic fusion of chemokines to a self tumor antigen induces protective, T-cell dependent antitumor immunity. Nat Biotechnol. 1999 Mar;17(3):253–258. [PMID 10096292]
2. A Biragyn *et al.* Mediators of innate immunity that target immature, but not mature, dendritic cells induce antitumor immunity when genetically fused with nonimmunogenic tumor antigens. J Immunol. 2001 Dec 1;167(11):6644–6653. [PMID 11714836]
3. G Almanzar *et al.* Sperm-derived SPANX–B is a clinically relevant tumor antigen that is expressed in human tumors and readily recognized by human CD4+ and CD8+ T cells. Clin Cancer Res. 2009 Mar 15;15(6):1954–1963. [PMID 19276289]

For information on the Immunotherapeutics Unit, Laboratory of Molecular Biology and Immunology of the National Institute on Aging (NIA), please visit: *http://www.grc.nia.nih.gov/branches/lmbi/cis_itu.htm.*

Dated: December 2, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–31554 Filed 12–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: January 30–31, 2012.

Time: 6 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov.*

Dated: December 2, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–31551 Filed 12–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Agents Targeting Thrombospondin-1 and CD47 To Treat Radiation-Induced Damage and Enhance the Effectiveness of Radiotherapy in Cancer Patients

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is a notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a worldwide exclusive license, to practice the inventions embodied in U.S. Provisional Patent Application No. 60/850,132, filed October 6, 2006, now abandoned (HHS Ref. No. E–227–2006/0–US–01); U.S. Provisional Patent Application No. 60/864,153, filed November 02, 2006, now abandoned (HHS Ref. No. E–227–2006/1–US–01); U.S. Provisional Patent Application No. 60/888,754, filed February 07, 2007, now abandoned (HHS Ref. No. E–227–2006/2–US–01); U.S. Provisional Patent Application No. 60/910,549, filed April 06, 2007, now abandoned (HHS Ref. No. E–227–2006/3–US–01); U.S. Provisional Patent Application No. 60/956,375, filed August 16, 2007, now abandoned (HHS Ref. No. E–227–2006/4–US–01); PCT Patent Application No. PCT/2007/080647, filed October 5, 2007, now abandoned (HHS Ref. No. E–227–2006/5–PCT–01); U.S. Patent Application No. 12/444,364, filed April 3, 2009 (HHS Ref. No. E–227–2006/5–US–02); Canadian Patent Application No. 2,665,287, filed October 5, 2007 (HHS Ref. No. E–227–2006/5–CA–03); Australian Patent Application No. 2007319576, filed October 5, 2007 (HHS Ref. No. E–227–2006/5–AU–04); European Patent Application No. 07868382.8, filed October 5, 2007 (HHS Ref. No. E–227–2006/5–EP–05); U.S. Provisional Patent Application No. 61/086,991, filed August 7, 2008, now abandoned (HHS Ref. No. E–153–2008/0–US–01); PCT Patent Application No. PCT/2009/052902, filed August 5, 2009, now abandoned (HHS Ref. No. E–153–2008/0–PCT–02); U.S. Patent Application No. 13/057,447, filed February 3, 2011 (HHS Ref. No. E–153–2008/0–US–06); Canadian Patent Application No. 2732102 filed August 5, 2009 (HHS Ref. No. E–153–2008/0–CA–043); Australian Patent Application No. 2009279676, filed August 5, 2009 (HHS Ref. No. E–153–2008/0–AU–03); and European Patent Application No. 09791202.6, filed August 5, 2009 (HHS Ref. No. E–153–2008/0–EP–08), entitled ''Prevention of Tissue Ischemia, Related Methods and Compositions,'' and ''Radioprotectants Targeting Thrombospondin-1 and CD47,'' to Radiation Control Technologies, Inc., a company incorporated under the laws of the State of Delaware having its headquarters in Rockville, Maryland. The United States of America is the assignee of the rights of the above inventions. The prospective exclusive license territory may be ''worldwide,''

and the field of use may be limited to: (1) The use of morpholino oligonucleotides that reduce expression of CD47 in combination with radiotherapy, to treat or prevent cancers in humans; and (2) the use of morpholino oligonucleotides that reduce expression of CD47 to treat or prevent radiation exposure damage in humans.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before January 9, 2012 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Suryanarayana (Sury) Vepa, Ph.D., J.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5020; Facsimile: (301) 402–0220; Email: *vepas@mail.nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: The present inventions provide for compositions and methods for preventing and/or reducing tissue ischemia and/or tissue damage due to ischemia, increasing blood vessel diameter, blood flow and tissue perfusion in the presence of vascular disease, by suppressing CD47 and/or blocking TSP1 and/or CD47 activity or interaction. The present inventions also provide for the use of morpholinos, peptides and antibodies that block the TSP1/CD47 signaling pathway as radioprotectants for normal tissue, radioenhancers for tumor tissue, and as protectants of normal tissue from damage caused by radiation exposure.

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, 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 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response 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: December 2, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–31556 Filed 12–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2011–N209; 30136–1265–0000–S3]

DeSoto National Wildlife Refuge, Harrison and Pottawattamie Counties, IA; and Washington County, NE; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for the DeSoto National Wildlife Refuge (Refuge, NWR). We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process. In addition, we will use special mailings, newspaper articles, Internet postings, and other media announcements to inform people of opportunities for input.

ADDRESSES: Send your comments or requests for more information by any one of the following methods:

- *Email: tom_cox@fws.gov.* Include ''DeSoto CCP'' in the subject line of the message.
- *Fax:* Attn: Tom Cox, (712) 642–2877.
- *U.S. Mail:* Attention: Refuge Manager, DeSoto National Wildlife Refuge, 1434 316th Lane, Missouri Valley, IA 51555–7033.
- *In-Person Drop-off:* You may drop off comments during regular business hours at the above address.

You may also find information about the CCP planning process on the planning web site: *http://www.fws.gov/midwest/planning* and submit comments to *r3planning@fws.gov.* Include ''DeSoto CCP'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Tom Cox, (712) 642–4121.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a revised CCP for the DeSoto NWR, with headquarters in Missouri Valley, IA. This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

This planning effort will be coordinated with the preparation of a CCP and EA for Boyer Chute National Wildlife Refuge, announced in the **Federal Register** on February 18, 2010 (FWS–R3–R–2009–N243). These refuges are located less than a half mile apart, share management resources, and have similar habitats, wildlife, and publics. Review and revision of refuge management and planning direction were prompted by major impacts to the refuges as a result of flooding on the Missouri River in 2011.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS, including DeSoto NWR, was established for specific purposes. We use these purposes as the foundation for

developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Refuge Overview

DeSoto National Wildlife Refuge, established in 1958, encompasses 8,358 acres of floodplain habitat on a former oxbow of the Missouri River. The Refuge conserves prairie, wetland, open water, and riparian forest habitats important to migratory waterfowl and other wildlife. Twenty-five miles north of Omaha, Nebraska, DeSoto also provides recreational use for up to 250,000 visitors annually. The Refuge is renowned for housing the Steamboat Bertrand artifact collection, the largest assemblage of Civil War era artifacts in the United States.

Public Involvement

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. We encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the Desoto NWR. We also invite comments on archeological, historic, and traditional cultural sites in accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*).

We invite anyone interested to respond to the following two questions:

1. What issues do you want to see addressed in the CCP?

2. What improvements would you recommend for the Refuge?

Responding to these two questions is optional; you are not required to provide information to us. Our planning team developed the questions to gather information about individual issues and ideas concerning the Refuge. Comments we receive will be used as part of the planning process; however, we will not reference individual comments in our reports or directly respond to them.

We will also give the public an opportunity to provide input at open houses. You can obtain a schedule of the open house events by contacting the Refuge Manager listed in the **ADDRESSES** section of this notice.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA Regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those regulations.

Public Availability of Comments

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

Charles M. Wooley,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2011–31565 Filed 12–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0021]

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of an extension of a currently approved information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information requests that we will submit to the Office of Management and Budget (OMB) for review and approval. The OMB formerly approved this information collection request (ICR) under OMB Control Number 1010–0103. After the Secretary of the Department of the Interior established ONRR (the former Minerals Revenue Management, a program under the Minerals Management Service) on October 1, 2010, OMB approved a new series number for ONRR and renumbered our ICRs. This ICR covers the paperwork requirements in the regulations under title 30, Code of Federal Regulations (CFR), parts 1202, 1206, and 1207 (previously 30 CFR parts 202, 206, and 207). The revised title of this ICR is ''30 CFR Parts 1202, 1206, and 1207, Indian Oil and Gas Valuation.'' There are five forms associated with this information collection.

DATES: Submit written comments on or before January 9, 2012.

ADDRESSES: You may submit comments on this ICR to ONRR by any of the following methods. Please use ''ICR 1012–0002'' as an identifier in your comment.

- Electronically go to *http://www.regulations.gov*. In the entry titled ''Enter Keyword or ID,'' enter ''ONRR–2011–0021'' and then click ''Search.'' Follow the instructions to submit public comments. The ONRR will post all comments.
- Mail comments to Armand Southall, Regulatory Specialist, Office of Natural Resources, P.O. Box 25165, MS 64000A, Denver, Colorado 80225. Please reference ICR 1012–0002 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1012–0002 in your comments.

FOR FURTHER INFORMATION CONTACT: Armand Southall, telephone (303) 231–3221, or email *armand.southall@onrr.gov*. You may also contact Mr. Southall to obtain copies, at no cost, of (1) The ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information. You may also review the information collection online at *http://www.reginfo.gov/public/PRAMain*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Parts 1202, 1206, and 1207, Indian Oil and Gas Valuation.

OMB Control Number: 1012–0002.

Bureau Form Number: Forms MMS–4109, MMS–4110, MMS–4295, MMS–4410, and MMS–4411.

Note: The ONRR will publish a rule updating our form numbers to Forms ONRR–4109, ONRR–4110, ONRR–4295, ONRR–4410, and ONRR–4411.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required by various laws to manage mineral resource production on Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds in accordance with those laws. Applicable laws pertaining to mineral leases on Federal and Indian lands and the OCS are posted on our Web site at *http://www.onrr.gov/Laws_R_D/PublicLawsAMR.htm*.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The ONRR performs the minerals revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Indian Tribes and individual Indian mineral owners receive all royalties generated from their lands. Determining product valuation is essential to ensure that Indian Tribes and individual Indian mineral owners receive payment on the full value of the minerals removed from their lands. Failure to collect the data described in this information collection could result in the undervaluation of leased minerals on Indian lands.

Effective October 1, 2010, ONRR reorganized and transferred their regulations from chapter II to chapter XII in title 30 of the Code of Federal Regulations (CFR), resulting in a change in our citations. Information collections covered in this ICR are found at 30 CFR part 1202, subparts C and J, which pertain to royalties; part 1206, subparts B and E, which govern the valuation of oil and gas produced from leases on Indian lands; and part 1207, which pertains to recordkeeping. All data reported is subject to subsequent audit and adjustment.

Indian Oil

Regulations at 30 CFR part 1206, subpart B, govern the valuation for royalty purposes of all oil produced from Indian oil and gas leases (Tribal and allotted), except leases on the Osage Indian Reservation, and are consistent with mineral leasing laws, other applicable laws, and lease terms. Generally, the regulations provide that lessees determine the value of oil based upon the higher of (1) The gross proceeds under an arm's-length contract; or (2) major portion analysis. The value determined by the lessee may be eligible for a transportation allowance.

From information collected on Form MMS–4110, Oil Transportation Allowance Report, ONRR and Tribal audit personnel evaluate (1) Whether lessee-reported transportation allowances are within regulatory allowance limitations and calculated in accordance with applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties.

Indian Gas

Regulations at 30 CFR part 1206, subpart E, govern the valuation for royalty purposes of natural gas produced from Indian oil and gas leases (Tribal and allotted). The regulations apply to all gas production from Indian oil and gas leases, except leases on the Osage Indian Reservation.

Most Indian leases contain the requirement to perform accounting for comparison (dual accounting) for gas produced from the lease. Lessees must elect to perform actual dual accounting as defined in 30 CFR 1206.176 or alternative dual accounting as defined in 30 CFR 1206.173. Lessees use Form MMS–4410, Accounting for Comparison [Dual Accounting], to certify that dual accounting is not required on an Indian lease or to make an election for actual or alternative dual accounting for Indian leases.

The regulations require lessees to submit Form MMS–4411, Safety Net Report, when gas production from an Indian oil or gas lease is sold beyond the first index pricing point. The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian oil and gas leases. This reporting requirement ensures that Indian lessors receive all royalties due and aids ONRR compliance efforts.

From information collected on Form MMS–4295, Gas Transportation Allowance Report, ONRR and Tribal audit personnel evaluate (1) Whether lessee-reported transportation allowances are within regulatory allowance limitations and calculated in accordance with applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties.

From information collected on Form MMS–4109, Gas Processing Allowance Summary Report, ONRR and Tribal audit personnel evaluate (1) whether lessee-reported processing allowances are within regulatory allowance limitations and calculated in accordance with applicable regulations; and (2) whether the lessees reported and paid the proper amount of royalties.

Indian Oil and Gas

Form MMS–4393, Request to Exceed Regulatory Allowance Limitation, is used for both Federal and Indian leases. Most of the burden hours are incurred on Federal leases; therefore, the form is approved under ICR 1010–0136, presently 1012–0005, pertaining to Federal oil and gas leases. However, we include a discussion of the form in this ICR, as well as the burden hours for Indian leases. To request permission to exceed a regulatory allowance limit, lessees must (1) submit a letter to ONRR explaining why a higher allowance limit is necessary; and (2) provide supporting documentation, including a completed Form MMS–4393. This form provides ONRR with the data necessary to make a decision whether to approve or deny the request and track deductions on royalty reports.

OMB Approval

The ONRR will request OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the inability to confirm the accurate royalty value to Indian Tribes and individual Indian mineral owners. ONRR protects proprietary information it receives, and does not collect items of a sensitive nature. The requirement to respond is mandatory for Form MMS–4410, Accounting for Comparison [Dual Accounting], and Form MMS–4411, Safety Net Report, under certain circumstances. And, the lessees are required to submit Forms MMS–4109, MMS–4110, and MMS–4295 in order to obtain a benefit.

Frequency of Response: Annually and on occasion.

Estimated Number and Description of Respondents: 148 Indian lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,309 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	PART 1202—ROYALTIES **Subpart C—Federal and Indian Oil**			
1202.101	Standards for reporting and paying royalties ..... Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F.	Burden covered under OMB Control Number 1012–0004 (expires 12/31/2012). Burden covered under § 1210.52.		
	Subpart J—Gas Production From Indian Leases			
1202.551(b)	How do I determine the volume of production for which I must pay royalty if my lease is not in an approved Federal unit or communitization agreement (AFA)? (b) You and all other persons paying royalties on the lease must report and pay royalties based on your takes.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1202.551(c)	(c) You and all other persons paying royalties on the lease may ask ONRR for permission * * * to report entitlements.	1	1	1
1202.558(a) and (b)	What standards do I use to report and pay royalties on gas? (a) You must report gas volumes as follows: (b) You must report residue gas and gas plant product volumes as follows:	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
	PART 1206—PRODUCT VALUATION **Subpart B—Indian Oil**			
1206.56(b)(2)	Transportation allowances—general ..... (b)(2) Upon request of a lessee, ONRR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. * * * An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination.	4	1	4
1206.57(a)(1)(i)	Determination of transportation allowances ..... (a) *Arm's-length transportation contracts.* (1)(i) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length.	AUDIT PROCESS. See note.		
1206.57(a)(1)(i)	(a) *Arm's-length transportation contracts* ..... (1)(i) * * * Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report.	Burden covered under § 1206.57(c)(1)(i) and (iii).		
1206.57(a)(1)(iii)	(a) *Arm's-length transportation contracts* ..... (1)(iii) * * * When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.	AUDIT PROCESS. See note.		
1206.57(a)(2)(i)	(a) *Arm's-length transportation contracts* ..... (2)(i) * * * Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without ONRR approval.	Burden covered under § 1206.57(a)(3).		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.57(a)(2)(ii)	(a) *Arm's-length transportation contracts* ..... (2)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported.	20	1	20
1206.57(a)(3)	(a) *Arm's-length transportation contracts* ..... (3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR. * * * The lessee shall submit all available data to support its proposal.	40	1	40
1206.57(b)(1)	(b) *Non-arm's-length or no contract* ..... (1) * * * A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with ONRR, unless ONRR approves a longer period upon a showing of good cause by the lessee.	Burden covered under § 1206.57(c)(2)(i) and (iii).		
1206.57(b)(1)	(b) *Non-arm's-length or no contract* ..... (1) * * * When necessary or appropriate, ONRR may direct a lessee to modify its actual transportation allowance deduction.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1206.57(b)(2)(iv)	(b) *Non-arm's-length or no contract* ..... (2)(iv) * * * After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of ONRR.	20	1	20
1206.57(b)(2)(iv)(A)	(b) *Non-arm's-length or no contract* ..... (2)(iv)(A) * * * After an election is made, the lessee may not change methods without ONRR approval.	20	1	20
1206.57(b)(3)(i)	(b) *Non-arm's-length or no contract* ..... (3)(i) * * * Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty bearing without ONRR approval.	40	1	40
1206.57(b)(3)(ii)	(b) *Non-arm's-length or no contract* ..... (3)(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported.	20	1	20
1206.57(b)(4)	(b) *Non-arm's-length or no contract* ..... (4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to ONRR. * * * The lessee shall submit all available data to support its proposal.	20	1	20
1206.57(b)(5)	(b) *Non-arm's-length or no contract* ..... (5) A lessee may apply to ONRR for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section.	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.57(c)(1)(i)	(c) *Reporting requirements* ..... (1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance.	4	1	4
1206.57(c)(1)(iii)	(c) *Reporting requirements* ..... (1) *Arm's-length contracts.* (iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	4	1	4
1206.57(c)(1)(iv)	(c) *Reporting requirements* ..... (1) *Arm's-length contracts.* (iv) ONRR may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by ONRR.	AUDIT PROCESS. See note.		
1206.57(c)(2)(i)	(c) *Reporting requirements* ..... (2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014. * * * The initial report may be based upon estimated costs.	6	1	6
1206.57(c)(2)(iii)	(c) *Reporting requirements* ..... (2) *Non-arm's-length or no contract.* (iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. * * * ONRR must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless ONRR approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	6	1	6
1206.57(c)(2)(iv)	(c) *Reporting requirements* ..... (2) *Non-arm's-length or no contract.* (iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period.	Burden covered under § 1206.57(c)(2)(i).		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.57(c)(2)(v)	(c) *Reporting requirements* ..... (2) *Non-arm's-length or no contract.* (v) * * * only those allowances that have been approved by ONRR in writing.	Burden covered under § 1206.57(c)(2)(i).		
1206.57(c)(2)(vi)	(c) *Reporting requirements* ..... (2) *Non-arm's-length or no contract.* (vi) Upon request by ONRR, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by ONRR.	AUDIT PROCESS. See note.		
1206.57(c)(4) and (e)(2)	(c) *Reporting requirements* ..... (4) Transportation allowances must be reported as a separate line item on Form MMS–2014. (e)*Adjustments.* (2)For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1206.59	May I ask ONRR for valuation guidance? ..... You may ask ONRR for guidance in determining value. You may propose a value method to ONRR. Submit all available data related to your proposal and any additional information ONRR deems necessary.	20	1	20
1206.61(a) and (b)	What records must I keep and produce? ..... (a) On request, you must make available sales, volume, and transportation data for production you sold, purchased, or obtained from the field or area. You must make this data available to ONRR, Indian representatives, or other authorized persons. (b) You must retain all data relevant to the determination of royalty value.	AUDIT PROCESS. See note.		
	PART 1206—PRODUCT VALUATION Subpart E—Indian Gas			
1206.172(b)(1)(ii)	How do I value gas produced from leases in an index zone? (b) *Valuing residue gas and gas before processing.* (1)(ii) Gas production that you certify on Form MMS–4410 * * * is not processed before it flows into a pipeline with an index but which may be processed later.	4	58	232
1206.172(e)(6)(i) and (iii)	(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (6)(i) You must report the safety net price for each index zone to ONRR on Form MMS–4411, Safety Net Report, no later than June 30 following each calendar year; (iii) ONRR may order you to amend your safety net price within one year from the date your Form MMS–4411 is due or is filed, whichever is later.	3	11	33
1206.172(e)(6)(ii)	(e) *Determining the minimum value for royalty purposes of gas sold beyond the first index pricing point.* (6)(ii) You must pay and report on Form MMS–2014 additional royalties due no later than June 30 following each calendar year.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.172(f)(1)(ii), (f)(2), and (f)(3)	(f) *Excluding some or all Tribal leases from valuation under this section.* (1) An Indian Tribe may ask ONRR to exclude some or all of its leases from valuation under this section. (ii) If an Indian Tribe requests exclusion from an index zone for less than all of its leases, ONRR will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation. (2) An Indian Tribe may ask ONRR S to terminate exclusion of its leases from valuation under this section. (3) The Indian Tribe's request to ONRR under either paragraph (f)(1) or (2) of this section must be in the form of a Tribal resolution.	40	1	40
1206.173(a)(1)	How do I calculate the alternative methodology for dual accounting? (a) *Electing a dual accounting method.* (1) * * * You may elect to perform the dual accounting calculation according to either § 1206.176(a) (called actual dual accounting), or paragraph (b) of this section (called the alternative methodology for dual accounting).	2	12	24
1206.173(a)(2)	(a) *Electing a dual accounting method* ..... (2) You must make a separate election to use the alternative methodology for dual accounting for your Indian leases in each ONRR S-designated area.	Burden covered under § 1206.173(a)(1).		
1206.174(a)(4)(ii)	How do I value gas production when an index-based method cannot be used? (a) *Situations in which an index-based method cannot be used.* (4)(ii) If the major portion value is higher, you must submit an amended Form MMS–2014 to ONRR by the due date specified in the written notice from ONRR of the major portion value.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1206.174 (b)(1)(i) and (iii); (b)(2); (d)(2).	(b) *Arm's-length contracts* ..... (1)(i) You have the burden of demonstrating that your contract is arm's-length. (iii) * * * In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your value. (2) ONRR may require you to certify that your arm's-length contract provisions include all of the consideration the buyer pays, either directly or indirectly, for the gas, residue gas, or gas plant product. (d) *Supporting data.* ..... (2) You must make all such data available upon request to the authorized ONRR or Indian representatives, to the Office of the Inspector General of the Department, or other authorized persons.	AUDIT PROCESS. See note.		
1206.174(d)	(d) *Supporting data.* If you determine the value of production under paragraph (c) of this section, you must retain all data relevant to determination of royalty value.	Burden covered under OMB Control Number 1012–0004.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.174(f)	(f) *Value guidance.* You may ask ONRR for guidance in determining value. You may propose a valuation method to ONRR. Submit all available data related to your proposal and any additional information ONRR deems necessary.	40	1	40
1206.175(d)(4)	How do I determine quantities and qualities of production for computing royalties? (d)(4) You may request ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease.	20	1	20
1206.176(b)	How do I perform accounting for comparison? ..... (b) If you are required to account for comparison, you may elect to use the alternative dual accounting methodology provided for in § 1206.173 instead of the provisions in paragraph (a) of this section.	Burden covered under § 1206.173(a)(1).		
1206.176(c)	(c) * * * If you do not perform dual accounting, you must certify to ONRR that gas flows into such a pipeline before it is processed.	Burden covered under § 1206.172(b)(1)(ii).		
	Transportation Allowances			
1206.177(c)(2) and (c)(3)	What general requirements regarding transportation allowances apply to me? (c)(2) If you ask ONRR, ONRR may approve a transportation allowance deduction in excess of the limitation in paragraph (c)(1) of this section. (3) Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination.	Burden covered under § 1206.56(b)(2).		
1206.178(a)(1)(i)	How do I determine a transportation allowance? .... (a) *Determining a transportation allowance under an arm's-length contract.* (1)(i) * * * You are required to submit to ONRR a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your report which claims the allowance on the Form MMS–2014.	1	18	18
1206.178(a)(1)(iii)	(a) *Determining a transportation allowance under an arm's-length contract.* (1)(iii) If ONRR determines that the consideration paid under an arm's-length transportation contract does not reflect the value of the transportation because of misconduct by or between the contracting parties * * * In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your transportation costs.	AUDIT PROCESS. See note.		
1206.178(a)(2)(i) and (ii)	(a) *Determining a transportation allowance under an arm's-length contract.* (2)(i) * * * you cannot take an allowance for the costs of transporting lease production that is not royalty bearing without ONRR approval, or without lessor approval on Tribal leases. (ii) As an alternative to paragraph (a)(2)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported.	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.178(a)(3)(i) and (ii)	(a) *Determining a transportation allowance under an arm's-length contract.* (3)(i) If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to ONRR. (ii) You are required to submit all relevant data to support your allocation proposal.	40	1	40
1206.178(b)(1)(ii)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (1)(ii) * * * You must submit the actual cost information to support the allowance to ONRR on Form MMS–4295, Gas Transportation Allowance Report, within 3 months after the end of the 12-month period to which the allowance applies.	15	5	75
1206.178(b)(2)(iv)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (2)(iv) You may use either depreciation with a return on undepreciated capital investment or a return on depreciable capital investment. * * * you may not later elect to change to the other alternative without ONRR approval.	20	1	20
1206.178(b)(2)(iv)(A)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (2)(iv)(A) * * * Once you make an election, you may not change methods without ONRR approval.	20	1	20
1206.178(b)(3)(i)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (3)(i) * * * Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without ONRR approval.	40	1	40
1206.178(b)(3)(ii)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (3)(ii) As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to ONRR a cost allocation method based on the values of the products transported.	20	1	20
1206.178(b)(5)	(b) *Determining a transportation allowance under a non-arm's-length contract or no contract.* (5) If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR. * * * You are required to submit all relevant data to support your proposal.	40	1	40
1206.178(d)(1)	(d) *Reporting your transportation allowance* ..... (1) If ONRR requests, you must submit all data used to determine your transportation allowance.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.178(d)(2), (e), and (f)(1)	(d) *Reporting your transportation allowance* ..... (2) You must report transportation allowances as a separate entry on Form MMS–2014. (e) *Adjusting incorrect allowances.* If for any month the transportation allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to report and pay additional royalties due, plus interest computed under 30 CFR 1218.54 from the first day of the first month you deducted the improper transportation allowance until the date you pay the royalties due. (f) *Determining allowable costs for transportation allowances.* (1) *Firm demand charges paid to pipelines.* * * * You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
Processing Allowances				
1206.180(a)(1)(i)	How do I determine an actual processing allowance? (a) *Determining a processing allowance if you have an arm's-length processing contract.* (1)(i) * * * You have the burden of demonstrating that your contract is arm's-length. You are required to submit to ONRR a copy of your arm's-length contract(s) and all subsequent amendments to the contract(s) within 2 months of the date ONRR receives your first report that deducts the allowance on the Form MMS–2014.	1	2	2
1206.180(a)(1)(iii)	(a) *Determining a processing allowance if you have an arm's-length processing contract.* (1)(iii) If ONRR determines that the consideration paid under an arm's-length processing contract does not reflect the value of the processing because of misconduct by or between the contracting parties * * * In these circumstances, ONRR will notify you and give you an opportunity to provide written information justifying your processing costs.	AUDIT PROCESS. See note.		
1206.180(a)(3)	(a) *Determining a processing allowance if you have an arm's-length processing contract.* (3) If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to ONRR. * * * You are required to submit all relevant data to support your proposal.	40	1	40
1206.180(b)(1)(ii)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (1)(ii) * * * You must submit the actual cost information to support the allowance to ONRR on Form MMS–4109, Gas Processing Allowance Summary Report, within 3 months after the end of the 12-month period for which the allowance applies.	20	12	240

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.180(b)(2)(iv)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (2)(iv) You may use either depreciation with a return on undepreciable capital investment or a return on depreciable capital investment. * * * you may not later elect to change to the other alternative without ONRR approval.	20	1	20
1206.180(b)(2)(iv)(A)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (2)(iv)(A) * * * Once you make an election, you may not change methods without ONRR approval.	20	1	20
1206.180(b)(3)	(b) *Determining a processing allowance if you have a non-arm's-length contract or no contract.* (3) Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and ONRR agree to an alternative.	20	1	20
1206.180(c)(1)	(c) *Reporting your processing allowance* ..... (1) If ONRR requests, you must submit all data used to determine your processing allowance.	AUDIT PROCESS. See note.		
1206.180(c)(2) and (d)	(c) *Reporting your processing allowance* ..... (2) You must report gas processing allowances as a separate entry on the Form MMS–2014 * * *. (d) *Adjusting incorrect processing allowances.* If for any month the gas processing allowance you are entitled to is less than the amount you took on Form MMS–2014, you are required to pay additional royalties, plus interest computed under 30 CFR 1218.54 from the first day of the first month you deducted a processing allowance until the date you pay the royalties due.	Burden covered under OMB Control Number 1012–0004. Burden covered under § 1210.52.		
1206.181(c)	How do I establish processing costs for dual accounting purposes when I do not process the gas? (c) A proposed comparable processing fee submitted to either the Tribe and ONRR (for Tribal leases) or ONRR (for allotted leases) with your supporting documentation submitted to ONRR. If ONRR does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the ONRR Director under 30 CFR part 1290.	40	1	40
PART 1207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS **Subpart A—General Provisions**				
1207.4(b)	Contracts made pursuant to old form leases ..... (b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows.	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1207.5	Contract and sales agreement retention ..... Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized ONRR, State or Indian representatives, other ONRR or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to ONRR within a reasonable period of time, as determined by ONRR. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR part 1212.	AUDIT PROCESS. See note.		
TOTAL BURDEN	.....	.....	148	1,309

Note: AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because ONRR staff asks non-standard questions to resolve exceptions.

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-Hour'' cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. We also will post the ICR at *http://www.onrr.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments, including names and addresses of respondents, at *http://regulations.gov*. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

Office of the Secretary, Information Collection Clearance Officer: Laura Dorey (202) 208–2654.

Dated: November 29, 2011.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2011–31496 Filed 12–7–11; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0002]

States' Decisions on Participating in Accounting and Auditing Relief for Federal Oil and Gas Marginal Properties

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice.

SUMMARY: Final regulations published September 13, 2004 (69 FR 55076), provide two types of accounting and auditing relief for Federal onshore or Outer Continental Shelf lease production from marginal properties. As required by the regulations, the Office of Natural Resources Revenue (ONRR)

provided a list of qualifying marginal Federal oil and gas properties to states that received a portion of Federal royalties. Each state then decided whether to participate in one or both relief options. For calendar year 2012, this notice provides the decisions by the affected states to allow one or both types of relief.

DATES: Effective January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Richard Adamski, Program Manager, Asset Valuation, telephone (303) 231–3410; email *richard.adamski@onrr.gov*; or mail to P.O. Box 25165, MS 63100B, Denver Federal Center, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: The regulations, codified at 30 CFR part 1204, subpart C, implement certain provisions of section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA) (30 U.S.C. 1726) and provide two options for relief: (1) Notification-based relief for annual reporting; and (2) other requested relief, as proposed by industry and approved by ONRR and the affected state. The regulations require ONRR to publish a list of the states and their decisions regarding marginal property relief by December 1 of each year.

To qualify for the first relief option (notification-based relief) for calendar year 2012, properties must have produced less than 1,000 barrels-of-oil-equivalent (BOE) per year for the base period (July 1, 2010, through June 30, 2011). Annual reporting relief will begin January 1, 2012, with the annual report and payment due February 28, 2013; or March 31, 2013, if you have an estimated payment on file. To qualify for the second relief option (other requested relief), the combined equivalent production of the marginal properties during the base period must equal an average daily well production of less than 15 BOE per well per day calculated under 30 CFR 1204.4(c).

The following table shows the states that have qualifying marginal properties and the states' decisions to allow one or both forms of relief.

State	Notification-based relief (less than 1,000 BOE per year)	Request-based relief (less than 15 BOE per well per day)
Alabama	No	No
California	No	No
Colorado	No	No
Kansas	Yes	No
Louisiana	Yes	Yes
Michigan	Yes	Yes
Mississippi	No	No
Montana	No	No
Nebraska	No	No
Nevada	Yes	Yes
New Mexico	No	Yes
North Dakota	Yes	Yes
Oklahoma	No	No
South Dakota	No	No
Utah	No	No
Wyoming	Yes	No

Federal oil and gas properties located in all other states where ONRR does not share a portion of Federal royalties with the state are eligible for relief if they qualify as marginal under the regulations. See section 117(c) of RSFA (30 U.S.C. 1726(c)). For information on how to obtain relief, please refer to 30 CFR 1204.205 or to the published rule, which you may view on our Web site at *http://www.onrr.gov/Laws_R_D/FRNotices/AC30.htm.*

Unless the information received is proprietary data, all correspondence, records, or information that we receive in response to this notice may be subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552 *et seq.*). If applicable, please highlight the proprietary portions, including any supporting documentation, or mark the page(s) that contain proprietary data. Proprietary information is protected by the Trade Secrets Act (18 U.S.C. 1905); FOIA, Exemption 4; and Department regulations (43 CFR part 2).

Dated: November 29, 2011.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2011–31497 Filed 12–7–11; 8:45 am]

BILLING CODE 4310–T2–P

INTERNATIONAL TRADE COMMISSION

[DN 2862]

Certain Kinesiotherapy Devices and Components Thereof, Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Kinesiotherapy Devices and Components Thereof,* DN 2862; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and 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 has received a complaint filed on behalf of Standard Innovation Corporation and Standard Innovation (US) Corp. on December 2, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain kinesiotherapy devices and components thereof. The complaint names LELO Inc. of San Jose, CA; Leloi AB of Sweden; LELO of China; Natural Contours Europe of the Netherlands; Momentum Management, LLC (a/k/a Bushman Products) of Torrance, CA; Evolved Novelties, Inc. of Canoga, CA; Nalpac Enterprises, Ltd. (d/b/a Nalpac, Ltd.) of Ferndale, MI; E.T.C. Inc. (d/b/a Eldorado Trading Company, Inc.) of Broomfield, CO; Williams Trading Co., Inc. of Pennsauken, NJ; Honey's Place, Inc. of San Fernando, CA; Lover's Lane & Co. of Plymouth, MI; PHE, Inc. (d/b/a Adam & Eve) of Hillsborough, NC; Castle Megastore Group, Inc. of Tempe, AZ; Shamrock 51 Management Company, Inc. (d/b/a Fairvilla.com) of Maitland, FL; Paris Intimates, LLC of West Bloomfield, MI; Drugstore.com, Inc. of Bellevue, WA; Peekay Inc. of Auburn, WA; Mile Inc. (d/b/a Lion's Den Adult) of Worthington, OH; Mersoner, Inc. (d/b/a Fascinations) of Chandler, AZ; Love Boutique-Vista, LLC (d/b/a Déjà vu) of Vista, CA; and Toys in Babeland LLC of Seattle, WA, as respondents.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2862'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*. Persons with questions regarding electronic filing should contact the Secretary ((202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: December 5, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–31543 Filed 12–7–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[DN 2861]

Certain Portable Communication Devices, Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Portable Communication Devices,* DN 2861; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and 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 has received a complaint filed on behalf of Digitude Innovations LLC on December 2, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable communication devices. The complaint names Research In Motion Ltd. of Canada; Research In Motion Corp. of Irving, TX; HTC Corporation of Taiwan; HTC America, Inc. of Bellevue, WA; LG Electronics, Inc. of South Korea; LG Electronics U.S.A. Inc. of Englewood Cliffs, NJ; LG Electronics MobileComm U.S.A. Inc. of San Diego, CA; Motorola Mobility Holdings, Inc. of Libertyville,

Illinois; Samsung Electronics Co., Ltd. of South Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung Telecommunications America, LLC of Richardson, TX; Sony Corporation of Japan; Sony Corporation of America of New York, NY; Sony Electronics, Inc. of San Diego, CA; Sony Ericsson Mobile Communication AB of Sweden; Sony Ericsson Mobile Communication (USA) Inc. of Research Triangle Park, NC; Amazon.com, Inc. of Seattle, WA; Nokia Corporation of Finland; and Nokia Inc. of Irving, TX, as respondents.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2861'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf.* Persons with questions regarding electronic filing should contact the Secretary ((202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: December 5, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–31544 Filed 12–7–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–461 (Third Review)]

Gray Portland Cement and Cement Clinker From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on gray Portland cement and cement clinker from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on May 2, 2011 (76 FR 24519) and determined on August 5, 2011 that it would conduct an expedited review (76 FR 50252, August 12, 2011).

The Commission transmitted its determination in this review to the Secretary of Commerce on December 2, 2011. The views of the Commission are contained in USITC Publication 4281 (December 2011), entitled *Gray Portland Cement and Cement Clinker from Japan: Investigation No. 731–TA–461 (Third Review).*

By order of the Commission.

Issued: December 2, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–31491 Filed 12–7–11; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Dean A. Pinkert did not participate in this review.

DEPARTMENT OF JUSTICE

[OMB Number 1122–0013]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested; Semi-Annual Progress Report for the Rural Domestic Violence and Child Victimization Enforcement Grant Program

ACTION: 30-Day notice of information collection under review.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 185, page 59160 on September 23, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk

Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Rural Domestic Violence and Child Victimization Enforcement Grant Program

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0013. U.S. Department of Justice, Office on Violence Against Women (Rural Program)

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 165 grantees of the Rural Program. The primary purpose of the Rural Program is to enhance the safety of victims of domestic violence, dating violence, sexual assault, stalking, and child victimization by supporting projects uniquely designed to address and prevent these crimes in rural jurisdictions. Grantees include States, Indian tribes, local governments, and nonprofit, public or private entities, including tribal nonprofit organizations, to carry out programs serving rural areas or rural communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 165 respondents (Rural Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Rural Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 330 hours, that is 165 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–31537 Filed 12–7–11; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities: Revision of a Previously Approved Collection, With Change; Comments Requested COPS Application Package

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 191, page 61114 on October 3, 2011, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ashley Hoornstra, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a previously approved collection, with change.

(2) *Title of the Form/Collection:* COPS Application Package.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked complete the COPS Application Package. The COPS Application Package includes all of the necessary forms and instructions that an applicant needs to review and complete to apply for COPS grant funding. The package is used as a

standard template for all COPS programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 4,200 respondents annually will complete the form within 9.4 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 39,500 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–31535 Filed 12–7–11; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 2, 2011, a proposed Consent Decree (''Decree'') in *United States* v. *Jack M. Levine & Son, Inc.,* Civil Action No. 1:11–cv–00480–CAB, was lodged with the United States District Court for the Northern District of Ohio.

In this action the United States, on behalf of the U.S. Environmental Protection Agency (''U.S. EPA''), sought penalties and injunctive relief under the Clean Air Act (''CAA'') against Jack M. Levine & Son, Inc. (''Defendant'') relating to Defendant's Cleveland, Ohio facility (''Facility''). The Complaint alleged that Defendant violated Section 608(b)(1) of the CAA, 42 U.S.C. 7671g(b)(1) (National Recycling and Emission Reduction Program), and the regulations promulgated thereunder, 40 CFR Part 82, Subpart F, by failing to follow the requirement to recover or verify recovery of refrigerant from appliances it accepts for disposal. The Consent Decree provides for a civil penalty of $3,500 based upon ability to pay. The Decree also requires Defendant to implement the following measures at the Facility: (1) Purchase equipment to recover refrigerant or contract for such services and provide for such recovery at no additional cost; (2) no longer accept small appliances, motor vehicle air conditioners (''MVACs''), or MVAC-like appliances with cut lines unless the supplier can provide appropriate written verification (*e.g.,* that all refrigerant that had not leaked previously was properly evacuated); (3) require its suppliers to use the verification statement provided in Appendix A that contains the information required by the regulations, unless it has an existing written agreement with that supplier regarding verification; and (4) keep a refrigerant recovery log to document details regarding refrigerant that is recovered by Defendant in the form provided in Appendix B.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Jack M. Levine & Son, Inc.,* D.J. Ref. 90–5–2–1–09789. The Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 801 West Superior Avenue, Suite 400, Cleveland, OH 44113 (contact Assistant U.S. Attorney Steven Paffilas (216) 622–3698)) and at U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–31486 Filed 12–7–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 2, 2011, a proposed Consent Decree in United States v. Rentech Nitrogen, LLC, Civil Action No. 3:11–CV–50358, was lodged with the United States District Court for Northern District of Illinois.

The Consent Decree would resolve claims for injunctive relief and the assessment of civil penalties asserted by the United States (Plaintiff), against Rentech Nitrogen, LLC (Defendant) pursuant to Sections 113(b) and 167 of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) and 7477.

Defendant produces nitric acid, which is used in the production of ammonium nitrate and other fertilizers and explosives. The nitric acid process results in the emissions of regulated air pollutants, including nitrogen oxides (''NO_X''). The Plaintiff's complaint, filed concurrently with the Consent Decree, alleges that Defendant violated the Prevention of Significant Deterioration (''PSD'') provisions of the CAA, 42 U.S.C. 7470–7492, and the implementing regulations at 40 CFR part 52; the New Source Performance Standards (''NSPS'') provisions of the CAA, 42 U.S.C. 7411, and the implementing regulations at 40 CFR part 60, subpart G; Title V of the CAA, 42 U.S.C. 7661 *et seq.;* and the State Implementation Plan for the State of Illinois promulgated pursuant to Section 110 of the CAA, 42 U.S.C. 7410, to the extent it incorporates and/or implements the above-listed federal requirements. Specifically, the complaint alleges that Defendant operated a nitric acid plant since inception without a required PSD permit and without using the best available control technology (''BACT'') required under the PSD regulatory framework. Additionally, the complaint alleges that Defendant's Title V operating permit is deficient for the same reason. Finally, the complaint alleges that Defendant exceeded emission limits for NO_X, violating the NSPS.

The Consent Decree would require Defendants to achieve BACT level emissions for NO_X, comply with the Nitric Acid NSPS, and incorporate these requirements into its Title V permit. The Consent Decree would also provide for a civil penalty of $108,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comment relating to the Consent Decree.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Rentech Nitrogen, LLC,* D.J. Ref. No. 90–5–2–1–09773/1.

The Consent Decree may be examined at the United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.50 for a copy of the complete Consent Decree (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–31520 Filed 12–7–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act

Notice is hereby given that on December 1, 2011, a proposed consent decree in *United States* v. *E.I. DuPont de Nemours and Company* (''DuPont''), Civil Action No. 1:11–7003, was lodged with the United States District Court for the District of New Jersey.

In this action the United States sought civil penalties and injunctive relief to address alleged violations of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6901–92k, at DuPont's Secure Environmental Treatment Facility in Deepwater, New Jersey. The complaint alleges that DuPont returned hazardous waste to a facility not permitted to receive it, that DuPont failed to comply with an information request from the U.S. Environmental Protection Agency, and that DuPont stored railcars containing hazardous waste without a permit and without secondary containment measures. The consent decree requires DuPont to pay a civil penalty of $250,000 and, among other things, to store railcars containing hazardous waste accepted at the facility after March 30, 2012 only in accordance with the requirements of the RCRA, and to empty all railcars containing hazardous waste that were accepted prior to March 30, 2012 by June 1, 2012.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *DuPont,* D.J. Ref. 90–5–1–1–09300/1.

The consent decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–31448 Filed 12–7–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Safety and Health Act Variance Regulations

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Occupational Safety and Health Act Variance Regulations,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 9, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/*Fax:* (202) 395–6881 (these are not toll-free numbers), *email: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Act allows covered employers to apply for four different types of variances from the requirements of OSHA standards. Employers submit variance applications that specify alternative means of complying with the requirements of applicable OSHA standards to the Agency. The OSHA has developed a proposed information collection for four different optional-use forms (OSHA Forms 5–30–1, 5–30–2, 5–30–3, and 5–30–4) that employers might use as templates in applying for variances. While use of the forms would be optional, employers are required to submit an application that includes all elements specified in regulations 29 CFR part 1905 in order to receive consideration for a variance.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is

generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on February 8, 2010 (75 FR 6220).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201109–1218–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Heath Administration (OSHA).

Title of Collection: Occupational Safety and Health Act Variance Regulations.

ICR Reference Number: 201109–1218–001.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 12.

Total Estimated Number of Responses: 12.

Total Estimated Annual Burden Hours: 366.

Total Estimated Annual Other Costs Burden: $0.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–31439 Filed 12–7–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''National Longitudinal Survey of Youth 1979.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 6, 2012.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to (202) 691–5111 this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, (202) 691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1979 (NLSY79) is a representative national sample of persons who were born in the years 1957 to 1964 and lived in the U.S. in 1978. These respondents were ages 14 to 22 when the first round of interviews began in 1979; they will be ages 47 to 56 when the planned twenty-fifth round of interviews is conducted in 2012 and 2013. The NLSY79 was conducted annually from 1979 to 1994 and has been conducted biennially since 1994. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

In addition to the main NLSY79, the biological children of female NLSY79 respondents have been surveyed since 1986. A battery of child cognitive, socio-emotional, and physiological assessments has been administered biennially since 1986 to NLSY79 mothers and their children. Starting in 1994, children who had reached age 15 by December 31 of the survey year (the Young Adults) were interviewed about their work experiences, training, schooling, health, fertility, self-esteem, and other topics. Funding for the NLSY79 Child and Young Adult surveys is provided by the Eunice Kennedy Shriver National Institute of Child Health and Human Development through an interagency agreement with the BLS and through a grant awarded to researchers at the Ohio State University Center for Human Resource Research (CHRR). The interagency agreement funds data collection for children and young adults up to age 20. The grant funds data collection for young adults age 21 and older. The BLS contracts with the National Opinion Research Center (NORC) at the University of Chicago to conduct the NLSY79 and associated Child and Young Adult surveys.

One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY79, members of the academic community publish articles and reports based on NLSY79 data for the DOL and other funding agencies. To date, more than 1,800 articles examining

NLSY79 data have been published in scholarly journals. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Current Action

The BLS seeks approval to conduct round 25 of the NLSY79 and the associated surveys of biological children of female NLSY79 respondents. The NLSY79 Child Survey involves three components:

- The Mother Supplement is administered to female NLSY79 respondents who live with biological children under age 15. This questionnaire will be administered to about 560 women, who will be asked a series of questions about each child under age 15. On average, these women each have 1.12 children under age 15, for a total of approximately 630 children.
- The Child Supplement involves aptitude testing of about 615 children under age 15.
- The Child Self-Administered Questionnaire is administered to approximately 490 children ages 10 to 14.

The Young Adult Survey will be administered to young adults age 15 and older who are the biological children of female NLSY79 respondents. These young adults will be contacted regardless of whether they reside with their mothers. Members of the Young Adult sample are contacted for interviews every other round once they reach age 30. The NLSY79 Young Adult Survey involves two components:

- Interviews with approximately 1,390 young adults ages 15 to 20.
- Interviews with approximately 4,530 young adults age 21 and older.

During the field period, about 200 main NLSY79 interviews will be validated to ascertain whether the interview took place as the interviewer reported and whether the interview was done in a polite and professional manner.

The round 25 questionnaire reflects a number of content changes recommended by experts in various social science fields. The round 25 main NLSY79 questionnaire introduces three new questions on childhood health and four new questions on childhood adversity to be asked of all respondents at the end of the health section. The questions on childhood health ask respondents for an overall rating of their childhood health and whether they had significant hospitalizations or illnesses as children. The rationale for including these questions is that early-childhood health experiences may help to predict adult health outcomes. The four questions on childhood adversity ask respondents whether they were raised in environments characterized by mental illness, alcoholism, physical violence, and parental affection. These questions have been found in other surveys to predict obesity and other adult health outcomes. The round 25 questionnaire includes a set of eight questions designed to identify respondents who have experienced a serious head injury or suffered a loss of smell. Traumatic head injury and loss of smell have been linked to subsequent dementia, and these questions will augment other measures of cognitive functioning already collected in the NLSY79. The round 25 questionnaire includes new questions on wills, trusts, and long-term care insurance. Round 25 includes questions on financial literacy and practices, which ask respondents about their preparedness for financial emergencies, their ability to monitor financial matters, and their knowledge of financial concepts. Round 25 also includes questions about assets, which have been asked in several previous rounds of the NLSY79, most recently in round 23.

III. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 1979.

OMB Number: 1220–0109.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (in minutes)	Estimated total burden (in minutes)
NLSY79 Round 25 Pretest	100	Biennially	100	60	100
NLSY79 Round 25 Main Survey	7,550	Biennially	7,550	60	7,550
Round 25 Validation Interviews	200	Biennially	200	6	20
Mother Supplement (Mothers of children under age 15)	[1] 560	Biennially	630	20	210
Child Supplement (Under age 15)	615	Biennially	615	31	318
Child Self-Administered Questionnaire (Ages 10 to 14)	490	Biennially	490	30	245
Young Adult Survey (Ages 15 to 20)	1,390	Biennially	1,390	51	1,182
Young Adult Survey, Grant component (Age 21 and older)	4,530	Biennially	4,530	56	4,228

Form	Total respondents	Frequency	Total responses	Average time per response (in minutes)	Estimated total burden (in minutes)
Totals [2]	14,185	.....	15,505	.....	13,853

[1] The number of respondents for the Mother Supplement (560) is less than the number of responses (630) because mothers are asked to provide separate responses for each of the biological children with whom they reside. The total number of responses for the Mother Supplement (630) is more than the number for the Child Supplement (615) because the number of children completing the Child Supplement is lower due to age restrictions and nonresponse.

[2] The total number of 14,185 respondents across all the survey instruments is a mutually exclusive count that does not include: (1) the 200 re-interview respondents, who were previously counted among the 7,550 main survey respondents, (2) the 560 Mother Supplement respondents, who were previously counted among the main survey respondents, and (3) the 490 Child SAQ respondents, who were previously counted among the 615 Child Supplement respondents.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 5th day of December 2011.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2011–31525 Filed 12–7–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0196]

Standard on Vinyl Chloride; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Vinyl Chloride (29 CFR 1910.1017).

DATES: Comments must be submitted (postmarked, sent, or received) by February 6, 2012.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0196, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0196) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce, to the maximum extent feasible, unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies a number of paperwork requirements. The following is a brief description of the collection of information requirements contained in the Vinyl Chloride (VC) Standard.

(A) Exposure Monitoring (§ 1910.1017(d) and § 1910.1017(n))

Paragraph 1910.1017(d)(2) requires employers to conduct exposure monitoring at least quarterly if the results show that worker exposures are above the permissible exposure limit (PEL), while those exposed at or above the action level (AL) must be monitored no less than semiannually. Paragraph (d)(3) requires that employers perform additional monitoring whenever there has been a change in VC production, processes or control that may result in an increase in the release of VC.

Paragraph 1910.1017(n) requires employers to inform each worker of their exposure-monitoring results within 15 working days after the employer receives these results. Employers may notify workers either individually in writing or by posting the monitoring results in an appropriate location that is accessible to the workers. In addition, if the exposure-monitoring results show that a worker's exposure exceeds the PEL, the employer must inform the exposed worker of the corrective action the employer is taking to prevent such overexposure.

(B) Written Compliance Plan (§§ 1910.1017(f)(2) and (f)(3))

Paragraph (f)(2) requires employers whose engineering and work practice controls cannot sufficiently reduce worker VC exposures to a level at or below the PEL to develop and implement a plan for doing so. Paragraph (f)(3) requires employers to develop this written plan and provide it upon request to OSHA for examination and copying. These plans must be updated annually.

(C) Respiratory Program (§ 1910.1017(g)(2))

When respirators are required, the employer must establish a respiratory protection program in accordance with 1910.134, paragraphs (b) through (d) (except (d)(1)(iii) and (d)(3)(iii)(B)(1) and (2)) and (f) through (m). Paragraph 1910.134(c) requires the employer to develop and implement a written respiratory protection program with worksite-specific procedures and elements for respirator use. The purpose of these requirements is to ensure that employers establish a standardized procedure for selecting, using, and maintaining respirators for each workplace where respirators will be used. Developing written procedures ensures that employers develop a respirator program that meets the needs of their workers.

(D) Emergency Plan (§ 1910.1017(i))

Employers must develop a written operational plan for dealing with emergencies; the plan must address the storage, handling, and use of VC as a liquid or compressed gas. In the event of an emergency, appropriate elements of the plan must be implemented. Emergency plans must maximize workers' personal protection and minimize the hazards of an emergency.

(E) Medical Surveillance (§ 1910.1017(k))

Paragraph (k) requires employers to develop a medical surveillance program for workers exposed to VC in excess of the Action Level. Examinations must be provided in accordance with this paragraph at least annually. Employers must also obtain, and provide to each worker, a copy of a physician's statement regarding the worker's suitability for continued exposure to VC, including use of protective equipment and respirators, if appropriate.

(F) Communication of VC Hazards (§ 1910.1017(l))

Under paragraph 1910.1017(l)(2), the employer must post warning signs outside regulated areas and areas containing hazardous operations, or where emergency conditions exist. Posting warning signs serves to warn workers that they are entering a hazardous area. Such signs warn workers that entry is permitted only if they are authorized to do so, and there is a specific need to enter the area. Warning signs also supplement the training workers receive under this standard.

(G) Recordkeeping (§ 1910.1017(m))

Employers must maintain worker exposure and medical records. Medical and monitoring records are maintained principally for worker access, but are designed to provide valuable information to both workers and employers. The medical and monitoring records required by this standard will aid workers and their physicians in determining whether or not treatment or other interventions are needed for VC exposure. The information also will enable employers to better ensure that workers are not being overexposed; such information may alert the employer that steps must be taken to reduce VC exposures.

Exposure records must be maintained for at least 30 years, and medical records must be kept for the duration of employment plus 20 years, or for a total of 30 years, whichever is longer. Records must be kept for extended periods because of the long latency period associated with VC-related carcinogenesis (i.e., cancer). Cancer often cannot be detected until 20 or more years after the first exposure to VC.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting an adjustment decrease in burden hours from 711 to 549 hours, a 162 burden hour reduction. The reduction is a result of fewer VC and Polyvinyl Chloride (PVC) establishments subject to reporting requirements under this standard. There is also a decrease in total annual cost from $48,928 to $40,888 (a decrease of $8,040). This decrease is a result of a decrease in the estimated number of workers to be exposed above to VC and PVC facilities is approximately 3,968, a decrease of 1,368 workers. The currently approved ICR estimates a total of 32 establishments. This proposed ICR estimates a total of 26 establishments. The Agency will summarize any comments submitted in response to this notice and will include this summary in its request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Standard on Vinyl Chloride (29 CFR 1910.1017).

OMB Number: 1218–0010.

Affected Public: Business or other for-profits.

Number of Respondents: 26.

Frequency: On occasion; annually.

Total Responses: 925.

Average Time per Response: Varies from 5 minutes (.08 hour) for employers to maintain records to 12 hours for employers to update their compliance plans.

Estimated Total Burden Hours: 549.

Estimated Cost (Operation and Maintenance): $40,888

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2011–0196). You may supplement electronic

submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and OSHA docket number, so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as Social Security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC on December 2, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–31492 Filed 12–7–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0860]

The 13 Carcinogens Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the 13 Carcinogens Standard (29 CFR 1910.1003).

DATES: Comments must be submitted (postmarked, sent, or received) by February 6, 2012.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0860, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0860) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the 13 Carcinogens Standard protect workers from the adverse health effects that may result from their exposure to the 13 carcinogens. The following is a brief description of the collection of information requirements contained in the 13 Carcinogens Standard: Establishing and implementing a medical surveillance program for

workers assigned to enter regulated areas; informing workers of their medical examination results; and providing workers with access to their medical records. Further, employers must retain worker medical records for specified time periods and make them available upon request to OSHA and NIOSH.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment decrease in burden hours from 1,598 to 1,472 (a total decrease of 126 hours). The decrease is due to a correction made to the burden hour time estimates associated with reviewing and updating existing decontamination procedures (from one hour to 15 minutes) and with reviewing, updating and posting existing instructions for the entry and exit procedures for regulated areas, and of existing emergency procedures (from one and a quarter hours (1.25 hours) to 15 minutes). The agency estimates an increase in both the number of establishments (from 93 to 95 establishments) and the number of exposed workers (from 643 to 657).

Type of Review: Extension of a currently approved collection.

Title: 13 Carcinogens Standard (29 CFR 1910.1003).

OMB Number: 1218–0085.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Number of Respondents: 95.

Frequency: On occasion; Annually.

Total Responses: 2,162.

Average Time per Response: Time per response ranges from approximately 5 minutes (for employers to maintain records) to 2 hours (for worker medical surveillance).

Estimated Total Burden Hours: 1,472.

Estimated Cost (Operation and Maintenance): $99,207.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0860). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the OSHA docket number, so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC on December 2, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–31494 Filed 12–7–11; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board

DATE AND TIME: Monday, December 12, 2011 at 2:00 p.m., Tuesday, December 13 at 8:00 a.m., and Wednesday, December 14, at 8:00 a.m.

PLACE: These meetings will be held at the National Science Foundation, 4201Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must contact the Board Office [call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference and provide name and organizational affiliation. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES: Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov*, (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov*, (703) 292–7750.

STATUS: Portions open; portions closed.

CLOSED SESSIONS:

December 12, 2011

4:00 p.m.–4:45 p.m.

December 13, 2011

9:40 a.m.–9:45 a.m.
11:15 a.m.–12 p.m.
4:45 p.m.–5 p.m.

December 14, 2011

11 a.m.–11:15 a.m.
11:15 a.m.–11:45 a.m.

OPEN SESSIONS:

December 12, 2011

2 p.m.–4 p.m.

December 13, 2011

8 a.m.–8:20 a.m.
8:20 a.m.–9 a.m.
9 a.m.–9:40 a.m.
9:45 a.m.–11:15 a.m.
1:15 p.m.–2:30 p.m.
2:30 p.m.–3:30 p.m.
3:30 p.m.–4:45 p.m.

December 14, 2011

8 a.m.–8:45 a.m.
8:45 a.m.–9:45 a.m.
9:45 a.m.–10:45 a.m.
11:45 a.m.–12:15 p.m.
1:15 p.m.–3 p.m.

MATTERS TO BE DISCUSSED:

Monday, December 12, 2011

Committee on Programs and Plans (CPP)

Open Session: 2 p.m.–4 p.m.

- Approval of Open CPP Minutes for July 2011.
- Committee Chairman's Remarks: *CY 2012 Schedule of Action and Information Items for NSB Review; CPP Task Force on Unsolicited Mid-Scale Research—Charge Revision.*
- Discussion Item: Status of CPP Program Portfolio Planning.
- NSB Information Items: Update on Polar Contracts, Update Subcommittee on Recompetition of NSF Facilities.
- NSB Information Item & Discussion: NSF High Performance Computing Strategy.
- NSB Briefing: Update on Changes in BIO Process in Receipt of Proposals.

Committee on Programs and Plans (CPP)

Closed Session: 4 p.m.–4:45 p.m.

- Committee Chairman's Remarks
- Approval of Closed CPP Minutes for July 2011 and October 2011
- NSB Action: Operation of the International Astronomy Observatory

Tuesday, December 13, 2011

Plenary Board Meeting

Open Session 8:00 a.m.–8:20 a.m.

- Chairman's Introduction

CPP Task Force on Unsolicited Mid-Scale Research (MS)

Open Session 8:20 a.m.–9 a.m.

- Approval of the September 13, 2011 Task Force Meeting minutes.
- Presentation and discussion of the NSF mid-scale award data analysis.
- Discussion of the revised MS Task Force report outline.
- Update on the MS Task Force customer satisfaction survey.

CSB Subcommittee on Facilities (SCF)

Open Session: 9 a.m.–9:40 a.m.

- Chairman's Remarks.
- Approval of Minutes from recent teleconferences: October 12, 2011, November 14, 2011.
- Final Approval of the Mid-scale Instrumentation Report to Congress. Planning discussion for upcoming SCF meetings in February and May 2012.
- Chairman's Closing Remarks.

CSB Subcommittee on Facilities (SCF)

Closed Session: 9:40 a.m.–9:45 a.m.

- Chairman's Remarks.
- Approval of minutes from the July 29, 2011 closed meeting.

Committee on Strategy and Budget (CSB)

Open Session: 9:45 a.m.–11:15 a.m.

- Committee Chairman's Remarks.
- SCF Update and Report to Congress.
- Update on FY 2012 Budget.
- Strategic Planning.
- Closing Remarks.

Committee on Strategy and Budget (CSB)

Closed Session: 11:15 a.m.–12 p.m.

- Approval of the August 29, 2011 and September 6, 2011 Teleconference Minutes.
- FY 2012 Transfer Authority.
- Update on NSF FY 2013 Budget Development.
- Policies and planning for budget processes for FY 2014 and beyond.

Committee on Education and Human Resources (CEH)

Open Session: 1:15 p.m.–2:30 p.m.

- Approval of July 2011 minutes.
- Update on the National Science and Technology Council Committee on STEM—Inventory of Federal STEM education activities and 5-year strategic Federal STEM education plan.
- Discussion of the NSF STEM education research portfolio: getting from theory to scale.

Task Force on Merit Review (MR)

Open Session: 2:30 p.m.–3:30 p.m.

- Approval of minutes from the July 28, 2011 meeting, August 24, 2011 teleconference, September 13, 2011 meeting.
- Task Force Chairmen's Remarks.
- Discussion of Final Report and Recommendations.
- Task Force Chairmen's Closing Remarks.

Committee on Audit and Oversight (A&O)

Open Session: 3:30 p.m.–4:45 p.m.

- Approval of Minutes of the July 28, 2011 Open Session.
- Committee Chairman's Opening Remarks.
- Inspector General's Update.
- FY 2011 Financial Statement Audit Report.
- Chief Financial Officer's Update.
- Chief Information Officer's Report.
- Human Capital Management Update.
- OIG FY 2012 Audit Plan.
- Update on Procedures re Personally Identifiable and Sensitive Information.
- Committee Chairman's Closing Remarks.

Committee on Audit and Oversight (A&O)

Closed Session: 4:45 p.m.–5:00 p.m.

- Approval of Minutes of the July 28, 2011 Meeting Closed Session.
- Committee Chair's Opening Remarks.
- Procurement activities.

Wednesday, December 14, 2011

Subcommittee on Polar Issues (SOPI)

Open Session: 8:00 a.m.–8:45 a.m.

- Approval of Open Session Minutes, July 2011.
- Committee Chairman's Remarks.
- Director's Remarks.
  - Briefing on Blue Ribbon Panel.
  - Other Committee Business.
- Update on Icebreaker Support for this year.
- Discussion on Long-term Plan for Icebreaker Support.

CSB Task Force on Data Policies (DP)

Open Session: 8:45 a.m.–9:45 a.m.

- Chairman's Remarks.
- Approval of September 13, 2011, meeting minutes.
- Discussion and Comment on the Revised Recommendations.
- Closing remarks from the Chairman.

Committee on Science & Engineering Indicators (SEI)

Open Session: 9:45 a.m.–10:45 a.m.

- Approval of July minutes.
- Committee Chairman's Remarks.
- Progress Report on *Science and Engineering Indicators 2012.*
- *Science and Engineering Indicators 2012* Companion Piece.

• *Science and Engineering Indicators 2012* Rollout.
• Chairman's Summary.

Plenary Board Meeting

Executive Closed Session: 11 a.m.–11:15 a.m.

• Approval of Executive Closed Session Minutes, September 13, 2011.
• Candidate Sites for 2012 Board Retreat and Off-Site Meeting.
• Approval of Honorary Award Recommendations.

Plenary Board Meeting

Closed Session: 11:15 a.m.–11:45 a.m.

• Approval of Closed Session Minutes, July 2011.
• Approval of Closed Session Minutes, September 6, 2011.
• Awards and Agreements (Resolutions).
• Closed Committee Reports.

Plenary Open

Open Session: 11:45 a.m.–12:15 p.m.

• Presentation—''Data Driven Discovery in Science.''

Plenary Open

Open Session: 1:15 p.m.–3:00 p.m.

• Approval of Open Session Minutes.
• Chairman's Report.
• Director's Report.
• Open Committee Reports.

Meeting Adjourns: 3:00 p.m.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2011–31660 Filed 12–6–11; 4:15 pm]

BILLING CODE 7555–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collections for OMB Review; Comment Request; Reportable Events; Notice of Failure To Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of two collections of information under PBGC's regulation on Reportable Events and Certain Other Notification Requirements (OMB control numbers 1212–0013 and 1212–0041, expiring March 31, 2012). This notice informs the public of PBGC's intent and solicits public comment on the collections of information.

DATES: Comments must be submitted by February 6, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

• *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the Web site instructions for submitting comments.
• *Email: paperwork.comments@pbgc.gov.*
• *Fax:* (202) 326–4224.
• *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *www.pbgc.gov.*

Copies of the collections of information and comments may be obtained without charge by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; visiting the Disclosure Division; faxing a request to (202) 326–4042; or calling (202) 326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–(800) 877–8339 and ask to be connected to (202) 326–4040.) The reportable events regulation, forms, and instructions are available at *www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: James Bloch, Program Analyst, Legislative and Policy Division, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; (202) 326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–(800) 877–8339 and ask to be connected to (202) 326–4024.)

SUPPLEMENTARY INFORMATION: On November 23, 2009, PBGC published (at 74 FR 61248) a proposed rule to amend the reportable events regulation to accommodate changes to the variable-rate premium (VRP) rules made pursuant to the Pension Protection Act of 2006 (PPA 2006). The rule also proposed to eliminate most automatic waivers and filing extensions, create two new reportable events based on provisions in PPA 2006, and make other changes to the reportable events regulation as well as conforming changes. Public comment on the proposed rule was directed primarily at the proposed elimination of the waivers and extensions and was generally negative. In response to the comments and in the spirit of Executive Order 13563 on Improving Regulation and Regulatory Review, PBGC plans to issue a new proposal that will more effectively target troubled plans and sponsors while reducing burden for those that are financially sound. PBGC is requesting OMB to extend approval of the existing information collections since current approval will expire in March 2012.

Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and employer events to PBGC. The reporting requirements give PBGC notice of events that indicate plan or employer financial problems. PBGC uses the information provided in determining what, if any, action it needs to take. For example, PBGC might need to institute proceedings to terminate a plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in PBGC's losses.

Section 303(k) of ERISA and section 430(k) of the Internal Revenue Code of 1986 (Code) impose a lien in favor of an underfunded single-employer plan that is covered by the termination insurance program under title IV of ERISA if (1) Any person fails to make a contribution payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds $1 million. (For this purpose, a plan is underfunded if its funding target attainment percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons that are liable for required contributions (*i.e.,* a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. ERISA and the Code require persons committing payment failures to notify PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds $1 million.

The provisions of section 4043 of ERISA and of sections 303(k) of ERISA and 430(k) of the Code have been

implemented in PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043). Subparts B and C of the regulation deal with reportable events, and subpart D deals with failures to make required contributions.

PBGC has issued Forms 10 and 10-Advance and related instructions under subparts B and C (approved under OMB control number 1212–0013) and Form 200 and related instructions under subpart D (approved under OMB control number 1212–0041). OMB approval of both of these collections of information expires March 31, 2012. PBGC intends to request that OMB extend its approval for three years, with minor changes. 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.

PBGC estimates that it will receive 1,020 reportable event notices per year under subparts B and C of the reportable events regulation using Forms 10 and 10-Advance and that the average annual burden of this collection of information is 5,370 hours and $816,000. PBGC estimates that it will receive 110 notices of failure to make required contributions per year under subpart D of the reportable events regulation using Form 200 and that the average annual burden of this collection of information is 660 hours and $101,000.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections 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.

Issued in Washington, DC, this 1st day of December, 2011.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–31417 Filed 12–7–11; 8:45 am]

BILLING CODE 7709–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Standard Form 1153: Claim for Unpaid Compensation of Deceased Civilian Employee

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: Merit System Audit and Compliance, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0234, Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on September 2, 2011 at Volume 76 FR 54809 to allow for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comment. The Office of Management and Budget is particularly interested in comments that:

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, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 9, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Classification and Pay Claims Program Manager, U.S. Office of Personnel Management, Merit System Audit and Compliance, Room 6484, 1900 E Street NW., Washington, DC 20415, or sent via electronic mail to *robert.hendler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee, is used to collect information from individuals who have been designated as beneficiaries of the unpaid compensation of a deceased Federal employee or who believe that their relationship to the deceased entitles them to receive the unpaid compensation of the deceased Federal employee. OPM needs this information to adjudicate the claim and properly assign a deceased Federal employee's unpaid compensation to the appropriate individual(s). The proposed revision to the expiring ICR responds to suggestions received from users. Part B, 1. Is changed to clarify that a beneficiary may include a legal entity or estate as provided for in 5 CFR 178.203© and to provide instructions if more room is needed to list designated beneficiaries.

Analysis

Agency: Merit System Audit and Compliance, Office of Personnel Management.

Title: Standard Form 1153, Claim for Unpaid Compensation of Deceased Civilian Employee.

OMB Number: 3206–0234.

Frequency: Annually.

Affected Public: Individuals.

Number of Respondents: 3,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 750 hours.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. 2011–31469 Filed 12–7–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: OPM 1496A, Application for Deferred Retirement (For Persons Separated on or After October 1, 1956), 3206–0121

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0121, Application for Deferred Retirement (For persons separated on or after October 1, 1956). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on September 2, 2011 at Volume 76 FR 54811 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 9, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: OPM 1496A, is used by eligible former Federal employees to apply for a deferred Civil Service annuity.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Deferred Retirement (For persons separated on or after October 1, 1956).

OMB Number: 3206–0121.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 2,800.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 2,800.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–31471 Filed 12–7–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0173, Designation of Beneficiary (FERS), SF 3102

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0173, Designation of Beneficiary (FERS), SF 3102. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 7, 2011 at Volume 76 FR 32996 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until January 9, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to

oira_submission@omb.eop.gov or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Standard Form 3102, Designation of Beneficiary (FERS), is used by an employee or an annuitant covered under the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Designation of Beneficiary (FERS).

OMB Number: 3206–0173.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 3,888.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 972.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–31472 Filed 12–7–11; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–74; Order No. 1018]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Spring Lake, Minnesota post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: December 1, 2011: Administrative record due (from Postal Service);

December 27, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene.

See the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 16, 2011, the Commission received a petition for review of the Postal Service's determination to close the Spring Lake post office in Spring Lake, Minnesota. The petition for review was filed by Sally Sedgwick (Petitioner) and is postmarked November 8, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–74 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 21, 2011.

Categories of issues apparently raised. Petitioner contends that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)); and (4) there are factual errors contained in the Final Determination.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 27, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, James F. Callow is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 16, 2011	Filing of Appeal.
December 1, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 1, 2011	Deadline for the Postal Service to file any responsive pleading.
December 27, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
December 21, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 10, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 25, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 1, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 7, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–31538 Filed 12–7–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65864; File No. SR–NYSEAMEX–2011–90]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend NYSE Rule 104(a)(1)(A) To Reflect That Designated Market Maker Unit Quoting Requirements Are Based on Consolidated Average Daily Volume

December 2, 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 18, 2011, NYSE Amex LLC (''NYSE Amex'' or the ''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 Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 104(a)(1)(A) to reflect that, when determining the specific percentage quoting requirement applicable to a Designated Market Maker unit (''DMM unit''), volume for the particular security is based on consolidated average daily volume (''CADV''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 Exchange proposes to amend NYSE Amex Equities Rule 104(a)(1)(A)[4] to reflect that, when determining the specific percentage quoting requirement applicable to a DMM unit,[5] volume for the particular security is based on CADV.[6]

A DMM unit must maintain a bid or an offer at the National Best Bid and National Best Offer (''inside'') a minimum of either 5% or 10% of the trading day, depending on trading volume for the security. NYSE Amex Equities Rule 104(a)(1)(A) currently reflects for one of the calculations, but not the other, that, when determining the specific percentage quoting requirement applicable to a DMM unit, trading volume for the particular security is based on volume ''on the Exchange.'' The reference to ''on the Exchange'' was inadvertently included in the Exchange's proposal to implement the NMM Pilot, which was based on the same language that was approved by the Commission in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] NYSE Amex Equities Rule 104 is currently in effect during a pilot period (''New Market Model Pilot'' or ''NMM Pilot''). The Exchange adopted the NMM Pilot pursuant to its merger with the New York Stock Exchange LLC (''NYSE''). *See* Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (the ''NYSE Amex NMM Approval''). *See also* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (the ''NYSE NMM Approval''). The Exchange has extended the operation of the NMM Pilot several times and it is currently set to expire on January 31, 2012. *See* Securities Exchange Act Release No. 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR–NYSEAmex–2011–43).

[5] *See* NYSE Amex Equities Rule 98(b)(2). ''DMM unit'' means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) Has been approved by NYSE Regulation pursuant to section (c) of NYSE Amex Equities Rule 98, (ii) is eligible for allocations under NYSE Amex Equities Rule 103B as a DMM unit in a security listed or traded on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit.

[6] Given the multitude of venues where equity securities trade, CADV is more reflective of the trading characteristics of a security than the volume on any single market.

NYSE NMM Approval.[7] In this regard, and as reflected in the NYSE NMM Approval, the Exchange intended that trading volume for a particular security would be based on CADV when determining the specific percentage quoting requirement applicable to a DMM unit.[8]

As proposed, NYSE Amex Equities Rule 104(a)(1)(A) would reflect that, with respect to maintaining a continuous two-sided quote with reasonable size, DMM units must maintain a bid or an offer at the inside at least 10% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume of less than one million shares, and at least 5% for securities in which the DMM unit is registered with a consolidated average daily volume equal to or greater than one million shares.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed change would align the text of NYSE Amex Equities Rule 104(a)(1)(A) with the previously approved manner by which to measure trading volume of a particular security, as set forth in NYSE Amex Equities Rule 103B, and consistent with the NYSE NMM Approval order, which also discussed the use of CADV, and not just trading volume on the Exchange, for purposes of measuring the quoting requirement applicable to a DMM unit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the Exchange's Rules to immediately reflect the fact that DMM unit quoting requirements are calculated based on CADV rather than trading volume on the Exchange. Because CADV is more reflective of the trading characteristics of a security than the volume on any single market, investors will benefit from implementation of the proposed rule change without undue delay. Therefore, the Commission designates the proposal 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–NYSEAMEX–2011–90 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–2011–90. 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

[7] NYSE has filed a similar proposal to similarly change the text of NYSE Rule 104(a)(1)(A) from volume ''on the Exchange'' to ''consolidated'' volume.

[8] *See* NYSE NMM Approval at 64381, which states that ''[f]or securities that have a consolidated average daily volume of less than one million shares per calendar month, a DMM Unit must maintain a bid or an offer at the NBBO for at least 10% of the trading day (calculated as an average over the course of a calendar month). For securities that have a consolidated average daily volume of equal to or greater than one million shares per calendar month, a DMM Unit must maintain a bid or an offer at the NBBO for at least 5% or more of the trading day (calculated as an average over the courts (sic) of a calendar month.'' *See also* NYSE NMM Approval at n.71. A subsequent NYSE rule change similarly noted that, ''with respect to maintaining a continuous two-sided quote with reasonable size, DMMs must maintain a bid or offer at the NBBO * * * at a prescribed level based on the average daily volume of the security. Securities that have a consolidated average daily volume of less than one million shares per calendar month are defined as Less Active Securities and securities that have a consolidated average daily volume of equal to or greater than one million shares per calendar month are defined as More Active Securities. For Less Active Securities, a [DMM] unit must maintain a bid or an offer at the NBBO for at least 10% of the trading day during a calendar month. For More Active Securities, a [DMM] unit must maintain a bid or an offer at the NBBO for at least 5% or more of the trading day during a calendar month.'' *See* Securities Exchange Act Release No. 58971 (November 17, 2008), 73 FR 71070 (November 24, 2008) (SR–NYSE–2008–115) at n.5. CADV is similarly used to differentiate between ''more active'' and ''less active'' securities under NYSE Amex Equities Rule 103B.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[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).

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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAMEX–2011–90 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31473 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65877; File No. SR–FINRA–2011–069]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating To Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded TBA

December 2, 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 November 22, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6730 to reduce the period to report TRACE–Eligible Asset-Backed Securities that are Agency Pass-Through Mortgage-Backed Securities traded to be announced (''TBA'') (''TBA transactions'') in two stages; FINRA Rule 6750, to provide for the dissemination of TBA transactions; FINRA Rule 7730, to establish fees for real-time TBA transaction data and historical TBA transaction data; and FINRA Rule 6730 and FINRA Rule 7730, to delete references to a pilot program that is no longer in effect and to incorporate other minor administrative, technical or clarifying changes. FINRA also proposes to establish a dissemination protocol providing that, for a TBA transaction in excess of $50 million, the size (volume) of the transaction would be displayed in disseminated TRACE data as $50 million plus.

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, the Proposed Rule Change

1. Purpose

FINRA proposes amendments to the Rule 6700 Series (the Trade Reporting and Compliance Engine (''TRACE'') rules) to provide greater transparency in transactions in Asset-Backed Securities that are TBA transactions.[3] First, FINRA proposes to amend Rule 6730 to reduce the reporting period for TBA transactions in two phases. Second, FINRA proposes to amend Rule 6750 to provide for the dissemination of information on TBA transactions in real-time (*i.e.,* immediately upon FINRA's receipt of the transaction report). Third, in Rule 7730, FINRA proposes to establish fees: (i) For a data set of real-time TRACE disseminated TBA transaction data at the same rates currently in effect for similar real-time TRACE disseminated data sets, and (ii) for a data set of historic TRACE TBA transaction data at the same rates currently in effect for similar Historic TRACE Data sets.[4] FINRA also proposes to delete references to a pilot program that is no longer in effect and make other minor technical, administrative or clarifying amendments to Rule 6730 and Rule 7730. Finally, FINRA proposes to establish a limit or ''cap'' of $50 million for disseminated TBA transactions as part of FINRA's dissemination policies and protocols, so that the actual size of a TBA transaction in excess of $50 million would be displayed as ''$50MM+'' in disseminated TRACE data.

TBA Transactions

As defined in Rule 6710(v), an Agency Pass-Through Mortgage-Backed Security means:

> a mortgage-backed security issued by an Agency or a Government-Sponsored Enterprise, for which the timely payment of principal and interest is guaranteed by an Agency or a Government-Sponsored Enterprise, representing ownership interests in a pool or pools of residential mortgage loans with the security structured to ''pass through'' the principal and interest payments made by the mortgagees to the owners of the pool(s) on a pro rata basis.[5]

As provided in Rule 6710(u), TBA means:

> ''to be announced'' and refers to a transaction in an Agency Pass-Through Mortgage-Backed Security * * * where the parties agree that the seller will deliver to the buyer an Agency Pass-Through Mortgage-Backed Security of a specified face amount and coupon from a specified Agency or Government-Sponsored Enterprise program representing a pool (or pools) of mortgages (that are not specified by unique pool number).

In a TBA transaction, the parties agree on a price for delivering a given volume of Agency Pass-Through Mortgage-Backed Securities at a specified future date. The distinguishing feature of a TBA transaction is that the actual identity of the securities to be delivered at settlement is not specified on the date of execution (''Trade Date''). Instead, the parties to the trade agree on only five general parameters of the securities to be delivered: issuer, mortgage type, maturity, coupon, and month of

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A TBA transaction is a transaction in a specific type of Asset-Backed Security, an Agency Pass-Through Mortgage-Backed Security as defined in Rule 6710(v), traded ''to be announced'' as defined in Rule 6710(u).

[4] The term Historic TRACE Data is defined in Rule 7730(f)(4).

[5] The terms Agency and Government-Sponsored Enterprise (GSE) are defined in, respectively, Rule 6710(k) and Rule 6710(n).

settlement. Together, the securitization process and the TBA market transform what is a fundamentally heterogeneous universe of individual mortgages and mortgage pools (with myriad credit and prepayment characteristics) into groups of fungible—and therefore liquid—fixed-income instruments.[6]

Reduction of TBA Transaction Reporting Period

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (''CMOs'') and real estate mortgage investment conduits (''REMICs'')) that are executed on a business day through 5 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(ii).[7] In contrast, secondary market transactions in all other TRACE–Eligible Securities must be reported within 15 minutes of the Time of Execution.[8] With certain exceptions, transaction information on such TRACE–Eligible Securities is disseminated as soon as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.[9]

In connection with proposing that TBA transactions be disseminated real-time to the public and the market, FINRA proposes to reduce the reporting period for TBA transactions to 15 minutes to provide market participants meaningful and timely price information.

However, reduction of the reporting period for TBA transactions would occur in two stages to permit industry participants to adjust policies and procedures, and to make required technological changes. First, for a pilot program of approximately 180 days duration, FINRA proposes to reduce the reporting period for TBA transactions from no later than the close of the TRACE system on Trade Date to no later than 45 minutes from the Time of Execution (''TBA Transaction Pilot Program''), as set forth in proposed Rule 6730(a)(3)(D)(i).[10] Minor exceptions to the general requirements are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d.[11] Second, after approximately 180 days, the TBA Transaction Pilot Program would expire and the reporting period would be reduced from no later than 45 minutes from the Time of Execution to 15 minutes from the Time of Execution, as set forth in proposed Rule 6730(a)(3)(D)(ii). Again, the proposed rule change includes certain limited exceptions for TBA transactions executed shortly before the TRACE system closes and when the TRACE system is closed.[12] FINRA would also incorporate cross references to the proposed reporting requirements applicable solely to TBA transactions in the reporting requirements applicable generally to Asset-Backed Securities in Rule 6730(a)(3)(A) and (B).

Dissemination of TBA Transaction Data

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly any of the Asset-Backed Securities transaction data reported to TRACE. Specifically, Rule 6750(b)(4) provides that transaction information on TRACE-Eligible Securities that are Asset-Backed Securities will not be disseminated.

However, when FINRA proposed the dissemination restrictions in Rule 6750(b)(4) regarding Asset-Backed Securities, FINRA represented that it would study the Asset-Backed Securities data after transaction reporting began. In the Commission's order approving the proposed rule change to define Asset-Backed Securities as TRACE-Eligible Securities and require reporting of Asset-Backed Securities transactions, the Commission noted FINRA's intent to study Asset-Backed Securities dissemination issues prior to making any proposal to disseminate some or all of such information, and the Commission's historical support of efforts to improve post-trade transparency in the fixed income markets:

FINRA believes that information on Asset-Backed Securities transactions should be collected and analyzed before making any decision regarding the utility of such information for transparency purposes or the consequences of dissemination on this market. FINRA has stated that, after a period of study, it would file a proposed rule change

[6] James Vichery and Joshua Wright, *TBA Trading and Liquidity in the Agency MBS Market,* Federal Reserve Bank of New York Staff Reports, no. 468 (August 2010), available at http://www.newyorkfed.org/research/staff_reports/sr468.pdf.

[7] The terms Asset-Backed Security and TRACE System Hours are defined in, respectively, Rule 6710(m) and Rule 6710(t). Rule 6730(a)(3)(B)(i) addresses reporting requirements for Asset-Backed Securities transactions executed after 5 p.m. Eastern Time on a business day, and Rule 6730(a)(3)(B)(ii) addresses reporting requirements for Asset-Backed Securities transactions executed after TRACE System Hours, or on a weekend or a holiday, or other day on which the TRACE system is not open at any time during that day.

In general, Asset-Backed Securities must be reported to TRACE under Rules 6730(a)(3)(A) and (B). Although CMOs and REMICs are Asset-Backed Securities, for certain pre-issuance transactions in CMOs and REMICs, the applicable reporting provisions are set forth in Rule 6730(a)(3)(C), and Rules 6730(a)(3)(A) and (B) do not apply.

As discussed, *infra,* FINRA proposes to renumber Rule 6730(a)(3)(A)(ii) as Rule 6730(a)(3)(A).

[8] The terms TRACE–Eligible Security and Time of Execution are defined in, respectively, Rule 6710(a) and Rule 6710(d).

[9] Currently, transaction information on all types of securities that are TRACE–Eligible Securities, except Asset-Backed Securities, is disseminated as provided in Rule 6750(a). However, FINRA does not disseminate information on a transaction in a TRACE–Eligible Security that is effected pursuant to Securities Act Rule 144A (17 CFR 239.144A) under Rule 6750(b)(1), certain transfers of proprietary securities positions between a member and another member or non-member broker-dealer where the transfer is effected in connection with a merger of one broker-dealer with the other broker-dealer or a direct or indirect acquisition of one broker-dealer by the other broker-dealer or the other broker-dealer's parent under Rule 6750(b)(2), or transactions that are List or Fixed Offering Price Transactions or Takedown Transactions under Rule 6750(b)(3). The terms List or Fixed Offering Price Transaction and Takedown Transaction are defined in, respectively, Rule 6710(q) and Rule 6710(r).

[10] To accommodate member requests that rule changes requiring technology changes occur on a Friday, if possible, the TBA Transaction Pilot Program providing for 45-minute reporting may be in effect for 180 days or for a few additional days to fix the termination date of the TBA Transaction Pilot Program on a Friday (*i.e.,* if the 180th day is not a Friday, the 45-minute requirement will expire on the Friday next occurring that the TRACE system is open).

[11] Minor exceptions to the general requirement to report TBA transactions no later than 45 minutes from the Time of Execution are set forth in proposed Rule 6730(a)(3)(D)(i)a., c. and d. Under proposed Rule 6730(a)(3)(D)(i)a., transactions executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 45 minutes after the TRACE system opens. Under proposed Rule 6730(a)(3)(D)(i)c., transactions executed on a business day less than 45 minutes before 6:30 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 45 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated ''as/of'' and include the date of execution. Under proposed Rule 6730(a)(3)(D)(i)d., transactions executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1), no later than 45 minutes after the TRACE system opens, designated ''as/of'' and include the date of execution.

[12] After the TBA Transaction Pilot Program expires, Rule 6730(a)(3)(D)(ii), which incorporates by reference Rule 6730(a)(1), requires generally that TBA transactions be reported no later than 15 minutes from the Time of Execution, with certain minor exceptions for transactions executed near the end of the TRACE System Hours, before and after TRACE System Hours, and on weekends and certain federal and religious holidays. *See, e.g.,* Rule 6730(a)(1)(C). The exceptions are the same as those that apply to members reporting transactions in corporate bonds and Agency Debt Securities to TRACE. (The SEC recently approved a proposed rule change, which included reorganizing, without substantive amendment, the provisions set forth in current Rule 6730(a)(1)(C) as Rule 6730(a)(1)(A). *See* Securities Exchange Act Release No. 65791 (November 18, 2011) (Order Approving File No. SR–FINRA–2011–053). The rule change becomes effective on February 6, 2012. *See Regulatory Notice* 11–53 (November 21, 2011).)

if it determined that its study of the trading data provides a reasonable basis to seek dissemination of transaction information on Asset-Backed Securities. The Commission has historically been supportive of efforts to improve post-trade transparency in the fixed income markets and encourages FINRA to carry out that study.[13]

Since reporting began on May 16, 2011, FINRA has reviewed Asset-Backed Securities transaction data. The reported Asset-Backed Securities transaction data, as well as input from market participants as FINRA prepared to expand TRACE to include Asset-Backed Securities, suggests that real-time disseminated TRACE transaction data should be expanded to include transaction information on TBA transactions.

First, at the launch of Asset-Backed Securities reporting, certain market participants noted that TBA transactions trade in a very liquid market and suggested that FINRA consider transparency in such transactions. Second, as FINRA reviewed and continues to review the data reported for Asset-Backed Securities, including TBA transactions, and studies the total volume of TBA transactions, the concentration of trading in such securities, and the pricing disparity among various types of Agency Pass-Through Mortgage-Backed Securities traded TBA to understand their liquidity and fungibility, the data supports FINRA's proposal to disseminate TBA transactions and increase transparency in this market.

The market activity reported and reviewed reveals that the TBA market is generally active and liquid. In addition, the degree of fungibility is high, with substantial trading concentrated among a relatively small universe of securities as identified by a unique CUSIP number (hereinafter, ''CUSIP'' means the specific security identified by the unique CUSIP number).[14] The TBA market has an average daily volume of $248 billion traded in close to 8,000 average daily trades,[15] and the average daily volume of all TBA transactions is approximately ten times the average daily volume of the entire corporate bond market.[16] The correlation between various TBA CUSIPs is high, and the price of one TBA transaction may be derived using available prices for TBA transactions for a different issuer, a different coupon rate, maturity, or a combination thereof.[17]

Accordingly, FINRA proposes to disseminate TBA transaction information reported to TRACE in real-time.[18] Specifically, Rule 6750(b)(4) would be amended to provide that FINRA will not disseminate information on a transaction in an Asset-Backed Security, *except* a transaction in an Agency Pass-Through Mortgage-Backed Security traded TBA.

Data and Fees

FINRA proposes to amend Rule 7730 to make available the real-time disseminated TBA transaction data and the historic TRACE data for TBA transactions, and to establish the fees for such TBA transaction data. First, FINRA proposes to amend Rule 7730(c) to establish the Asset-Backed Security data set (''ABS Data Set'') as the third Real-Time TRACE market data set. The ABS Data Set will be limited to real-time disseminated TBA transaction data initially. The market data fee rates currently in effect for similar Real-Time TRACE market data sets (*i.e.,* for the Corporate Bond Data Set and the Agency Data Set) in Rule 7730(c) would be extended to the ABS Data Set.

Second, FINRA proposes to amend Rule 7730(d) to establish a third historic data product for TBA transactions (''Historic ABS Data Set'') similar to the data sets for corporate bonds (''Historic Corporate Bond Data Set'') and Agency Debt Securities (''Historic Agency Data Set'') listed therein. FINRA also proposes to establish fees for the Historic ABS Data Set at the same rates currently in effect in Rule 7730(d) for the Historic Corporate Bond Data Set and the Historic Agency Data Set. The Historic ABS Data Set would include all TBA transactions effected as of or after May 16, 2011, and, among other things, would include uncapped volume information. However, like all other Historic TRACE Data, TBA transaction data to be included in the Historic ABS Data Set would be released subject to a delay of approximately 18 months from the date of the transaction.[19]

Other Rule Changes

FINRA proposes to delete provisions regarding an expired pilot program, and to incorporate other minor administrative, technical or clarifying changes in Rule 6730 and Rule 7730.

FINRA proposes to delete Rule 6730(a)(3)(A)(i), the pilot program for Asset-Backed Securities transaction reporting that expired on November 18, 2011 (''Pilot Program''), Rule 6730(a)(3)(C)(i), which references the Pilot Program and applies to certain pre-issuance CMOs and REMICs, and all cross references to the two provisions in Rule 6730(a)(3)(A), (B) and (C).[20] In addition, FINRA would incorporate technical amendments to Rule 6730(a)(3)(C)(ii), and renumber Rule 6730(a)(3)(A)(ii) and Rule 6730(a)(3)(C)(ii) as, respectively, Rule 6730(a)(3)(A) and Rule 6730(a)(3)(C).[21]

Also in Rule 6730, FINRA proposes to incorporate an introductory sentence in Rule 6730(a)(3), stating that Asset-Backed Securities transactions must be reported as provided in that subparagraph, and a caption to Rule 6730(a)(3)(C), regarding the reporting requirements that apply to certain pre-issuance transactions involving CMOs and REMICs. In addition, FINRA proposes a technical amendment to incorporate references in Rule 6730(a)(3)(A) and (B) to the proposed reporting requirements for TBA transactions in proposed Rule 6730(a)(3)(D).

In Rule 7730, FINRA proposes to add, in paragraphs (d)(1)(A)(ii) and (d)(1)(B)(ii) regarding Historic TRACE Data, a sentence to clarify that the 2011 Historic Agency Data Set also will include the 2010 Historic Agency Data Set, and the 2013 Historic ABS Data Set also will include the 2012 Historic ABS

[13] *See* Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR–FINRA–2009–065).

[14] CUSIP means Committee on Uniform Security Identification Procedures.

[15] The information is based upon FINRA's review of all TBA transactions reported to TRACE from May 16, 2011 through October 28, 2011.

[16] The information is based upon FINRA's review of transactions in all TRACE-Eligible Securities, other than Agency Debt Securities, reported to TRACE from May 16, 2011 through October 28, 2011.

[17] From a review of all TBA transactions reported to TRACE from May 16, 2011 through July 31, 2011, the data shows that TBA transactions (with different issuers, different coupon rates, and different maturities) were priced consistently, relative to each other.

[18] FINRA's TRACE system would disseminate transaction information immediately upon receipt of a transaction report.

FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be subject to dissemination.

[19] Asset-Backed Securities transactions first began to be reported to TRACE on May 16, 2011; thus, the first Historic ABS Data Set would be available for release approximately 18 months later, in early 2013.

[20] Cross references to the Pilot Program would be deleted in Rule 6730(a)(3)(A)(ii) (proposed renumbered Rule 6730(a)(3)(A)), Rule 6730(a)(3)(B) and Rule 6730(a)(3)(C)(ii) (proposed renumbered Rule 6730(a)(3)(C)).

[21] In Rule 6730(a)(3)(C)(ii) (proposed renumbered Rule 6730(a)(3)(C)), FINRA proposes to delete the words ''After the expiration of the Pilot Program in paragraph (a)(3)(A)(i), such transactions must be reported the earlier of:'' and add the following text in the same place: ''Transactions in Asset-Backed Securities that are collateralized mortgage obligations (CMOs) or real estate mortgage investment conduits (REMICs) that are executed before the issuance of the security must be reported the earlier of:.''

Data Set.[22] FINRA also proposes minor technical amendments to Rule 7730(c) and (d) to reflect that the number of Data Sets and Historic Data Sets will increase from two to three, and other minor technical amendments to Rule 7730(b)(1) and Rule 7730(c) and (d).

Dissemination Cap

Currently, there are two TRACE dissemination protocols in place, referred to as dissemination caps, under which the actual size (volume) of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is $5 million ($5MM), and the size of transactions in excess of $5MM is displayed as ''$5MM+.'' For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is $1 million ($1MM), and the size of a transaction in excess of $1MM is displayed as ''$1MM+.'' [23]

FINRA has analyzed the distribution of TBA trades to determine an appropriate cap for these securities. FINRA proposes initially to set a dissemination cap for a TBA transaction at $50 million (a ''$50 million dissemination cap''). Accordingly, TBA transactions greater than $50 million would be displayed as ''$50MM+.'' At this level, approximately 12 percent of TBA transactions and approximately 63 percent of TBA transaction volume will be subject to the $50 million dissemination cap.[24]

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

[22] FINRA proposes not to add the clarification to the fee chart in Rule 7730. Also, FINRA proposes to delete a similar statement— ''The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set.''—in two sections of the fee chart in Rule 7730 summarizing Historic TRACE Data fees. Also, FINRA proposes to delete ''BTDS'' in two sections of the fee chart in Rule 7730 summarizing market data fees.

[23] The terms Investment Grade and Non-Investment Grade are defined in, respectively, Rule 6710((h) and Rule 6710(i).

[24] In contrast, the existing caps for corporate Investment Grade bonds limit the display of actual size for approximately 1.6 percent of trades representing 48 percent of par value traded, and, for Agency Debt Securities, 6 percent of trades and 74 percent of par value. The information is based on a review of all TBA transactions, and transactions in Investment Grade corporate bonds and Agency Debt Securities reported to TRACE from May 16, 2011 through September 30, 2011.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[25] 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, and Section 15A(b)(5) of the Act,[26] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public, because transparency in TBA transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for Agency Pass-Through Mortgage-Backed Securities; and because the dissemination of price and other TBA transaction information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the TBA market. In addition, FINRA believes that the proposed data fees for the ABS Data Set (TBA transaction data disseminated immediately upon receipt by FINRA) and the Historic ABS Data Set (TBA transaction data delayed for 18 months), which are proposed at the same rates currently in effect for similar TRACE corporate bond and Agency Debt Securities data products, are reasonable fees that are equitably allocated among members, data vendors, qualifying Tax-Exempt Organizations and other TRACE data consumers.

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.

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] 15 U.S.C. 78*o*–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–069 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–2011–069. 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–2011–069 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31524 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65876; File No. SR–BX–2011–078]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees for BX

December 2, 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 22, 2011, NASDAQ OMX BX, Inc. (the ''Exchange'' or ''BX'') 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

BX is filing with the Commission a proposed rule change to modify pricing for BX members using the NASDAQ OMX BX Equities System. The new pricing will take effect immediately. The text of the proposed rule change is available at BX's principal office, at *http:/nasdaqomxbx.cchwallstreet.com/,* at the Commission's Public Reference Room, and at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt fees applicable to the new routing services on the NASDAQ OMX BX Equities Market.[3] BX has a pricing model under which members are charged for the execution of quotes/orders posted on the BX book (*i.e.,* quotes/orders that provide liquidity), while members receive a rebate for orders that access liquidity; this is not changing. The proposed fees, because they apply to routed orders, will apply only to orders executed at venues other than the NASDAQ OMX BX Equities Market.

BX proposes to amend BX Rule 7018(a) to adopt fees for the execution of routed orders in securities priced at $1 or more per share and BX Rule 7018(b) to adopt fees for routing of securities priced at less than $1 per share. In BX Rule 7018(a), the charges depend on both where the order was executed and the order's routing strategy, which is similar to NASDAQ Rule 7018(a).[4] The different routing strategies, BSTG,[5] BSCN,[6] BMOP,[7] BTFY[8] and BCRT,[9] are defined in BX Rule 4758 and correlate to some of the routing strategies of NASDAQ, as explained below. The proposed BX routing fees are the same as or less than NASDAQ's, which is also explained further below.[10]

Respecting BSTG and BSCN orders, the charge is $0.0023 per share executed at NYSE and $0.0030 per share executed at venues other than NYSE. Respecting NASDAQ's comparable STGY and SCAN orders,[11] this charge is the same for shares executed on NYSE and also the same as what NASDAQ charges for routed executions at other venues in NASDAQ-listed securities, NYSE-listed securities and for securities listed on exchanges other than NASDAQ or NYSE ($0.0030 per share).[12] The Exchange believes that charging the same routing fees as NASDAQ should attract users to its new routing program.

Respecting BMOP orders, the charge is $0.0025 per share executed at NYSE and $0.0035 per share executed at venues other than NYSE. This is the same as what NASDAQ charges for its comparable MOPP orders,[13] which is, following the format of the NASDAQ fee schedule: (i) for NASDAQ-listed securities, $0.0035 per share; (ii) for NYSE-listed securities, $0.0035 per share executed at venues other than NYSE or $0.0025 per share executed at NYSE; and (iii) for securities listed on exchanges other than NASDAQ or NYSE, $0.0035 per share. The Exchange has determined that this is the appropriate charge to attract BMOP orders to BX.

Respecting BTFY orders, the charge is $0.0022 per share executed at NYSE and $0.0005 per share executed at venues other than NYSE, NASDAQ or PSX. For orders that execute at PSX, BX will pass through all fees assessed and rebates offered by PSX and for orders that execute at NASDAQ, BX will pass through all fees assessed and rebates offered by NASDAQ. BX, PSX and NASDAQ are affiliates. This is the same as what NASDAQ charges for its comparable TFTY orders,[14] which is $0.0022 per share executed at NYSE and $0.0005 per share executed at venues other than NYSE, BX or PSX, regardless of where the security is listed. For orders that execute at BX, NASDAQ gives a credit of $0.0014 for orders that

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR–BX–2011–048).

[4] Similar to the fees proposed here, NASDAQ bases the charge on the type of routing strategy employed and where the order was executed, because routing fees are generally intended to the recoup the cost of routing the order to another venue for execution. However, unlike BX, NASDAQ also bases its routing fees on where the security is listed. This is not a significant difference because the proposed fees include a separate charge for execution on the NYSE.

[5] *See* BX Rule 4758(a)(1)(A)(iii).

[6] *See* BX Rule 4758(a)(1)(A)(iv).

[7] *See* BX Rule 4758(a)(1)(A)(vi).

[8] *See* BX Rule 4758(a)(1)(A)(v).

[9] *See* BX Rule 4758(a)(1)(A)(vii).

[10] Pursuant to a November 28, 2011 conference call with Commission staff, Edith Hallahan, Principal Associate General Counsel, the NASDAQ OMX Group, Inc., confirmed that the proposed BX routing fees are the same as (not less than) NASDAQ's existing routing fees.

[11] *See* NASDAQ Rule 4758(a)(1)(A)(iii) and (iv).

[12] For NASDAQ-listed securities, there is no separate, lower fee for orders executed at NYSE, because NASDAQ-listed securities do not trade on NYSE and thus would not route there.

[13] *See* NASDAQ Rule 4758(a)(1)(A)(vi).

[14] *See* NASDAQ Rule 4758(a)(1)(A)(v).

remove liquidity at BX, which is the equivalent of a pass through of BX fees, because BX currently provides a credit of $0.0014 for executions on BX.[15] Accordingly, BTFY fees are the same as TFTY fees. Pass through fees are intended to recover costs without specifying what those costs are, because the applicable fees may be lengthy and dependent on various factors, and thereby difficult to replicate, even in an affiliated exchange's fee schedule. In addition, pass through fees are useful because they can keep pace with changes in the fees being passed through without extensive changes to the fee schedule.

Respecting BCRT orders, for orders that execute at PSX, BX will pass through all fees assessed and rebates offered by PSX and for orders that executed at NASDAQ, BX will pass through all fees assessed and rebates offered by NASDAQ; PSX and NASDAQ are affiliates of BX.[16] NASDAQ similarly passes through all fees assessed and rebates offered respecting orders routed to PSX (its affiliates) for its comparable CART [17] orders executed on PSX. With respect to BX, NASDAQ gives a credit of $0.0014 for orders that remove liquidity at BX; this is the equivalent of a pass through of BX fees, because the BX fee schedule currently provides a credit of $0.0014 for executions on BX.[18]

Respecting securities prices at less than $1 executed at a venue other than BX, BX proposes to amend BX Rule 7018(b) to adopt a charge of 0.3% of the total transaction cost. This is the same as what NASDAQ charges for orders that route and execute at an away market,[19] which the Exchange believes is reasonable.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[20] in general, and with Section 6(b)(4) of the Act,[21] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The new routing fees are reasonable because they seek to recoup the cost of the execution on the other venue, which is generally borne by the order router and, ultimately, the routing exchange. In particular, pass through fees, as proposed herein for BTFY and BCRT orders executed on NASDAQ and BX, are structured to recoup routing costs. The Exchange does not believe that the proposed pass through of such fees for orders routed to and executed at NASDAQ or BX should create any inappropriate incentives or raise any novel regulatory issues. The pass through proposed herein applies to exchanges affiliated with the Exchange, NASDAQ and PHLX, which BX believes is reasonable and currently exists in NASDAQ Rule 7018(a).

The proposed fees mimic the routing fee structure in effect on NASDAQ for some time.[22] The fees for BSCN, BSTG and BMOP are the same on BX as for SCAN, STGY and MOPP on NASDAQ. With respect to BTFY and BCRT, these are the same as TFTY and CART on NASDAQ with respect to a pass through of charges and credits from executions at PSX. TFTY and CART executions at BX receive a credit of $0.0014, which is equivalent to the charge on BX for removing liquidity and is thereby the same as a pass through of BX charges. Accordingly, the proposed pass through of fees for BTFY and BCRT with respect to executions at NASDAQ, although it would not result in a credit of $0.0014, is still the same, because the pass through charge will be NASDAQ's charge for removing liquidity.

BX also believes that the proposed routing fees are equitable. All similarly situated members are subject to the same fee structure, and access to BX is offered on fair and non-discriminatory terms. Specifically, the same routing fee, credit or pass through fee applies to any participant and does not differ based on user type (*e.g.,* customer or broker-dealer).

Furthermore, the new routing fees are reasonable and equitable in that the decision to use send routable orders and to use BX as a router is entirely voluntary; members can avail themselves of numerous other means of directing orders to other venues, including becoming members of those markets or using any of a number of competitive routing services offered by other exchanges and brokers.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor BX's execution and routing services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed fees will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.[23] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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 Number SR–BX–2011–078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–078. This file number should be included on the

[15] *See* BX Rule 7018(a) (Credit for entering order that accesses liquidity).

[16] BCRT orders can only execute on BX, PSX or NASDAQ. *See* BX Rule 4758(a)(1)(A)(vii).

[17] *See* NASDAQ Rule 4758(a)(1)(A)(xi).

[18] *See* BX Rule 7018(a) (Credit for entering order that accesses liquidity).

[19] *See* NASDAQ Rule 7018(b).

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(4).

[22] *See* NASDAQ Rule 7018.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

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–BX–2011–078 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31485 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65875; File No. SR–CBOE–2011–112]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FLEX Transaction Fees

December 2, 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 November 23, 2011, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fees Schedule as it relates to Flexible Exchange Options (''FLEX Options'').[5] The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to revise the CBOE Fees Schedule as it relates to FLEX Options. In particular, the Exchange is proposing to amend the fees schedule to provide that FLEX transactions for the account of non-Trading Permit Holder broker-dealers (which use the ''C'' order origin code) are subject to the same transaction fee rates that are applicable to public customers (which also use the ''C'' order origin code).[6] This change will be effective immediately.

Currently, the FLEX trading procedures and principles contained in Rule 24B.5 provide for certain allocation priorities to public customers and non-Trading Permit Holder broker-dealers.[7] To accomplish this, both public customer orders and non-Trading Permit Holder broker-dealer orders in FLEX Options are currently identified through using the order origin code ''C''. However, use of the same code may result in billing discrepancies because the public customer fee rates currently differ from broker-dealer fee rates.[8] For

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform (which consists of open outcry based trading) are generally contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform (which combines both open outcry and electronic based trading) are generally contained in Chapter XXIVB. Currently, all FLEX Options are traded on the FLEX Hybrid Trading System platform.

[6] The FLEX transaction fees for public customers are currently as follows: $0.00 per contract for equity options; $0.44 per contract for SPX options where the premium is greater than or equal to $1; $0.35 per contract for SPX options where the premium is less than $1; $0.40 per contract for OEX, XEO, S&P500 Dividend Index and Volatility Index options (except OEX and XEO Weeklys); $0.30 per contract for OEX and XEO Weeklys; $0.00 for QQQQ options; $0.18 per contract for all other index, exchange-traded fund (''ETF''), exchange-traded note (''ETN'') and HOLDRS options; and $0.85 per contract for credit default options and credit default basket options. In addition, a ''CFLEX Surcharge Fee'' of $0.10 per contract applies to all orders (all origin codes) executed electronically on the FLEX Hybrid Trading System. The CFLEX Surcharge Fee is charged up to the first 2,500 contracts per trade. *See* CBOE Fees Schedule Section 1 and Footnotes 1 and 17.

[7] Under the FLEX electronic request for quotes (''RFQ'') process, an incoming RFQ order is eligible to trade with FLEX RFQ responses (referred to as ''FLEX Quotes'') and FLEX Orders at a single clearing price that leaves bids and offers which cannot trade with each other (referred to as a ''BBO clearing price'') In determining priority, the FLEX system gives priority to FLEX Quotes and FLEX Orders whose price is better than the BBO clearing price, then to FLEX Quotes and FLEX Orders at the BBO clearing price. Generally, allocation among multiple FLEX Quotes and FLEX Orders at the BBO clearing price are first to FLEX Quotes subject to a FLEX Appointed Market-Maker participant entitlement, if applicable; second to FLEX Orders resting in the FLEX electronic book; third to FLEX Quotes for the account of public customers and non-Trading Permit Holder broker-dealers, with multiple interest ranked based on time priority, and finally all other FLEX Quotes, with multiple interest ranked based on time priority. *See* Rule 24B.5(a)(1)(C); *see also* Rule 24B.5(a)(1)(C) and (D) for various on the allocation algorithm when the RFQ market is locked or crossed or when the Trading Permit Holder that initiated the RFQ has indicated an intention to cross.

[8] The Exchange notes that, to the extent there may be any billing discrepancy with respect to FLEX Options transactions for the account of a non-Trading Permit Holder broker-dealers, such discrepancy would result in an under collection by the Exchange for such transactions. In that regard,

Continued

ease of administration, the Exchange is therefore proposing that the same FLEX Option transactions fees that apply to transactions for the account of public customers should apply to transactions for the account on non-Trading Permit Holder broker-dealers. The Exchange also believes that applying the same fee for FLEX Option transactions on behalf of the account of public customer orders and non-Trading Permit Holder broker-dealers is a reasonable and equitable allocation of fees in that the same fees are applicable to all Trading Permit Holders representing public customer and non-Trading Permit Holder broker-dealer orders. The Exchange also generally believes that the level of activity associated with FLEX Options trading overall,[9] and with FLEX Options trading on behalf of non-Trading Permit Holder broker-dealer activity in particular, is deminimis and it is therefore administratively convenient to assess transaction fees for non-Trading Permit Holder broker-dealers in this manner.[10]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and furthers the objectives of Section 6(b)(4) of the Act,[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders. The proposed change is reasonable because the transaction fee rates for the account of non-Trading Permit Holder broker-dealers are the same as the rates that apply to public customers. The proposed change is equitable and not unfairly discriminatory because the same fees are applicable to all Trading Permit Holders representing public customers and non-Trading Permit Holder broker-dealers. Further, the Exchange generally believes that level of activity associated with FLEX Options trading overall,[13] and with FLEX Options trading on behalf of non-Trading Permit Holder broker-dealer activity in particular, is deminimis and it is therefore administratively convenient to assess transaction fees for non-Trading Permit Holder broker-dealers in this manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(2) of Rule 19b–4[15] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–112 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–112. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2011–112 and should be submitted on or before December 29, 2011.

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the FLEX transaction fees for broker-dealers are currently as follows: $0.25, $0.45 and $0.20 per contract for equity options respectively for manual, electronic and QQQ transactions; $0.40 per contract for OEX, XEO, SPX, S&P 500 Dividend Index and Volatility Index options; $0.25 per contract for other indexes, ETFs, ETNs, and HOLDRS for manual transactions; $0.45 per contract for other indexes, ETFs, ETNs, and HOLDRS options for electronic transactions; $0.20 per contract for QQQ; $0.25 per contract for credit default options and credit default basket options for manual transactions; and $0.45 per contract for credit default options and credit default basket options for electronic transactions. In addition, certain ''Surcharge Fees'' apply to all non-public customer transactions (i.e., CBOE and non-Trading Permit Holder market-maker, Clearing Trading Permit Holder and broker-dealer) including to Voluntary Professionals and Professionals. These surcharges include an index license fee of $0.10 per contract for OEX, XEO, SPX, S&P500 Dividend Index, DJX and Volatility Index options (except GVZ), and $0.15 per contract for MNX, NDX and RUT options; and a product research and development fee of $0.10 per contract for GVZ options. As noted above, a ''CFLEX Surcharge Fee'' of $0.10 per contract also applies to all orders (all origin codes) executed electronically on the FLEX Hybrid Trading System. The CFLEX Surcharge Fee is charged up to the first 2,500 contracts per trade. *See* CBOE Fees Schedule Section 1 and Footnotes 1, 14 and 17.

[9] For example, during September 2011, all FLEX Options trading activity accounted for approximately 0.08% of the Exchange's average daily volume.

[10] The Exchange is evaluating whether to introduce a separate order origin code for FLEX Orders that are entered for the account of non-Trading Permit Holder broker-dealers. If the Exchange would introduce such a code in the future, we anticipate that the Exchange may considering revising the fee schedule to assess transaction fees rates for non-Trading Permit Holders broker-dealers that differ from the transaction fee rates applicable to public customers. Any such change to the fees schedule would be addressed through a separate rule change filing.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* note 9, *supra.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31483 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65874; File No. SR–C2–2011–037]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

December 2, 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 November 23, 2011, the Chicago Board Options Exchange, Incorporated [sic] (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

On September 2, 2011, the Commission approved a proposed rule change filed by the Exchange to permit on a pilot basis the listing and trading on C2 of Standard & Poor's 500 Index (''S&P 500'') options with third-Friday-of-the-month (''Expiration Friday'') expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities (''SPXPM'').[3] On September 28, 2011, the Exchange filed an immediately-effective rule change to adopt fees associated with the anticipated trading of SPXPM (the ''Initial SPXPM Fees Filing'').[4] The Exchange now proposes to amend those fees associated with the trading of SPXPM.

In the Initial SPXPM Fees Filing, the Exchange adopted an SPXPM Tier Appointment Fee of $4,000 which would be charged to any Market-Maker Permit holder that has an appointment (registration) in SPXPM at any time during a calendar month, but the Exchange also waived that fee through November 30, 2011. The Exchange hereby proposes continuing that waiver for the month of December 2011. The purpose of this waiver extension is to allow more time for the SPXPM market to develop and allow and encourage Market-Makers to join in and elect for an SPXPM Tier Appointment.

The Exchange also proposes to cease charging no transaction fee for SPXPM Trades on the Open (trades which occur upon the opening of trading). The Exchange did not intend to waive transaction fees for SPXPM Trades on the Open, and such waiver was unintentionally included in the Initial SPXPM Fees Filing. While the Exchange waives transaction fees for Trades on the Open in multiply-listed classes, the rationale for such a waiver does not apply to SPXPM Trades on the Open. C2 multiply-listed options classes are traded using a Maker-Taker pricing model in which orders that take liquidity from the marketplace are charged a transaction fee and orders that provide liquidity to the market place receive a rebate. For this model, C2 is unable to charge for Trades on the Open because it is not possible to identify who is the Maker and who is the Taker. SPXPM utilizes a pricing model in which transactions fees are charged to Market-Makers, Professionals and customers, so differentiating Trades on the Open is not an issue and therefore such trades should be treated similarly to all other SPXPM transactions. Henceforth, transaction fees for SPXPM Trades on the Open will be assessed in the same manner as they are assessed for normal SPXPM transactions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Trading Permit Holders and other persons using Exchange facilities. Continuing the waiver of the SPXPM Tier Appointment Fee is reasonable because it will allow Market-Makers with an SPXPM Tier Appointment to avoid paying the Tier Appointment Fee for another month, and is equitable and not unfairly discriminatory because all Market-Makers with an SPXPM Tier Appointment will be able to avoid paying the SPXPM Tier Appointment Fee for December 2011. Assessing transaction fees for SPXPM Trades on the Open is reasonable because the amount of the transaction fees will be the same as the amount of SPXPM transaction fees assessed during the rest of the trading day. Assessing transaction fees for SPXPM Trades on the Open is equitable and not unfairly discriminatory because the fees will be assessed equally to all parties within each class who qualify for the fees, just as they are during the rest of the trading day.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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 solicited or received with respect to the proposed rule change.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008).

[4] *See* Securities Exchange Act Release No. 34–65471 (October 3, 2011), 76 FR 62491 (October 7, 2011) (SR–C2–2011–026).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act [7] and subparagraph (f)(2) of Rule 19b–4 [8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–037. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–C2–2011–037 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31482 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65873; File No. SR–NASDAQ–2011–164]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct NOM Rules

December 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 29, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been 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

NASDAQ is filing with the Securities and Exchange Commission (''Commission'') a proposal for the NASDAQ Options Market (''NOM'') to eliminate from its rules two order types and two data feeds that are not in place. Specifically, NASDAQ proposes to delete Chapter VI, Sections 1(e)(1) and (4), 7(b)(3)(A), and 10(1)(B) and (C) to delete Reserve Orders and Discretionary Orders from its rules. Secondly, NASDAQ proposes to amend Chapter VI, Trading Systems, Section 1(a)(3), in order to eliminate from its rules NASDAQ Options Depth at Price and NASDAQ Options Net Order Imbalance, two data feeds.[3]

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make corrections to NOM rules that are needed as a result of transitioning to a new system. NOM recently completed the rollout of enhancements to its trading system; the deletions proposed herein have already been implemented.

First, NASDAQ proposes to eliminate two order types from its rules. Specifically, NASDAQ proposes to amend Chapter VI, Section 1(e)(1) and (4), to delete Reserve Orders and Discretionary Orders from its rules. These order types are also proposed to be deleted from Chapter VI, Section 6(a)(2), Section 7(b)(3)(A), and Section 10(1)(B) and (C).[4] Reserve Orders are limit orders that have both a displayed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See http://www.nasdaqtrader.com/TraderNews.aspx?id=dtn2011–002.*

[4] Because the deletion of subparagraphs (B) and (C) would leave the last sentence in paragraph (1) with a list consisting of one item (that is, subparagraph (A)), NASDAQ proposes to finish that sentence by stating that within each price level, trading interest will be executed in time priority; this is not a change to the system but rather a clarification of that sentence. The words ''orders that are displayed within the System'' in paragraph (A) are no longer needed because all orders are displayed now that NASDAQ will no longer have Reserve and Discretionary Orders.

size as well as an additional non-displayed amount. Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming orders. If the displayed portion of a Reserve Order is fully executed, the System will replenish the display portion from reserve up to the size of the original display amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry. Although Reserve Orders were available on NOM, they were rarely used; accordingly, when rolling out new trading enhancements, NASDAQ determined not to make the technical changes necessary to accommodate them; Reserve Orders have not been available on NOM since September 28, 2011.

Discretionary Orders are orders that have a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The non-displayed trading interest is not entered into the System book but is, along with the displayed size, converted to an IOC buy (sell) order priced at the highest (lowest) price in the discretionary price range when displayed contracts become available on the opposite side of the market or an execution takes place at any price within the discretionary price range. The generation of this IOC order is triggered by the automatic cancellation of the displayed contracts portion of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system will convert and process all such orders in the same priority in which such Discretionary Orders were entered. If an IOC order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the System book with a new time stamp, at its original displayed price, and with its non-displayed discretionary price range. Although the Exchange received approval for the Discretionary Order type when NOM was launched, it was not made available due to lack of participant interest. For this reason, NASDAQ has determined not to offer it going forward and, accordingly, did not make the necessary technical changes to accommodate this order type when implementing its trading enhancements.

Second, NASDAQ proposes to delete two NOM data feeds from its rules, NASDAQ Options Depth at Price (''DAP'') and NASDAQ Options Net Order Imbalance (''NOIView''). DAP provides aggregate quotation information for each price level of trading interest on the NOM book, last sale data for trades executed on NOM, and order imbalance information. It is described in Chapter VI, Section 1(a)(3)(C) of NOM Rules and is available without charge.[5] In adopting this rule, the Exchange stated that:

> * * * NASDAQ is making a voluntary decision to make this data available. NASDAQ is not required by the Exchange Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. NASDAQ chooses to make the data available as proposed in order to improve market quality, to attract order flow, and to increase transparency. Once this filing becomes effective, NASDAQ will be required to continue making the data available until such time as NASDAQ changes its rule.[6]

The Exchange retired DAP because few participants subscribed to it and its content is available on another data feed, ITTO; a fee is charged for ITTO.

Similarly, NASDAQ also retired NOIView. NOIView provides order imbalance information, which is also available on ITTO. NOIView is described in Chapter VI, Section 1(a)(3)(D).

At this time, NASDAQ is filing this proposed rule change to reflect its decision to retire these data feeds and to eliminate them from its rules. Although NASDAQ notified subscribers, NASDAQ retired the feeds prior to the submission of this filing, as part of a rollout of new trading system enhancements. Once an option was switched over to the new system, DAP and NOIView were no longer available for that option.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the data is available on other data feeds, albeit for a fee, and the Reserve Order and the Discretionary Order types were not used or rarely used, such that the Exchange does not believe that this elimination will negatively impact market quality. The Exchange is not required to make these features available and made a decision to eliminate them, which the Exchange believes is consistent with promoting just and equitable principles of trade as well as protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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

[5] *See* Securities Exchange Act Release No. 63983 (February 25, 2011), 76 FR 12178 (SR–NASDAQ–2011–032).

[6] *See id.* at 12179.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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–NASDAQ–2011–164 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–164. 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 Number SR–NASDAQ–2011–164 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31481 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65872; File No. SR–CBOE–2011–113]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Trades for Less Than $1

December 2, 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 November 29, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend its program that allows transactions to take place at a price that is below $1 per option contract through June 29, 2012. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 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] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.54, *Accommodation Liquidations (Cabinet Trades),* which sets forth specific procedures for engaging in cabinet trades. Rule 6.54 currently provides for cabinet transactions to occur via open outcry at a cabinet price of $1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a PAR Official/OBO, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the PAR Official/OBO cabinet book (which resting cabinet book orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The Exchange has temporarily amended the procedures through December 30, 2011 to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract.[5] These lower priced transactions are traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) Bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also available for trading in option

[5] *See* Securities Exchange Act Release Nos. 59188 (December 30, 2008), 74 FR 480 (January 6, 2009) (SR–CBOE–2008–133) (adopting the amended procedures on a temporary basis through January 30, 2009), 59331 (January 30, 2009), 74 FR 6333 (February 6, 2009) (extending the amended procedures on a temporary basis through May 29, 2009), 60020 (June 1, 2009), 74 FR 27220 (June 8, 2009) (SR–CBOE–2009–034) (extending the amended procedures on a temporary basis through June 1, 2010), 62192 (May 28, 2010), 75 FR 31828 (June 4, 2010) (SR–CBOE–2010–052) (extending the amended procedures on a temporary basis through June 1, 2011) and 64403 (May 4, 2011), 76 FR 27110 (May 10, 2011) (SR–CBOE–2011–048) (extending the amended procedures on a temporary basis through December 30, 2011).

classes participating in the Penny Pilot Program.[6] The Exchange believes that allowing a price of at least $0 but less than $1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly due to market conditions which may result in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of $100 and the underlying stock might now be trading at $30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the $1 cabinet price (*e.g.,* the series might be quoted no bid).[7]

The purpose of the instant rule change is to extend the operation of these temporary procedures through June 29, 2012, so that the procedures can continue without interruption while CBOE considers whether to seek permanent approval of the temporary procedures.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[8] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than $1 per option contract better facilitates the closing of options positions that are worthless or not actively trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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 neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] 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–CBOE–2011–113 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.

All submissions should refer to File Number SR–CBOE–2011–113. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–113 and should be submitted on or before December 29, 2011.

[6] Currently the $1 cabinet trading procedures are limited to options classes traded in $0.05 or $0.10 standard increment. The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

[7] As with other accommodation liquidations under Rule 6.54, transactions that occur for less than $1 are not be [sic] disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.54, the transactions are exempt from the Consolidated Options Audit Trail (''COATS'') requirements of Exchange Rule 6.24, *Required Order Information.* However, the Exchange maintains quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange following the close of each business day. The rule also provides that transactions for less than $1 will be reported for clearing utilizing forms, formats and procedures established by the Exchange from time to time. In this regard, the Exchange initially intends to have clearing firms directly report the transactions to The Options Clearing Corporation (''OCC'') using OCC's position adjustment/transfer procedures. This manner of reporting transactions for clearing is similar to the procedure that CBOE currently employs for on-floor position transfer packages executed pursuant to Exchange Rule 6.49A, *Transfer of Positions.*

[8] 15 U.S.C. 78s(b)(1).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31480 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65871; File No. SR–DTC–2011–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Modify a Practice in Order To Mitigate Systemic Risk, Specifically Liquidity Related, Associated With DTC End of Day Net Funds Settlement

December 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder notice is hereby given that on November 21, 2011, The Depository Trust Company (''DTC'') 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 primarily by DTC. 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

As more fully set forth below, the proposed change DTC is proposing to temporarily reduce each Participant's maximum net debit cap for night cycle processing of valued transactions over weekends and holidays and to restore such debit cap at the start of day cycle processing for the next settlement date (*i.e.,* the first business day following the weekend or holiday).

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 Corporation 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 Corporation 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

(i) Under the proposed change, DTC would temporarily reduce each Participant's maximum net debit cap for night cycle processing[3] of valued transactions over weekends and holidays and would restore such debit cap at the start of day cycle processing for the next settlement date (*i.e.,* the first business day following the weekend or holiday). In doing so, DTC believes it would reduce the systemic risk associated with a liquidity shortfall and would enhance the safety and soundness of the U.S. settlement system.

Background on DTC Settlement and the Net Debit Cap Control

DTC's Settlement System is structured so that Participants may make intraday book-entry deliveries versus payment of securities held in their DTC accounts. These transfers generate debits to the settlement account of each receiving Participant and credits to the settlement account of each delivering Participant. As debits and credits of multiple transactions net over the course of the business day a Participant will have either a net debit balance or net credit balance from time to time and at settlement will be in either a net debit or net credit balance position. Participants having a net debit balance for settlement owe payments of the amount of the net debit to DTC. In order that DTC has the resources to achieve end-of-day settlement among non-defaulting Participants, DTC maintains liquidity resources sufficient to complete settlement, notwithstanding the failure of its largest Participant to pay, by covering the net debit balance of a defaulting Participant. The key risk management control in this process is the net debit cap, which limits the net debit balance of a Participant, intraday and at settlement, to available liquidity resources. (The net debit balance must also be collateralized by sufficient collateral measured by the collateral monitor risk control.) DTC assigns a net debit cap to each Participant based on the Participant's activity and currently limits the maximum net debit cap for a Participant to $1.8 billion and for a family of related Participants to $3 billion aggregate.[4] This settlement structure is designed to support the efficient recycling of intraday liquidity to facilitate the settlement of transactions while limiting systemic risk due to Participant failure.

With Friday night cycle processing over weekends and holidays, however, Participants may accrue net debit balances for end-of-day settlement on the next business day, which is two to three calendar days away from the actual settlement. DTC has recognized that during such extended processing, external credit events may occur, including, in particular, the possibility of a weekend insolvency.

Change in Night Cycle Processing

To address the liquidity risk[5] over the extended periods for weekends and holidays, DTC is proposing to reduce the maximum net debit cap temporarily over the extended period for any Participant or any family of related Participants to $1.5 billion at the open of night cycle processing on any DTC business day for which the succeeding calendar day is not a business day. DTC would then restore the net debit cap of any affected Participant to its full net debit cap at the open of day cycle processing for the next business day in the ordinary course of business.[6]

Risk Reduction and Anticipated Minimal Settlement System and Participant Impact

The purpose of this proposed change in processing practice is to minimize systemic risk to U.S. markets and to DTC Participants as well as to minimize direct liquidity risk to DTC by the

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] DTC processes settlement in two cycles per business day: (i) A night cycle that begins at approximately 9 p.m. and finishes at approximately 11:30 p.m. and (ii) a day cycle that begins at approximately 3 a.m. and completes at 3:30 p.m. For Monday settlement, the night cycle begins on the preceding Friday evening at 9 p.m. and ends at 11:30 p.m. that night; the day cycle does not begin until 3 a.m. on Monday.

[4] These net debit caps are supported by $3.2 billion of liquidity resources at DTC in the form of a $1.3 billion all-cash Participants Fund and a $1.9 billion committed line of credit available for settlement in the event that a Participant fails to pay its net debit balance at settlement.

[5] ''Liquidity risk'' refers to the financial risk associated with access to liquidity to cover the failure of a Participant to fund its net settlement obligation to DTC.

[6] Today, DTC may reduce a Participant's net debit cap (*see, e.g.,* DTC Rule 1, definition of Net Debit Cap which permits DTC to set the Net Debit Cap of a Participant at ''any other amount determined by [DTC], in its sole discretion.''). Accordingly, after a temporary weekend or holiday reduction as proposed herein, DTC may elect not to restore the net debit cap of any affected Participant. By way of example only, and in line with the purpose of this proposed change in practice, DTC would not expect to restore the net debit cap of a Participant that had become insolvent in the intervening non-business days or as to which DTC is concerned with its credit status. (DTC would take the same approach to holidays, that is, whenever two business days are not successive.)

management of net debit balances over extended processing periods such as weekends and holidays.

The highest net debit caps at DTC are established primarily to support the settlement of Money Market Instrument (''MMI'') transactions. MMI transactions are high value, same day settling transactions that are processed principally in the afternoon on any settlement day. Because these transactions are processed during the day cycle only, they should not be affected by the proposed modification to processing in the night-cycle for weekends and holidays.

In order to determine the potential effects of lowering the net debit caps for certain night cycle processing as proposed in this rule filing, DTC conducted a simulation study in which the maximum net debit cap for a Participant and for a Participant family was set at $1.5 billion. The study found that net debit cap related blockage increased by only 1.13% on average, representing a gross value of approximately $913 million out of approximately $70 billion processed in each night cycle for settlement on the next business day. For Participants that might encounter transaction blockage, this blockage could be further minimized at their discretion by improving their processing systems by instructing deliveries versus payment that would generate credits to offset debits. With the proposed revised practice, at the time net debit caps are restored for same-day settlement, any transactions that pending due to the lower net debit cap would be reprocessed and would be completed at the start of the day cycle, assuming no other changes.[7] DTC recognizes that this change in practice may affect transaction management for certain Participants and has taken the initiative to discuss the proposal with all of those Participants and has received no objections. Certain Participants indicated that they would consider changes that could lessen the impact by implementing their own night cycle process improvements.

Accordingly, DTC submits that the proposed rule change would mitigate systemic risk due to any potential shortfall in liquidity associated with net settlement failure with only minimal Participant and processing impact.

[7] The Participants with increased blockage in the simulation often have large net debits in the night cycle because they do not send in Night Deliver Orders (''NDOs'') or they exempt or withhold from night cycle processing many or all of their Institutional Deliveries that would otherwise create credits.

(ii) The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC as well as with the CPSS/IOSCO Recommendations for Securities Settlement Systems applicable to DTC in that it supports efficient, timely, and final net funds settlement. The proposed change is designed to facilitate the prompt and accurate clearance and settlement of securities transactions by promoting efficiencies and enhancing the risk management controls associated with the funds settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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 shall: (a) By order approve or disapprove such proposed rule change or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2011–09 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–DTC–2011–09. 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 DTC's principal office and on DTC's Web site at *http://www.dtc.org.* 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–DTC–2011–09 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31479 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65870; File No. SR–OCC–2011–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow for the Clearing of Real Estate Index Futures Contracts

December 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on November 21, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The proposed rule change would accommodate certain cash-settled futures proposed to be traded by ELX Futures L.P. (''ELX'').

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

In its capacity as a derivatives clearing organization (''DCO''), registered as such under the Commodity Exchange Act (the ''CEA''), OCC performs the clearing function for ELX and other futures exchanges. OCC's existing By-Laws and Rules already accommodate the clearing of cash-settled futures. However, a sentence is proposed to be added to Article XII, Section 2 of OCC's By-Laws to more explicitly describe the rights and obligations of buyers and sellers of cash-settled futures, such as the Agricultural Futures and the Interest Rate Futures. An addition to OCC Rule 1301(e) is also proposed to allow OCC to recover the costs that it would incur in the event of a Clearing Member's failure to satisfy a non-U.S. Dollar settlement obligation, such as the cost of purchasing the non-U.S. Dollar currency.

All of the Euro Interest Rate Futures will be settled in Euros. OCC already clears futures contracts that are settled in Euros, and management believes that the facilities and procedures established in connection with the settlement of the existing Euro-settled futures will generally be sufficient to permit the clearing and settlement of the Euro Interest Rate Futures.[4] ELX intends to use, as a final settlement price for each Interest Rate Future, the published settlement price of the corresponding contract on Eurex.

ELX plans to use as a final settlement price for each Agricultural Future, the published settlement price of the corresponding contract on the Chicago Board of Trade.

OCC performs the clearing function for ELX pursuant to the Clearing Agreement. Pursuant to the terms of the Clearing Agreement, OCC has agreed to clear the specific types of contracts enumerated therein and may agree to clear additional types through the execution by both parties of a new ''Schedule C'' to the Clearing Agreement. A copy of three proposed new Schedule Cs providing for the clearance of Agricultural Futures, Euribor Futures and German Interest Rate Futures, respectively, which are attached to File SR–OCC–2011–16 as Exhibits 5A, 5B and 5C.

OCC believes that the proposed changes to its By-Laws are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (''Exchange Act''), because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of investors and the public interest. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

OCC has not solicited or received written comments relating to the proposed rule change.

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)(iii) of the Act[5] and Rule 19b–4(f)(4)[6] and became effective on filing. 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 No. SR–OCC–2011–16 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–OCC–2011–16. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] File No. SR–OCC–2010–18, Securities Exchange Act Release No. 63222 (November 1, 2010), 75 FR 68390 (November 5, 2010).

[5] *Supra* note 2.

[6] *Supra* note 3.

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at OCC's principal office and OCC's Web site (*http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_11_16.pdf*). 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–OCC–2011–16 and should be submitted on or before December 29, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31478 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65869; File No. SR–Phlx–2011–161]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Optional Anti-Internalization Functionality

December 2, 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 22, 2011, NASDAQ OMX PHLX LLC (''PHLX'' or the ''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 Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to modify its optional anti-internalization functionality.

The text of the proposed rule change is available at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to provide a more granular alternative to the voluntary anti-internalization functionality. Under the proposal, market participants will be given the additional options of (1) assigning a group identification modifier at the port level; and (2) assigning different anti-internalization methodology to specific order entry ports.

Currently, anti-internalization processing is available only on an MPID-wide basis with only a single methodology being allowed per MPID. Market participants direct that a particular version of anti-internalization processing be applied to a particular MPID, which is then applied by the system to all quotes/orders entered using that MPID. Market participants have the option, when entering quotes/orders using the same MPID they do not wish to have automatically interact with each other in the System, to either direct the System to not execute any part of the interacting quotes/orders from the same MPID and, instead, cancel share amounts of the interacting quotes/orders back to the entering party with an arrangement that takes into consideration the size of the interacting quotes/orders (Decrement); or, regardless of the size of the interacting quotes/orders, cancelling the oldest of them in full (Cancel Oldest).[4]

Under the proposal, market participants entering quotes/orders under a specific MPID may voluntarily assign a unique group identification modifier that represents a group of quotes/orders from the same market participant identifier and order entry port (''Group ID''). The Group ID will be a two-character code composed of alphanumerics and/or spaces, assigned to a specific order entry port and updated by the Exchange on behalf of the market participant. This additional option will direct the System to execute any so designated incoming quotes/orders against all eligible resting quotes/orders except those with the both the same MPID and same Group ID.

If the market participant selects the option of utilizing the Group ID, the anti-internalization selection will be applied to all quotes/orders entered using both the same MPID and the same Group ID. If the incoming order has both the same MPID and the same Group ID, the two orders will not execute against each other. If the two orders have the same MPID and different Group IDs, then the order will be eligible to execute against each other as designated by the anti-internalization method. For example:

1. Incoming order ''A'' has an MPID of ''ABCD'' and Group ID ''A1'', resting order ''B'' has an MPID of ''ABCD'' and Group ID ''A1'': in this scenario, these two orders would not execute against each other.

2. Incoming order ''C'' has an MPID of ''EFGH'' and Group ID ''XY'', resting order ''D'' has an MPID of ''EFGH'' and Group ID ''ZZ'': in this scenario, these two orders would execute against each other.

Additionally, market participants will now have the option to assign a different anti-internalization methodology (Decrement or Cancel Oldest) to different order entry ports. The anti-internalization method assigned to the port sending the

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Exchange Rule 3307(a)(4).

incoming order will determine which methodology is applied to the orders prevented from matching. For example:

FIRM XX (MPID ''ABCD'') utilizes three ports and has elected to assign Group IDs to their order entry ports for the purpose of anti-internalization. Additionally, the market participant selected different anti-internalization methodologies per port as follows:

Port 1: Group ID A1; Anti-internalization methodology: Decrement.

Port 2: Group ID A1; Anti-internalization methodology: Cancel Oldest.

Port 3: Group ID B1; Anti-internalization methodology: Cancel Oldest.

If an incoming order from Port 1 tries to interact with a resting order from Port 3, the orders will execute because they have the same MPID but different Group IDs.

If an incoming order from Port 1 tries to interact with a resting order from Port 2, then the anti-internalization method selected for Port 1 will apply to the order. In this case, the Decrement method would apply.

If an incoming order from Port 2 tries to interact with a resting order from Port 1, then the anti-internalization method selected for Port 2 will apply. In this case, the Cancel Oldest methodology would apply.

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. The Exchange notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Group ID allows firms to better manage order flow and prevent undesirable executions against themselves. The Exchange notes that a similar functionality was effective upon filing with the Commission for EDGX Exchange, Inc.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange may immediately offer its market participants the ability to better manage their order flow and prevent undesirable executions with themselves, which in turn may decrease costs to customers of such firms. The Commission notes that the proposal is based on similar rules of other exchanges[12] and believes that waiving the 30-day operative delay[13] is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.

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–Phlx-2011–161 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.

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[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See* EDGX Exchange, Inc. Rule 11.9(f); Securities and Exchange Release No. 53428 (December 3, 2010), 75 FR 76763 (December 9, 2010)(SR–EDGX–2010–18), which was based on NYSEArca Equities Rule 7.31(qq). The Exchange's current proposal differs from EDGX Rule 11.9(f) and NYSEArca Equities Rule 7.31(qq) in that there are additional methods relating to additional modifiers that do not apply to the Exchange. Furthermore, EDGX utilizes the additional identity modifier at the port level as well as at the order level.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* EDGX Exchange, Inc. Rule 11.9(f) and NYSEArca Equities Rule 7.31(qq).

[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).

All submissions should refer to File Number SR–Phlx-2011–161. 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,[14] 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 publicly available. All submissions should refer to File Number SR-Phlx-2011-161 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31477 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65868; File No. SR–NASDAQ–2011–158]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Optional Anti-Internalization Functionality

December 2, 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 22, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''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 Exchange. NASDAQ has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to modify its optional anti-internalization functionality.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to provide a more granular alternative to the voluntary anti-internalization functionality. Under the proposal, market participants will be given the additional options of (1) assigning a group identification modifier at the port level; and (2) assigning different anti-internalization methodology to specific order entry ports.

Currently, anti-internalization processing is available only on an MPID-wide basis with only a single methodology being allowed per MPID. Market participants direct that a particular version of anti-internalization processing be applied to a particular MPID, which is then applied by the system to all quotes/orders entered using that MPID. Market participants have the option, when entering quotes/orders using the same MPID they do not wish to have automatically interact with each other in the System, to either direct the System to not execute any part of the interacting quotes/orders from the same MPID and, instead, cancel share amounts of the interacting quotes/orders back to the entering party with an arrangement that takes into consideration the size of the interacting quotes/orders (Decrement); or, regardless of the size of the interacting quotes/orders, cancelling the oldest of them in full (Cancel Oldest).[4]

Under the proposal, market participants entering quotes/orders under a specific MPID may voluntarily assign a unique group identification modifier that represents a group of quotes/orders from the same market participant identifier and order entry port (''Group ID''). The Group ID will be a two-character code composed of alphanumerics and/or spaces, assigned to a specific order entry port and updated by NASDAQ on behalf of the market participant. This additional option will direct the System to execute any so designated incoming quotes/orders against all eligible resting quotes/orders except those with the both the same MPID and same Group ID.

If the market participant selects the option of utilizing the Group ID, the anti-internalization selection will be applied to all quotes/orders entered using both the same MPID and the same Group ID. If the incoming order has both the same MPID and the same Group ID, the two orders will not execute against each other. If the two orders have the same MPID and different Group IDs, then the order will be eligible to execute against each other as designated by the anti-internalization method. For example:

1. Incoming order ''A'' has an MPID of ''ABCD'' and Group ID ''A1,'' resting order ''B'' has an MPID of ''ABCD'' and Group ID ''A1'': in this scenario, these two orders would not execute against each other.

2. Incoming order ''C'' has an MPID of ''EFGH'' and Group ID ''XY,'' resting order ''D'' has an MPID of ''EFGH'' and Group ID ''ZZ'': in this scenario, these

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Exchange Rule 4757(a)(4).

two orders would execute against each other.

Additionally, market participants will now have the option to assign a different anti-internalization methodology (Decrement or Cancel Oldest) to different order entry ports. The anti-internalization method assigned to the port sending the incoming order will determine which methodology is applied to the orders prevented from matching. For example:

FIRM XX (MPID ''ABCD'') utilizes three ports and has elected to assign Group IDs to their order entry ports for the purpose of Anti-Internalization. Additionally, the market participant selected different Anti-internalization methodologies per port as follows:

Port 1: Group ID A1; Anti-internalization methodology: Decrement.

Port 2: Group ID A1; Anti-internalization methodology: Cancel Oldest.

Port 3: Group ID B1; Anti-internalization methodology: Cancel Oldest.

If an incoming order from Port 1 tries to interact with a resting order from Port 3, the orders will execute because they have the same MPID but different Group IDs.

If an incoming order from Port 1 tries to interact with a resting order from Port 2, then the anti-internalization method selected for Port 1 will apply to the order. In this case, the Decrement method would apply.

If an incoming order from Port 2 tries to interact with a resting order from Port 1, then the anti-internalization method selected for Port 2 will apply. In this case, the Cancel Oldest methodology would apply.

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. NASDAQ notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Group ID allows firms to better manage order flow and prevent undesirable executions against themselves. NASDAQ notes that a similar functionality was effective upon filing with the Commission for EDGX Exchange, Inc.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASDAQ requests that the Commission waive the 30-day operative delay so that NASDAQ may immediately offer its market participants the ability to better manage their order flow and prevent undesirable executions with themselves, which in turn may decrease costs to customers of such firms. The Commission notes that the proposal is based on similar rules of other exchanges[12] and believes that waiving the 30-day operative delay[13] is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.

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

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See* EDGX Exchange, Inc. Rule 11.9(f); Securities and Exchange Release No. 53428 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR–EDGX–2010–18), which was based on NYSEArca Equities Rule 7.31(qq). NASDAQ's current proposal differs from EDGX Rule 11.9(f) and NYSEArca Equities Rule 7.31(qq) in that there are additional methods relating to additional modifiers that do not apply to NASDAQ. Furthermore, EDGX utilizes the additional identity modifier at the port level as well as at the order level.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASDAQ has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* EDGX Exchange, Inc. Rule 11.9(f) and NYSEArca Equities Rule 7.31(qq).

[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).

Number SR–NASDAQ–2011–158 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–158. 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,[14] 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2011–158 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31476 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65867; File No. SR–BX–2011–080]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Optional Anti-Internalization Functionality

December 2, 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 22, 2011, NASDAQ OMX BX, Inc. (''BX'' or the ''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 Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to modify its optional anti-internalization functionality.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to provide a more granular alternative to the voluntary anti-internalization functionality. Under the proposal, market participants will be given the additional options of (1) assigning a group identification modifier at the port level; and (2) assigning different anti-internalization methodology to specific order entry ports.

Currently, anti-internalization processing is available only on an MPID-wide basis with only a single methodology being allowed per MPID. Market participants direct that a particular version of anti-internalization processing be applied to a particular MPID, which is then applied by the system to all quotes/orders entered using that MPID. Market participants have the option, when entering quotes/orders using the same MPID they do not wish to have automatically interact with each other in the System, to either direct the System to not execute any part of the interacting quotes/orders from the same MPID and, instead, cancel share amounts of the interacting quotes/orders back to the entering party with an arrangement that takes into consideration the size of the interacting quotes/orders (Decrement); or, regardless of the size of the interacting quotes/orders, cancelling the oldest of them in full (Cancel Oldest).[4]

Under the proposal, market participants entering quotes/orders under a specific MPID may voluntarily assign a unique group identification modifier that represents a group of quotes/orders from the same market participant identifier and order entry port (''Group ID''). The Group ID will be a two-character code composed of alphanumerics and/or spaces, assigned to a specific order entry port and updated by the Exchange on behalf of the market participant. This additional option will direct the System to execute any so designated incoming quotes/orders against all eligible resting quotes/orders except those with the both the same MPID and same Group ID.

If the market participant selects the option of utilizing the Group ID, the anti-internalization selection will be applied to all quotes/orders entered using both the same MPID and the same Group ID. If the incoming order has both the same MPID and the same Group ID, the two orders will not execute against

[4] *See* Exchange Rule 4757(a)(4).

each other. If the two orders have the same MPID and different Group IDs, then the order will be eligible to execute against each other as designated by the anti-internalization method. For example:

1. Incoming order ''A'' has an MPID of ''ABCD'' and Group ID ''A1'', resting order ''B'' has an MPID of ''ABCD'' and Group ID ''A1'': in this scenario, these two orders would not execute against each other.
2. Incoming order ''C'' has an MPID of ''EFGH'' and Group ID ''XY'', resting order ''D'' has an MPID of ''EFGH'' and Group ID ''ZZ'': in this scenario, these two orders would execute against each other.

Additionally, market participants will now have the option to assign a different anti-internalization methodology (Decrement or Cancel Oldest) to different order entry ports. The anti-internalization method assigned to the port sending the incoming order will determine which methodology is applied to the orders prevented from matching. For example:

FIRM XX (MPID ''ABCD'') utilizes three ports and has elected to assign Group IDs to their order entry ports for the purpose of anti-internalization. Additionally, the market participant selected different anti-internalization methodologies per port as follows:

Port 1: Group ID A1; Anti-internalization methodology: Decrement.

Port 2: Group ID A1; Anti-internalization methodology: Cancel Oldest.

Port 3: Group ID B1; Anti-internalization methodology: Cancel Oldest.

If an incoming order from Port 1 tries to interact with a resting order from Port 3, the orders will execute because they have the same MPID but different Group IDs.

If an incoming order from Port 1 tries to interact with a resting order from Port 2, then the anti-internalization method selected for Port 1 will apply to the order. In this case, the Decrement method would apply.

If an incoming order from Port 2 tries to interact with a resting order from Port 1, then the anti-internalization method selected for Port 2 will apply. In this case, the Cancel Oldest methodology would apply.

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. The Exchange notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Group ID allows firms to better manage order flow and prevent undesirable executions against themselves. The Exchange notes that a similar functionality was effective upon filing with the Commission for EDGX Exchange, Inc.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange may immediately offer its market participants the ability to better manage their order flow and prevent undesirable executions with themselves, which in turn may decrease costs to customers of such firms. The Commission notes that the proposal is based on similar rules of other exchanges[12] and believes that waiving the 30-day operative delay[13] is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.

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

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See* EDGX Exchange, Inc. Rule 11.9(f); Securities and Exchange Release No. 53428 (December 3, 2010), 75 FR 76763 (December 9, 2010)(SR–EDGX–2010–18), which was based on NYSEArca Equities Rule 7.31(qq). The Exchange's current proposal differs from EDGX Rule 11.9(f) and NYSEArca Equities Rule 7.31(qq) in that there are additional methods relating to additional modifiers that do not apply to the Exchange. Furthermore, EDGX utilizes the additional identity modifier at the port level as well as at the order level.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* EDGX Exchange, Inc. Rule 11.9(f) and NYSEArca Equities Rule 7.31(qq).

[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).

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–BX–2011–080 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–080. 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,[14] 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 publicly available. All submissions should refer to File Number SR–BX–2011–080 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31475 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

[14] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65865; File No. SR–NYSE–2011–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend NYSE Rule 104(a)(1)(A) To Reflect That Designated Market Maker Unit Quoting Requirements Are Based on Consolidated Average Daily Volume

December 2, 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 18, 2011, New York Stock Exchange LLC (''NYSE'' or the ''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 Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to [amend] [sic] NYSE Rule 104(a)(1)(A) to reflect that, when determining the specific percentage quoting requirement applicable to a Designated Market Maker unit (''DMM unit''), volume for the particular security is based on consolidated average daily volume (''CADV''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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 Exchange proposes to amend NYSE Rule 104(a)(1)(A)[4] to reflect that, when determining the specific percentage quoting requirement applicable to a DMM unit,[5] volume for the particular security is based on CADV.[6]

A DMM unit must maintain a bid or an offer at the National Best Bid and National Best Offer (''inside'') a minimum of either 10% or 15% of the trading day, depending on trading volume for the security. NYSE Rule 104(a)(1)(A) currently reflects for one of the calculations, but not the other, that, when determining the specific percentage quoting requirement applicable to a DMM unit, trading volume for the particular security is based on volume ''on the Exchange.'' The reference to ''on the Exchange'' was inadvertently included in the Exchange's proposal to implement the

[4] NYSE Rule 104 is currently in effect during a pilot period (''New Market Model Pilot'' or ''NMM Pilot''). *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (the ''NYSE NMM Approval''). The Exchange has extended the operation of the NMM Pilot several times and it is currently set 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).

[5] *See* NYSE Rule 98(b)(2). ''DMM unit'' means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) Has been approved by NYSE Regulation pursuant to section (c) of NYSE Rule 98, (ii) is eligible for allocations under NYSE Rule 103B as a DMM unit in a security listed on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit.

[6] Given the multitude of venues where equity securities trade, CADV is more reflective of the trading characteristics of a security than the volume on any single market.

NMM Pilot.[7] In this regard, and as reflected in the NYSE NMM Approval, the Exchange intended that trading volume for a particular security would be based on CADV when determining the specific percentage quoting requirement applicable to a DMM unit.[8]

As proposed, NYSE Rule 104(a)(1)(A) would reflect that, with respect to maintaining a continuous two-sided quote with reasonable size, DMM units must maintain a bid or an offer at the inside at least 15% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume of less than one million shares, and at least 10% for securities in which the DMM unit is registered with a consolidated average daily volume equal to or greater than one million shares.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed change would align the text of NYSE Rule 104(a)(1)(A) with the previously approved manner by which to measure trading volume of a particular security, as set forth in NYSE Rule 103B, and consistent with the NMM Approval order, which also discussed the use of CADV, and not just trading volume on the Exchange, for purposes of measuring the quoting requirement applicable to a DMM unit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the Exchange's Rules to immediately reflect the fact that DMM unit quoting requirements are calculated based on CADV rather than trading volume on the Exchange. Therefore, the Commission designates the proposal 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–NYSE–2011–58 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–2011–58. 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 will also be available for inspection and

[7] NYSE Amex LLC has filed a similar proposal to similarly change the text of NYSE Amex Equities Rule 104(a)(1)(A), which is based on NYSE Rule 104(a)(1)(A), from volume ''on the Exchange'' to ''consolidated'' volume.

[8] *See* NYSE NMM Approval at 64381, which states that ''[f]or securities that have a consolidated average daily volume of less than one million shares per calendar month, a DMM Unit must maintain a bid or an offer at the NBBO for at least 10% of the trading day (calculated as an average over the course of a calendar month). For securities that have a consolidated average daily volume of equal to or greater than one million shares per calendar month, a DMM Unit must maintain a bid or an offer at the NBBO for at least 5% or more of the trading day (calculated as an average over the courts (sic) of a calendar month.'' *See also* NYSE NMM Approval at n.71. A subsequent NYSE rule change similarly noted that, ''with respect to maintaining a continuous two-sided quote with reasonable size, DMMs must maintain a bid or offer at the NBBO* * *at a prescribed level based on the average daily volume of the security. Securities that have a consolidated average daily volume of less than one million shares per calendar month are defined as Less Active Securities and securities that have a consolidated average daily volume of equal to or greater than one million shares per calendar month are defined as More Active Securities. For Less Active Securities, a [DMM] unit must maintain a bid or an offer at the NBBO for at least 10% of the trading day during a calendar month. For More Active Securities, a [DMM] unit must maintain a bid or an offer at the NBBO for at least 5% or more of the trading day during a calendar month.'' *See* Securities Exchange Act Release No. 58971 (November 17, 2008), 73 FR 71070 (November 24, 2008) (SR–NYSE–2008–115) at n.5. CADV is similarly used to differentiate between ''more active'' and ''less active'' securities under NYSE Rule 103B.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[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).

copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2011–58 and should be submitted on or before December 29, 2011

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31474 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12938 and #12939]

Mississippi Disaster #MS–00052

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of MISSISSIPPI dated 11/29/2011.

Incident: Severe Storms and Tornadoes.

Incident Period: 11/16/2011.

Effective Date: 11/29/2011.

Physical Loan Application Deadline Date: 01/30/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 08/29/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jones.

Contiguous Counties: Mississippi Covington, Forrest, Jasper, Perry, Smith, Wayne.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12938 C and for economic injury is 12939 0.

The States which received an EIDL Declaration # are Mississippi.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 29, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–31555 Filed 12–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12951 and #12952]

New Jersey Disaster #NJ–00030

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4048–DR), dated 11/30/2011.

Incident: Severe Storm.

Incident Period: 10/29/2011.

Effective Date: 11/30/2011.

Physical Loan Application Deadline Date: 01/30/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 08/30/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/30/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cape May, Essex, Hunterdon, Morris, Somerset, Sussex, Union, Warren.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12951B and for economic injury is 12952B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–31552 Filed 12–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12940 and #12941]

New Mexico Disaster #NM–00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Mexico (FEMA–4047–DR), dated 11/23/2011.

Incident: Flooding.

Incident Period: 08/19/2011 through 08/24/2011.

Effective Date: 11/23/2011.

Physical Loan Application Deadline Date: 01/23/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 08/23/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

[14] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/23/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cibola, Sandoval, and the Pueblo of Acoma and the Pueblo of Santa Clara.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 129406 and for economic injury is 129416.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–31550 Filed 12–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0646]

Riverside Micro-Cap Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Riverside Micro-Cap Fund II, L.P., 45 Rockefeller Center, New York, NY 10111, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Riverside Micro-Cap Fund II, L.P. proposes to provide equity security financing to Employment Law Training, Inc., 160 Pine Street, San Francisco, CA 94111 (''ELT'').

The financing is brought within the purview of § 107.730(a) and (d) of the Regulations because Riverside Capital Appreciation Fund V, L.P. and Co-Invest Vehicle, both Associates of Riverside Micro-Cap Fund II, L.P., own more than ten percent of ELT, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: November 30, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–31547 Filed 12–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0646]

Riverside Micro-Cap Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Riverside Micro-Cap Fund II, L.P., 45 Rockefeller Center, New York, NY 10111, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Riverside Micro-Cap Fund II, L.P. proposes to provide equity security financing to DrugTest Holding Company, 12600 Northborough Drive, Suite 300, Houston, TX 77067 (''DISA'').

The financing is brought within the purview of § 107.730(a) and (d) of the Regulations because Riverside Capital Appreciation Fund V, L.P. and Co-Invest Vehicle, both Associates of Riverside Micro-Cap Fund II, L.P., own more than ten percent of DISA, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: November 30, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–31548 Filed 12–7–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7711]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Empowering Women and Girls Through Sports

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C/SU–12–14.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates

Application Deadline: February 6, 2012.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for Empowering Women and Girls through Sport Program as part of the International Sports Programming Initiative. This initiative will consist of approximately 12 short-term U.S.-based and overseas programs focused on using sport as a tool for women's empowerment. The program envisions approximately 115 participants from overseas coming to the U.S., and approximately 20 American participants traveling overseas. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may apply.

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 Office of Citizen Exchanges welcomes proposals for two-way exchanges that directly respond to the following objectives: (1) To use sport as a tool to introduce foreign participants to the United States, and specifically to girls-focused programming; (2) To increase the capacity of girls' sports programs overseas; and (3) To use mentorships to foster professional relationships between women's sports leaders and administrators in the United States with those overseas.

It has been shown that women's participation in sport can improve physical health, foster self-esteem, and provide opportunities for leadership and achievement. By demonstrating the important and growing role that sports play in the social development of women and girls in the United States, these sports exchange programs will foster women's empowerment in participating countries.

All foreign participants will benefit from the effectiveness of sport in communicating American ideals and values despite language and other cultural barriers. Foreign participants will gain a deeper understanding of U.S. society and culture through interactions with participants from the United States, as well as through sessions on the history of Title IX and its implications in the United States. The Americans with whom they spend time in the United States, along with Americans who travel overseas, will learn about the experience of their foreign counterparts.

Sports Visitor Programs

The visitor program will introduce participants to: The integration of sports into the education and lives of women and girls in the United States; the role of sports in teaching teamwork, healthy behaviors, and leadership skills; and to develop the participants' skills and knowledge in using sport as a vehicle for positive change in their communities.

The primary audience will be either youth players (14–17 years old) or coaches who work with girls and are committed to the development of girls' sport programs. Program Sessions may include some combination of the following topics: Title IX; disability sports; sport-specific clinics; teambuilding; schools in the United States; after school programming; volunteerism; coaching & youth development; women's health, including fitness and nutrition; leadership activities; exposure to sports programs specifically for girls; recruiting participants and funding women's sport programs; and conflict resolution.

ECA estimates approximately 115 visitors for 10-day programs. Most programs will either begin or end in the Washington, DC area. Other program sites will be determined by ECA, in consultation with the cooperating agency. For more information on budgeting, please consult the POGI.

Sport Envoy Programs

Sports Envoys will be a combination of American sports program administrators, coaches, and athletes who will focus on female athletes and coaches, as well as the development of girls' sports programming infrastructure. The embassies will have a key role in implementing the programs, but the cooperating agency will help to develop program materials, recruit sport program administrators, and may arrange airfare. Additionally, small groups of American envoys may require an orientation before traveling overseas. The applicant should plan on approximately 20 participants receiving an orientation in the Washington, DC area before heading overseas.

Sports Mentorship Program

The Sports Mentorship component will link approximately 20 foreign emerging leaders in women's sports from ECA-selected countries, who have at least two years of professional experience in building sports programs for women and girls, with female peer mentors in the United States for an approximately four-week mentorship program. The program is designed to reach beyond the exchange by serving as the basis for an international professional support network for women working in sport. Participants will also have access to the community of alumni from previous State Department sponsored exchange programs.

Applicant organizations must identify a sampling of the U.S. organizations and individuals with whom they are proposing to match foreign participants. Proposals should contain letters of commitment or support from partner organizations for the proposed mentorships. A description of any previous cooperative activities with these partner organizations must be included in the proposal, along with information about their mission, activities, and accomplishments. Applicants should clearly outline and describe the roles and responsibilities of all partner organizations in terms of project logistics, management and oversight.

By participating and working with female athletes and administrators from around the globe, the participants will develop a broader world view; they will have opportunities to connect with women and girls across borders and promote mutual understanding and partnerships. They will be able to harness the tools sport provides for helping women and girls to live a healthy and independent life that will enable them to pursue educational, career, and leadership opportunities that otherwise may have been closed to them.

Further details on specific program responsibilities can be found in the Project Objectives, Goals, and Implementation (POGI), which is part of the formal solicitation package available from the Bureau. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing proposals.

In a cooperative agreement, ECA/PE/C/SU is substantially involved in program activities above and beyond routine monitoring. ECA/PE/C/SU activities and responsibilities for this program are as follows:

1. Participating in the design and direction of program activities, including approval and input for all program agendas and timelines;
2. Providing guidance in execution of all project components;
3. Providing guidance on content and speakers for workshops;
4. Assisting with SEVIS-related issues;
5. Assisting with participant emergencies;
6. Selecting participating countries for programming;
7. Liaising with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department;
8. Liaising with the U.S. professional sports leagues and federations to select Sports Envoys and help in hosting Sport Visitor delegations.

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: $1,000,000.

Approximate Number of Awards: 1.

Approximate Average Award: $1,000,000.

Anticipated Award Date: Pending availability of funds, February 15, 2012.

Anticipated Project Completion Date: June 30, 2013.

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 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 non-profit 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

(a.) 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 one award, in an amount up to $1,000,000 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.

(b.) Technical Eligibility: All proposals must comply with the following or they will result in your proposal being declared technically ineligible and given no further consideration in the review process.

The Office does not support proposals limited to conferences or seminars (*i.e.,* one- to fourteen day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

The Office of Citizen Exchanges does not support academic research or faculty or student fellowships.

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 Beth Fine, Office of Citizen Exchanges, ECA/PE/C/SU, SA–5, 3rd Floor, SportsUnited, Department of State, Washington, DC 20522–0503, telephone: (202) 632–6061; fax: (202) 632–6492; or email: *FineEH@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number 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 Beth Fine and refer to the Funding Opportunity Number ECA/PE/C/SU–12–14 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 part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 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 part 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 part 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 part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 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.

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. 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. Educational materials;
2. Participant travel (domestic, local, and international transportation);
3. Orientations;
4. Cultural activities;
5. Meeting costs;
6. Food and lodging;
7. Travel and Per Diem for Interpreters or English Language Officers;
8. Small grants;
9. Evaluation;
10. Other justifiable expenses directly related to supporting program activities.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: February 6, 2012.

Reference Number: ECA/PE/C/SU–12–14.

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 (8) copies of the application should be sent to:

Program Management Division ECA–IIP/EX/PM, *Ref.:* ECA/PE/C/SU–12–14, SA–5, Floor 4, Department of State, 2200 C Street NW., Washington, DC 20037.

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.

Optional—IV.3f.3 You may also state here any limitations on the number of applications that an applicant may submit and make it clear whether the limitation is on the submitting organization, individual program director or both.

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: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program Planning and Ability To Achieve Objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. The agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and debriefing sessions, and follow-on activities).

4. Institutional Capacity/Track Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. Proposals 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: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. Draft survey questionnaires or other techniques plus a description of a methodology to link outcomes to the original program objectives are recommended.

6. 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.

7. Follow-on Activities: Proposals should provide a plan for implementation of the small grants program described above. That plan should include coordination with the appropriate post. All follow-on activities should be tracked and evaluated.

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 a 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.1b. The following additional requirements apply to this project: A critical component of current U.S. government Iran policy is the support for indigenous Iranian voices. The State Department has made the awarding of grants for this purpose a key component of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) has requested the Department of State to follow certain procedures to effectuate the goals of Sections 481(b), 531(a), 571, 582, and 635(b) of the Foreign Assistance Act of 1961 (as amended); 18 U.S.C. 2339A and 2339B; Executive Order 13224; and Homeland Security Presidential Directive 6. These licensing conditions mandate that the Department conduct a vetting of potential Iran grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting the Department will collect information from grantees and sub-grantees regarding the identity and background of their key employees and Boards of Directors.

Note: To assure that planning for the inclusion of Iran complies with requirements, please contact Beth Fine,

telephone number (202) 632–6061, email *fineeh@state.gov* for additional information.

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact: Beth Fine, telephone number (202) 632–6061, email *fineeh@state.gov* for additional information.

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) 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 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.

(4) Quarterly program and financial reports which should include relevant details on all programs completed that quarter, as well as a description of planning undertaken for programs taking place in the following quarter. Specific information on mentorship hosts, follow-on grants, and other program activities should be included.

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 reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Optional Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement.

(2) Numbers of all persons who benefit from the award funding but do not travel.

(3) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least one week prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Beth Fine, U.S. Department of State, ECA/PE/C/SU, SA–5, 3rd Floor, SportsUnited, Department of State, Washington, DC 20522–0503, telephone: (202) 632–6061; fax: (202) 632–6492; or email: *FineEH@state.govmailto:.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/SU–12–14.

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 28, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–31392 Filed 12–7–11; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of the Trade Agreements Act of 1979

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Determination of Procurement Thresholds.

FOR FURTHER INFORMATION CONTACT: Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395–9476 or Jean_Grier@ustr.eop.gov.

SUMMARY: Executive Order 12260 requires the United States Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), which implements U.S. trade agreement obligations, including those under the World Trade Organization (WTO) Agreement on Government Procurement, Chapter 15 of the United States-Australia Free Trade Agreement (U.S.-Australia FTA), Chapter 9 of the United States-Bahrain Free Trade Agreement (U.S.-Bahrain FTA), Chapter 9 of the United States-Chile Free Trade Agreement (U.S.-Chile FTA), Chapter 9 of the Dominican Republic-Central American-United States Free Trade Agreement (DR–CAFTA), Chapter 9 of the United States-Morocco Free Trade Agreement (U.S.-Morocco FTA), Chapter 10 of the North American Free Trade Agreement (NAFTA), Chapter 9 of

the United States-Oman Free Trade Agreement (U.S.-Oman FTA), Chapter 9 of the United States-Peru Trade Promotion Agreement (U.S.-Peru TPA), and Chapter 13 of the United States-Singapore Free Trade Agreement (U.S.-Singapore FTA). These obligations apply to covered procurements valued at or above specified U.S. dollar thresholds.

Now, therefore, I, Ronald Kirk, United States Trade Representative, in conformity with the provisions of Executive Order 12260, and in order to carry out U.S. trade agreement obligations under the WTO Agreement on Government Procurement, Chapter 15 of the U.S.-Australia FTA, Chapter 9 of the U.S.-Bahrain FTA, Chapter 9 of the U.S.-Chile FTA, Chapter 9 of DR–CAFTA, Chapter 9 of the U.S.-Morocco FTA, Chapter 10 of NAFTA, Chapter 9 of the U.S.-Oman FTA, Chapter 9 of the U.S.-Peru TPA, and Chapter 13 of the U.S.-Singapore FTA, do hereby determine, effective on January 1, 2012:

For the calendar years 2012 and 2013, the thresholds are as follows:

I. WTO Agreement on Government Procurement

A. Central Government Entities Listed in U.S. Annex 1

(1) Procurement of goods and services—$202,000; and

(2) Procurement of construction services—$7,777,000.

B. Sub-Central Government Entities Listed in U.S. Annex 2

(1) Procurement of goods and services—$552,000; and

(2) Procurement of construction services—$7,777,000.

C. Other Entities Listed in U.S. Annex 3

(1) Procurement of goods and services—$622,000; and

(2) Procurement of construction services—$7,777,000.

II. U.S.-Australia FTA, Chapter 15

A. Central Government Entities Listed in the U.S. Schedule to Annex 15–A, Section 1

(1) Procurement of goods and services—$77,494; and

(2) Procurement of construction services—$7,777,000.

B. Sub-Central Government Entities Listed in the U.S. Schedule to Annex 15–A, Section 2

(1) Procurement of goods and services—$552,000; and

(2) Procurement of construction services—$7,777,000.

C. Other Entities Listed in the U.S. Schedule to Annex 15–A, Section 3

(1) Procurement of goods and services for List A Entities— $387,471;

(2) Procurement of goods and services for List B Entities— $622,000;

(3) Procurement of construction services—$7,777,000.

III. U.S.-Bahrain FTA, Chapter 9

A. Central Government Entities Listed in the U.S. Schedule to Annex 9–A–1

(1) Procurement of goods and services—$202,000; and

(2) Procurement of construction services—$10,074,262.

B. Other Entities Listed in the U.S. Schedule to Annex 9–A–2

(1) Procurement of goods and services for List B entities—$622,000; and

(2) Procurement of construction services—$12,399,671.

IV. U.S.-Chile FTA, Chapter 9

A. Central Government Entities Listed in the U.S. Schedule to Annex 9.1, Section A

(1) Procurement of goods and services—$77,494; and

(2) Procurement of construction services—$7,777,000.

B. Sub-Central Government Entities Listed in the U.S. Schedule to Annex 9.1, Section B

(1) Procurement of goods and services—$552,000; and

(2) Procurement of construction services—$7,777,000.

C. Other Entities Listed in the U.S. Schedule to Annex 9.1, Section C

(1) Procurement of goods and services for List A Entities— $387,471;

(2) Procurement of goods and services for List B Entities— $622,000;

(3) Procurement of construction services—$7,777,000.

V. DR–CAFTA, Chapter 9

A. Central Government Entities Listed in the U.S. Schedule to Annex 9.1.2(b)(i), Section A

(1) Procurement of goods and services—$77,494; and

(2) Procurement of construction services—$7,777,000.

B. Sub-Central Government Entities Listed in the U.S. Schedule to Annex 9.1.2(b)(i), Section B

(1) Procurement of goods and services—$552,000; and

(2) Procurement of construction services—$7,777,000.

C. Other Entities Listed in the U.S. Schedule to Annex 9.1.2(b)(i), Section C

(1) Procurement of goods and services for List B Entities— $622,000;

(2) Procurement of construction services—$7,777,000.

VI. U.S.-Morocco FTA, Chapter 9

A. Central Government Entities Listed in the U.S. Schedule to Annex 9–A–1

(1) Procurement of goods and services—$202,000; and

(2) Procurement of construction services—$7,777,000.

B. Sub-Central Government Entities Listed in the U.S. Schedule to Annex 9–A–2

(1) Procurement of goods and services—$552,000; and

(2) Procurement of construction services—$7,777,000.

C. Other Entities Listed in the U.S. Schedule to Annex 9–A–3

(1) Procurement of goods and services for List B Entities— $622,000;

(2) Procurement of construction services—$7,777,000.

VII. NAFTA, Chapter 10

A. Federal Government Entities Listed in the U.S. Schedule to Annex 1001.1a–1

(1) Procurement of goods and services—$77,494; and

(2) Procurement of construction services—$10,074,262.

B. Government Enterprises Listed in the U.S. Schedule to Annex 1001.1a–2

(1) Procurement of goods and services—$387,471; and

(2) Procurement of construction services—$12,399,671.

VIII. U.S.-Oman FTA, Chapter 9

A. Central Level Government Entities Listed in the U.S. Schedule to Annex 9, Section A

(1) Procurement of goods and services—$202,000; and

(2) Procurement of construction services—$10,074,262.

B. Other Covered Entities Listed in the U.S. Schedule to Annex 9, Section B

(1) Procurement of goods and services for List B Entities— $622,000;

(2) Procurement of construction services—$12,399,671.

IX. U.S.-Peru TPA, Chapter 9

A. Central Government Entities Listed in the U.S. Schedule to Annex 9.1, Section A

(1) Procurement of goods and services—$202,000; and

(2) Procurement of construction services—$7,777,000.

B. Sub-Central Government Entities Listed in the U.S. Schedule to Annex 9.1, Section B

(1) Procurement of goods and services—$552,000; and
(2) Procurement of construction services—$7,777,000.

C. Other Entities Listed in the U.S. Schedule to Annex 9.1, Section C

(1) Procurement of goods and services for List B Entities—$622,000;
(2) Procurement of construction services—$7,777,000.

X. U.S.-Singapore FTA, Chapter 13

A. Central Government Entities Listed in the U.S. Schedule to Annex 13A, Schedule 1, Section A

(1) Procurement of goods and services—$77,494; and
(2) Procurement of construction services—$7,777,000.

B. Sub-Central Government Entities Listed in the U.S. Schedule to Annex 13A, Schedule 1, Section B

(1) Procurement of goods and services—$552,000; and
(2) Procurement of construction services—$7,777,000.

C. Other Entities Listed in the U.S. Schedule to Annex 13A, Schedule 1, Section C

(1) Procurement of goods and services—$622,000;
(2) Procurement of construction services—$7,777,000.

Ronald Kirk,

United States Trade Representative.

[FR Doc. 2011–31512 Filed 12–7–11; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Austin Straubel International Airport, Green Bay, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of 3.3334 acres of airport property at the Austin Straubel International Airport, Green Bay, WI.

Brown County, as sponsor of the airport, is seeking to release from compliance with grant assurances two parcels of airport property identified as Parcel nos. 98 and 107, totaling 3.3334 acres. These parcels are located alongside each other in the extreme northwest corner of the airport in the vicinity of the intersection of Pine Tree Road and State Highway 172. Proposed use of the land to be released is construction of a new fire station by the neighboring Village of Hobart to house its emergency response vehicles. The proposed fire station would be located adjacent to the existing village hall.

The 3.334 acres would be provided to the Village of Hobart in exchange for the village vacating 2 parcels of road and road right-of-way totaling 9.367 acres located on, or adjacent to, Austin Straubel International Airport. One parcel contains a roadway section located within the airport security perimeter fence on West Adam Drive and Lonesome Road. The second parcel is a short section of Cyrus Road, located immediately to the south of Runway 36 and within the runway protection zone, but outside of the airport property boundary.

The value to the airport of exchanging airport property for the road and road right-of-way rests with the fact that the Village of Hobart could otherwise mandate the airport to keep the surfaces open and require installation of a fence around the road right-of-ways at an estimated cost to the airport of over $200,000. An additional benefit to the airport of acquiring this 9.367 acres of village-owned property in exchange for the 3.3334 acres of airport-owned property is that this action would provide the airport with a contiguous, airside property boundary.

A categorical exclusion for this land release action was prepared by Wisconsin Dept. of Transportation-Bureau of Aeronautics, and issued by FAA on November 15, 2011.

The airport sponsor purchased the two parcels by voluntary acquisition on June 24, 1998 (Parcel No. 98) and November 1, 2002 (Parcel No. 107). No Federal or State of Wisconsin funds were utilized in the acquisition process.

The aforementioned land is not needed for aeronautical use, as shown on the Airport Layout Plan, conditionally approved on May 16, 2011. There are no impacts to the airport by allowing the airport to dispose of the property.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 9, 2012.

ADDRESSES: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4635/ FAX Number (612) 253–4611. Documents reflecting this FAA action may be reviewed at the following locations: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706, or at the Wisconsin Department of Transportation, Bureau of Aeronautics, 4802 Sheboygan Ave., Room 701, Madison WI 53707.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4635/FAX Number (612) 253–4611. Documents reflecting this FAA action may be reviewed at the following locations: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706; or at the Wisconsin Department of Transportation, Bureau of Aeronautics, 4802 Sheboygan Ave., Room 701, Madison WI 53707.

SUPPLEMENTARY INFORMATION: Following is a legal description of the subject airport property to be released at Austin Straubel International Airport, Green Bay, Wisconsin:

Parcel No. 98: West 220 feet of N¼ of SW¼, NW¼. Section 1, T23N, R19E, except highway, Village of Hobart, Brown County, Wisconsin.

Parcel No. 107: West 440 feet of North½ of North½, SW¼, NW¼, except West 220 feet and except road, Section 1, Township 23 N, R19E, Village of Hobart, Brown County, Wisconsin.

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Minneapolis, MN on November 17, 2011.

Laurie Suttmeier,

Acting Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2011–31459 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0154]

Stakeholders Meeting Regarding Ready Reserve Force (RRF) Ship Manager Contract Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The Maritime Administration (MarAd) announces that it will hold a public outreach listening session on December 7, 2011 to gather input for consideration of possible changes to the Ship Manager Contract requirements for maintaining and operating MarAd Ready Reserve Force vessels. The topics to be discussed at the listening session will include:

- Ship Owner/Operator requirement.
- 12-ship award limit.
- Definition of Ship Manager ''business entity''.
- Citizenship requirements—46 CFR 315 and 46 U.S.C. 802(a) and 802(b), U.S. Citizen vs. Documented Citizen.
- The relative importance of Technical, Past Performance and Price Evaluation Factors.
- Ship Manager as Agent vs. Independent contractor issues.
- Consideration of participation in Voluntary Intermodal Sealift Agreement, Maritime Security Program, or Tanker Emergency Preparedness Agreement.
- Small business, sub-contracting vs. joint venture structure of Ship Manager.
- Re-assignment of ships during contract performance.
- Incentives for Cost Saving Methods in Program Management, Ship Costs, Green Initiatives.
- Limited Scope Ship Management Contract for State Maritime Academy Schoolships.

The meeting is open to the public. Due to space constraints, participation is limited to two (2) representatives per company/organization. Advanced registration is recommended. The DOT building at 1200 New Jersey Ave. SE. has security entrance requirements. All personnel will be escorted. The public meeting will be held at a site accessible to individuals with disabilities. To register, interested parties should send their name, title, and company affiliation to Rilla Gaither at *Rilla.Gaither@dot.gov* by close of business Monday, December 5, 2011.

DATES: The meeting will be held on Wednesday, December 7, 2011 at 10:30 a.m. to 12 p.m.

ADDRESSES: This meeting will be held in the Conference Center at the U.S. Department of Transportation Headquarters, 1200 New Jersey Avenue SE., Washington, DC 20590. Additional meetings, if deemed necessary, may be held on the West or Gulf Coast, and will be identical in terms of agenda and purpose.

FOR FURTHER INFORMATION CONTACT: For general background information or technical information, contact Rilla Gaither, Office of the Associate Administrator for National Security, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 or by email to *RRFSMC@dot.gov.*

By Order of the Maritime Administrator.

Dated: December 2, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–31460 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0153]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OCEAN VUE 1; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2011–0153. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OCEAN VUE 1 is:

Intended Commercial Use of Vessel: ''glass bottom boat tour.''

Geographic Region: ''Florida.''

The complete application is given in DOT docket MARAD–2011–0153 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 1, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–31450 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0160]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LADY KAY; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2011–0160. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LADY KAY is:

Intended Commercial Use of Vessel: ''sight seeing cruises, personal trips (cruises), sport-fishing, diving snorkeling.''

Geographic Region: ''FL, GA, SC, NC, VA, MD, DE, NJ, NY, CT, RI, MA, NH, ME.''

The complete application is given in DOT docket MARAD–2011–0160 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 1, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–31452 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011 0148]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BARBARY GHOST; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2011–0148. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BARBARY GHOST is:

Intended Commercial Use Of Vessel: ''Sightseeing tours in the San Francisco Bay for a group of six passengers or less.''

Geographic Region: ''CA.''

The complete application is given in DOT docket MARAD–2011–0148 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may

review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 1, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–31444 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0159]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PRIORITIES; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2011–0159. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PRIORITIES is:

Intended Commercial Use of Vessel: ''Term charters 6 or less guests.''

Geographic Region: ''Puerto Rico, Florida, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine.''

The complete application is given in DOT docket MARAD–2011–0159 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 1, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–31453 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0157]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel FOR–2–NA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2011–0157. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FOR–2–NA is:

Intended Commercial Use of Vessel: ''Charter fishing, for hire.''

Geographic Region: ''Massachusetts.''

The complete application is given in DOT docket MARAD–2011–0157 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 1, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–31458 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011 0155]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PATRIOT II; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2011–0155. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PATRIOT II is:

Intended Commercial Use of Vessel: ''crewboat.''

Geographic Region: ''Louisiana.''

The complete application is given in DOT docket MARAD–2011–0155 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 1, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–31465 Filed 12–7–11; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL REGISTER

Vol. 76 Thursday,
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Part II

Federal Trade Commission

16 CFR Part 437
Business Opportunity Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 437

RIN 3084–AB04

Business Opportunity Rule

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final rule.

SUMMARY: The Commission is adopting final amendments to its Trade Regulation Rule entitled ''Disclosure Requirements and Prohibitions Concerning Business Opportunities'' (''Business Opportunity Rule'' or ''Rule''). Among other things, the Business Opportunity Rule has been amended to broaden its scope to cover business opportunity sellers not covered by the interim Business Opportunity Rule, such as sellers of work-at-home opportunities, and to streamline and simplify the disclosures that sellers must provide to prospective purchasers. The final Rule is based upon the comments received in response to an Advance Notice of Proposed Rulemaking (''ANPR''), an Initial Notice of Proposed Rulemaking (''INPR''), a Revised Notice of Proposed Rulemaking (''RNPR''), a public workshop, a Staff Report, and other information discussed herein. This document also contains the text of the final Rule and the Rule's Statement of Basis and Purpose (''SBP''), including a Regulatory Analysis.

DATES: The provisions of the final Rule will become effective on March 1, 2012.

ADDRESSES: Requests for copies of the final Rule and the SBP should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the final Rule and SBP, are available at *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, (202) 326–3711, Division of Marketing Practices, Room H–286, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The final Rule modifies the interim Business Opportunity Rule in two significant ways. First, the final Rule contains an expanded definition of ''business opportunity'' aimed at extending the scope of the Rule to business opportunities previously not covered, such as work-at-home programs. Second, although the final Rule's scope is broader than the interim Business Opportunity Rule, the compliance burden is reduced. Specifically, in contrast to the extensive disclosures previously required, the final Rule now requires that business opportunity sellers provide prospective customers with a substantially simplified and streamlined one-page disclosure document. The final Rule also adds affirmative prohibitions on misrepresentations and omissions, as well as disclosure requirements for sales conducted in Spanish and other languages besides English.

Statement of Basis and Purpose

Key Terms and Abbreviations Used Throughout This Statement of Basis and Purpose

''Amended Franchise Rule'' refers to the amended Franchise Rule published at 72 FR 15444 (Mar. 30, 2007) and codified at 16 CFR 436.

''ANPR'' refers to the Trade Regulation Rule on Franchising and Business Opportunity Ventures: Advanced Notice of Proposed Rulemaking, 62 FR 9115 (Feb. 28, 1997).

''Initial Proposed Disclosure Document'' refers to the original version of the Disclosure Document that was proposed in the INPR in 2006.

''INPR'' refers to the Initial Notice of Proposed Rulemaking for the Business Opportunity Rule, 71 FR 9054 (Apr. 12, 2006).

''Interim Business Opportunity Rule'' refers to the Business Opportunity Rule, codified at 16 CFR 437 that is currently in effect and is the subject of these amendment proceedings.

''IPBOR'' refers to the Initial Proposed Business Opportunity Rule, which was proposed in the INPR in 2006.

''Macro Report'' refers to Macro International, Inc.'s report to the FTC on the Disclosure Form, available at *http://www.ftc.gov/bcp/workshops/bizopps/disclosure-form-report.pdf.*

''Original Franchise Rule'' refers to the original Franchise Rule published at 43 FR 59614 (Dec. 21, 1978).

''RNPR'' refers to the Revised Notice of Proposed Rulemaking for the Business Opportunity Rule, 73 FR 16110 (Mar. 26, 2008).

''RPBOR'' refers to the Revised Proposed Business Opportunity Rule, which was proposed in the RNPR in 2008.

''Staff Report'' refers to FTC staff's *Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule* (16 CFR Part 437). The Staff Report is available at *http://www.ftc.gov/os/fedreg/2010/october/101028businessopportunitiesstaffreport.pdf.*

''Workshop'' refers to the June 1, 2009, public workshop held in Washington, DC, to discuss the proposed Disclosure Document and other aspects of the Business Opportunity Rule.

''Workshop Notice'' refers to the **Federal Register** Notice announcing the Workshop, 74 FR 18712 (Apr. 24, 2009).

I. Introduction

A. Overview of the Franchise Rule and the Evolution of the Interim Business Opportunity Rule

1. The Franchise Rule

On December 21, 1978, the Commission promulgated a Trade Regulation Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' (the ''Original Franchise Rule''), to address deceptive and unfair practices in the sale of franchises and business opportunity ventures.[1] The Original Franchise Rule covered, in a single Code of Federal Regulations part, both franchises and certain business opportunity ventures. With franchises, the franchisee sells goods or services that are associated with the franchisor's trademark, and the franchisee is subject to significant control by, or receives significant assistance from, the franchisor. The franchisee typically distributes goods or services supplied by the seller or an affiliate and receives accounts or locations in which to conduct the business. By contrast, business opportunities often do not involve a trademark. Vending machines or rack display routes are typical examples of business opportunities. Based upon the original rulemaking record, the Commission found that unfair and deceptive practices were widespread in the sale of franchises and business opportunities, causing serious economic harm to consumers.

The Commission adopted the Original Franchise Rule to prevent unfair and deceptive practices in the sale of franchises and business opportunities through pre-sale disclosure of specified items of material information. The purpose of the Original Franchise Rule was neither to regulate the substantive terms of a franchise or business opportunity agreement nor to regulate the relationship between the seller and the buyer. Rather, it was to ensure that sellers disclose material information to prospective buyers. The Original Franchise Rule was posited on the notion that a fully informed prospective buyer can determine whether a particular offering is in his or her best interest.

The Original Franchise Rule required extensive disclosures on a score of specified topics, such as, information about the seller; the business background of the seller's principals and their litigation and bankruptcy histories; the terms and conditions of

[1] 43 FR 59614 (Dec. 21, 1978).

the offer; statistical analyses of existing franchised and company-owned outlets; information about prior purchasers, including the names and addresses of at least 10 purchasers nearest the prospective buyer; and audited financial statements.

The Commission recognized that requiring these extensive disclosures would likely impose significant compliance costs on businesses covered by the Original Franchise Rule. It therefore sought to strike the proper balance between prospective purchasers' need for pre-sale disclosure and the burden imposed on those selling business ventures covered by the Rule. To achieve this balance, the Commission limited the scope of the Original Franchise Rule's coverage in three significant ways.

First, the Original Franchise Rule covered only those opportunities that required a purchaser to make a payment of at least $500 within the first six months of operation. In transactions where a purchaser may incur high financial losses if the seller withholds material information, the benefit for prospective purchasers of the Original Franchise Rule's pre-sale disclosure requirements outweighs the sellers' cost to make those disclosures. By contrast, when the investment required to purchase a business opportunity is comparatively small, prospective purchasers face a relatively small financial risk. In such circumstances, compliance costs may outweigh the benefits of pre-sale disclosure. Therefore, the Original Franchise Rule did not reach opportunities that charged lower fees.

Second, the ''inventory exemption'' excluded certain types of payments from the Original Franchise Rule's $500 minimum cost threshold. The ''inventory exemption'' is the franchise industry's shorthand term for the Commission's determination that, as a matter of policy, voluntary purchases of reasonable amounts of inventory at bona fide wholesale prices for resale do not count toward the required threshold payment. An important consequence of this policy determination was to eliminate from Original Franchise Rule coverage many pyramid marketing plans because purchasers of such plans typically do not make a required payment of or exceeding $500, but instead make voluntary purchases of inventory in reasonable amounts and at bona fide wholesale prices for resale.

Third, in addition to franchise opportunities, the Commission focused the Original Franchise Rule on the types of business opportunities that the record showed were likely to result in significant consumer injury, such as vending machines, rack displays, and similar opportunities, which frequently were sold through deceptive conduct. A feature common to these types of opportunities was the promise of assistance in securing locations or accounts. Thus, the Commission incorporated this characteristic into the Original Franchise Rule's definitional elements to ensure coverage of demonstrably injurious schemes. Other forms of assistance that business opportunity sellers frequently offer—such as training and the buy-back and resale of goods assembled by the purchaser (an element of many craft assembly opportunities) did not bring a business opportunity within the scope of the Original Franchise Rule's coverage.

In addition to these limits on the scope of the Original Franchise Rule's coverage—driven by balancing prospective purchasers' need for pre-sale disclosure against the burden imposed on business opportunity sellers—another aspect of the Original Franchise Rule's language further limited the scope of coverage. Specifically, the Original Franchise Rule provided that a business opportunity was covered only if the purchaser of the opportunity sells goods or services directly to end-users other than the business opportunity seller. The effect of this limitation was to exclude many work-at-home opportunities—such as envelope stuffing and craft assembly ventures—from Original Franchise Rule coverage. In those opportunities, the purchaser typically performs work for the seller or produces various goods for the seller, who then purportedly distributes them to end-users.

In 1995, as part of its systematic review of FTC rules, the Commission published in the **Federal Register** a request for comment on the Original Franchise Rule to determine its continued effectiveness and impact.[2] Based upon the comments received during the rule review, the Commission tentatively determined to retain the Original Franchise Rule, but sought additional comment on possible amendments. To that end, in February 1997, the Commission published an ANPR, seeking comment on various issues, including whether the Commission should separate the disclosure requirements for business opportunities from those for franchises.[3]

Based upon comments responding to the ANPR, the Commission found that the Original Franchise Rule continued to serve a vital purpose and that pre-sale disclosure was necessary to protect purchasers of franchises and business opportunities from fraudulent and deceptive sales practices. At the same time, however, the Commission agreed with the overwhelming view of the commenters who suggested that there are material differences between franchises and business opportunities and that these two types of distinct business arrangements require separate disclosure approaches. For example, many of the Original Franchise Rule's pre-sale disclosures, in particular those pertaining to the structure of the parties' relationship, do not apply to the sale of most business opportunities because those sales typically involve comparatively simple contracts. In addition, the Commission recognized that the Original Franchise Rule's detailed disclosure obligations may create barriers to entry for legitimate business opportunity sellers.[4] Accordingly, in 1999, the Commission announced its intention to conduct a separate rulemaking proceeding for business opportunity sales.[5]

2. The Interim Business Opportunity Rule

Much of the information revealed by the Commission's regulatory review of the Original Franchise Rule highlighted the differences between franchises and business opportunity ventures, and the distinct regulatory challenges presented by these two types of offerings—that franchises typically are expensive and involve complex contractual licensing relationships, while business opportunity sales are generally less costly and involve comparatively simple purchase agreements that pose less of a financial risk to purchasers. Based on the record amassed during the review proceeding, the Commission concluded that the Original Franchise Rule's extensive disclosure requirements imposed unnecessary compliance costs on both business opportunity sellers and buyers, and determined to bifurcate the Original Franchise Rule into two separate parts—one covering the sale of business format franchises[6] and one to govern the sale of business opportunities. Accordingly, in the ANPR, the Commission solicited

[2] 60 FR 17656 (Apr. 7, 1995).

[3] 62 FR 9115 (Feb. 28, 1997).

[4] 64 FR 57296 (Oct. 22, 1999).

[5] *Id.*

[6] The industry term ''business format franchise'' specifically refers to franchises in which franchisees operate under a common trademark or other commercial symbol and are required to adhere to the specific business format or method of doing business prescribed by the franchisor. Business format franchises are commonly called ''franchises'' by the general public, and the two terms are used interchangeably here.

comment on several proposed regulatory modifications, including the creation of a separate trade regulation rule governing the sale of business opportunities.[7]

Subsequently, the Commission completed all procedural steps prescribed by Section 18 of the FTC Act to finalize the Amended Franchise Rule, along with a Statement of Basis and Purpose, in March 2007.[8] At that time, the Amended Franchise Rule—no longer covering business opportunities—was codified at Part 436 in Title 16 of the CFR. The Original Franchise Rule with all definitional elements and references regarding business format franchising deleted, was retained and redesignated as Part 437. Part 437 was titled the ''interim Business Opportunity Rule.'' [9] The interim Business Opportunity Rule contained no new substantive disclosure requirements or prohibitions, and in all material respects was substantially identical to the Original Franchise Rule. Until the final Rule becomes effective, Part 437 governs sales of non-franchise business opportunities.[10]

B. Rule Amendment Proceedings

1. Initial Notice of Proposed Rulemaking and Initial Proposed Business Opportunity Rule

In 2006, having determined that a separate business opportunity rule was necessary, the Commission published an Initial Notice of Proposed Rulemaking (''INPR''), announcing its intention to proceed with its proposal for a separate Business Opportunity Rule (the ''initial proposed Business Opportunity Rule'' or ''IPBOR'').[11] The INPR proposed to amend the interim Business Opportunity Rule by updating it, streamlining it, and expanding its scope of coverage.[12] The IPBOR contained an expansive definition of ''business opportunity'' that encompassed business opportunities previously covered by the Original Franchise Rule as well as work-at home, medical billing, and multi-level marketing (MLM) [13] operations. It also eliminated the $500 threshold for Rule coverage.[14]

Streamlining the interim Business Opportunity Rule and tailoring it to fit business opportunities (as opposed to business format franchises) has been a primary focus of this proceeding. Both the Original Franchise Rule and the interim Business Opportunity Rule require extensive disclosures covering over twenty specified topics. In the INPR, the Commission recognized that these extensive disclosure requirements entail disproportionate compliance costs for sellers of comparatively low-cost business opportunity ventures.[15] Therefore, the Commission proposed to mitigate the compliance burden by simplifying and streamlining the disclosure requirements.[16]

Specifically, the INPR proposed a one-page business opportunity pre-sale disclosure document (the ''initial proposed disclosure document'') with only six required material disclosures.[17] The initial proposed disclosure document was intended to provide prospective purchasers with essential material information they could use in making a purchase decision. The INPR proposed to require sellers to use the exact form and language set forth by the Commission and to include information regarding (1) the seller; (2) earnings claims; (3) legal actions involving the offered business and its key personnel; (4) the existence of cancellation or refund policies; (5) the number of cancellation or refund requests; and (6) references.[18]

In response to the INPR, the Commission received more than 17,000 comments, the overwhelming majority of which came from individuals active in the MLM industry.[19] MLM companies, their representatives and trade associations, as well as individual participants in various MLM plans, expressed grave concern about the burdens the IPBOR would impose on them and urged the Commission to exclude them from the scope of the IPBOR, to implement various safe harbor provisions, and to reduce the required disclosures.[20] The Commission also received approximately 187 comments, primarily from individual consumers or consumer groups, in favor of the IPBOR.[21] Only a handful of comments came from non-MLM companies and industry groups, expressing various concerns about obligations that the IPBOR would impose upon them.[22] None of the comments addressed the form of the initial proposed disclosure document.

2. The Revised Notice of Proposed Rulemaking and Revised Proposed Business Opportunity Rule

Based on an extensive review of the comments received in response to the INPR and the Commission's law enforcement history, the Commission issued a revised Notice of Proposed Rulemaking (''RNPR'') on March 28, 2008, that set forth a revised proposed Rule (the ''Revised Proposed Business Opportunity Rule'' or ''RPBOR'') that was more narrowly tailored than the IPBOR.[23]

In the RNPR, the Commission recognized that there were two main problems with the IPBOR's breadth of coverage. First, the IPBOR would have unintentionally swept in numerous commercial arrangements, including

[7] 62 FR at 9115. In response to the ANPR, the Commission received 166 written comments. The staff also held six public workshops on the issues raised in the comments, three of which specifically addressed business opportunities.

[8] 72 FR 15444 (Mar. 30, 2007).

[9] For example, references to ''franchisor'' and ''franchisee'' used in the Original Franchise Rule were changed in the interim Business Opportunity Rule to ''business opportunity seller'' and ''business opportunity purchaser,'' and the Original Franchise Rule's definition of ''franchise'' was changed to ''business opportunity.'' *See id.*

[10] 73 FR 16111, 16112 (Mar. 26, 2008).

[11] 71 FR 19054 (Apr. 12, 2006).

[12] The INPR also specified the process the Commission would follow in amending the Business Opportunity Rule. Pursuant to the Commission's Rules of Practice, 16 CFR 1.20, the Commission determined to use a modified version of the rulemaking process set forth in section 1.13 of those Rules. Specifically, the Commission announced that it would publish a Notice of Proposed Rulemaking, with a 60-day comment period, followed by a 40-day rebuttal period. In addition, pursuant to Section 18(c) of the FTC Act, the Commission announced that it would hold hearings with cross-examination and rebuttal submissions only if an interested party requested a hearing. The Commission also stated that, if requested to do so, it would contemplate holding one or more informal public workshops in lieu of hearings. Finally, pursuant to 16 CFR 1.13(f), the Commission announced that staff would issue a Report on the Business Opportunity Rule (''Staff Report''), which would be subject to additional public comment. 71 FR at 19079–80.

[13] Multi-level marketing is one form of direct selling, and refers to a business model in which a company distributes products through a network of distributors who earn income from their own retail sales of the product and from retail sales made by the distributors' direct and indirect recruits. Because they earn a commission from the sales their recruits make, each member in the MLM network has an incentive to continue recruiting additional sales representatives into their ''down lines.'' *See* Peter J. Vander Nat & William W. Keep, *Marketing Fraud: An Approach to Differentiating Multilevel Marketing from Pyramid Schemes,* 21 J. Pub. Pol'y & Marketing 140 (Spring 2002).

[14] Promoters of business opportunities were able to evade coverage under the Original Franchise Rule and the interim Business Opportunity Rule by pricing their offerings opportunities below $500, the monetary threshold of coverage.

[15] 71 FR at 19057.

[16] *Id.*

[17] 71 FR at 19091.

[18] 71 FR at 19068.

[19] Comments responding to the INPR are available at *http://www.ftc.gov/os/comments/businessopprule/index.shtm.* References to INPR comments are cited herein as: Name of the commenter-INPR (*e.g.,* Avon-INPR).

[20] Thousands of comments were form letters submitted by participants in various MLM programs. 73 FR at 16113.

[21] Numerous letters came from individuals having negative experiences with various MLMs. 73 FR at 16113 n.37.

[22] 73 FR at 16113.

[23] *Id.* at 16110.

retail product distribution, training and/or educational organizations, where there was little or no evidence that fraud was occurring.[24] Recognizing this legitimate concern, the Commission, in the RNPR, proposed to narrow the definition of ''business opportunity.'' Specifically, the RPBOR provided that the ''required payment'' prong of the business opportunity definition would not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices; [25] eliminated as an element of the business opportunity definition the making of an earnings claim; [26] and narrowed the types of ''business assistance'' that would trigger the business opportunity definition to just those types of assistance that are the hallmark of business opportunity fraud: Location, account, and ''buy-back'' assistance.[27]

Second, the Commission determined that the IPBOR was unworkable with respect to MLMs and would have imposed greater burdens on the MLM industry than other types of business opportunity sellers without sufficient countervailing benefits to consumers. After careful consideration of the record, the Commission decided to narrow the scope of the RPBOR to avoid broadly sweeping in all sellers of MLM opportunities. This decision was based on the overwhelming majority of the approximately 17,000 comments that argued that the IPBOR failed to differentiate between unlawful pyramid schemes—which the Commission intended to cover—and legitimate companies using an MLM model.

Finally, the RPBOR eliminated two disclosures that would have been required by the IPBOR—information about legal actions pertaining to a business opportunity seller's sales personnel, and the number of cancellation or refund requests the seller received.[28] Eliminating the disclosure of legal actions involving sales employees was based on the Commission's recognition that the burden of collecting litigation histories for every sales person was not outweighed by the corresponding benefit to prospective purchasers.[29] With respect to the disclosure of the number of cancellation or refund requests received, the Commission determined that such disclosure was not useful, and further, may have had the perverse effect of discouraging legitimate businesses from offering refunds.[30]

The RNPR sought public comment on issues relevant to the Commission's consideration of the RPBOR, including whether the RPBOR would adequately accomplish the Commission's stated purpose of protecting consumers against fraud and, if it did not, what alternatives the Commission could consider.[31] In contrast to the INPR, which generated more than 17,000 comments, the Commission received fewer than 125 comments and rebuttal comments in response to the RNPR.[32] Again, however, the vast majority of commenters were from the MLM industry, but this time they supported the Commission's proposal to narrow the scope of the Business Opportunity Rule, albeit with suggestions for fine-tuning.[33] It is noteworthy that only one comment came from a business opportunity seller.[34] The Commission also received comments from two consumer groups [35] and approximately twelve individuals [36] who expressed their disappointment that the FTC's proposed rule would exclude MLMs from coverage.

3. Consumer Testing of Disclosure Document and Public Workshop

In the RNPR, the Commission announced that it had retained a consultant to assess the proposed disclosure document, with the objective of achieving the proper format and content for communicating material information to consumers. Following publication of the RNPR, Macro International, Inc. (''Macro''), the FTC's consultant, conducted extensive consumer testing of the initial proposed disclosure document that resulted in substantial improvement to both the layout and the wording of the form.[37] The Commission made Macro's report as well as the revised proposed Business Opportunity Disclosure Document (''revised proposed disclosure document'') [38] public in a **Federal Register** Notice (''Workshop Notice'') that also announced a one-day public workshop in Washington, DC.[39] The Workshop Notice focused on whether the revised proposed disclosure document was an effective means of conveying material information to prospective purchasers of business opportunities. The Workshop Notice also sought comment to further develop the public record on issues that had been raised in the comments received in response to the RNPR. Five individuals who represented a range of interests in the proposed Rule were chosen to participate as panelists, including a federal law enforcer, a state law enforcer, a consumer advocate, the general counsel of a national multi-level marketing company, and a former director of the FTC's Bureau of Consumer Protection.[40] Staff convened the public workshop with these five panelists in Washington, DC, on June 1, 2009. At the conclusion of the workshop discussion of the revised proposed disclosure document, panelists and audience members were invited to express their views about other issues related to the RPBOR.[41] Following

[24] *Id.* As one commenter described it, the IPBOR would have swept in traditional arrangements for distribution of ''food and beverages, construction equipment, manufactured homes, electronic components, computer systems, medical supplies and equipment, automotive parts, automotive tools and other tools, petroleum products, industrial chemicals, office supplies and equipment, and magazines.'' IBA–INPR at 5; *see also* Timberland-INPR (noting that numerous manufacturers structure their retail distribution in this manner).

[25] This amendment was based on concerns raised by some commenters that if a ''required payment'' did not exclude the purchase of inventory, many traditional product distribution arrangements could be brought within the scope of the Rule. 73 FR at 16113.

[26] This amendment was based on concerns raised by some commenters that a broad range of commercial arrangements easily would fall under the business opportunity definition if the company made some representation about sales or profits sufficient to constitute an earnings claim. *Id.* at 16114; *see also infra* Section III.A.3.

[27] *Id.* at 16123. The Commission eliminated two additional types of assistance that would have triggered the Rule's strictures and disclosure obligations—tracking payments and providing training.

[28] *Id.* at 16125.

[29] *Id.*

[30] *Id.*

[31] *Id.* at 16133.

[32] Comments responding to the RNPR are available at *http://www.ftc.gov/os/comments/bizoprevised/index.shtm.* References to RNPR comments are cited herein as: Name of commenter-RNPR.

[33] Some commenters suggested changes to the language of certain definitions proposed in the RNPR to ensure that the multi-level marketing industry was not inadvertently swept into the ambit of the rule. *See, e.g.,* DSA–RNPR; Babener-RNPR; IBA–RNPR.

[34] Planet Antares-RNPR.

[35] The two consumer groups are the Consumer Awareness Institute (''CAI'') and Pyramid Scheme Alert (''PSA'').

[36] Some letters came from individuals having negative experiences with MLMs.

[37] A copy of the expert's report to the FTC, ''Design and Testing of Business Opportunity Disclosures,'' (''Macro Report'') is available at *http://www.ftc.gov/bcp/workshops/bizopps/disclosure-form-report.pdf.*

[38] The version of the revised proposed disclosure document that was tested by Macro inadvertently omitted the phrase ''or pay any money'' from the conclusion of the penultimate sentence of the revised proposed disclosure document. Macro determined that this omission had no effect on the results of its testing. *See* Macro Report at 2.

[39] *See* 74 FR 18712 (Apr. 24, 2009).

[40] Commission staff selected individuals as panelists based upon their comments, backgrounds, and interest in the subject matter.

[41] A copy of the transcript of the June 1, 2009 workshop is available at *http://www.ftc.gov/bcp/workshops/bizopps/index.shtml.* References to the

Continued

robust discussion on various topics, the Commission received follow-up written comment from six individuals and entities.[42]

4. Staff Report

Pursuant to the Rule amendment process announced in the INPR, the Commission's Bureau of Consumer Protection issued a Staff Report on the Business Opportunity Rule in November 2010.[43] The Staff Report explained in detail the history of the Rule amendment proceeding and summarized the issues raised during the various notice and comment periods, particularly those raised in response to the RNPR. It also addressed the public workshop discussion and subsequent comments, as well as additional issues that the staff raised on its own initiative, based on the Commission's law enforcement experience.

Twenty-seven comments were submitted in response to the Staff Report,[44] including eleven comments submitted by consumer group Consumer Awareness Institute (''CAI''). The Commission also received comments from the Department of Justice (''DOJ''), the Direct Selling Association (''DSA''), MLM companies,[45] one franchise lead generator, a consumer group named Pyramid Scheme Alert (''PSA''), and ten individuals. A few commenters suggested changes to some of the Rule's definitions and the scope of coverage,[46] while others encouraged the Commission to adopt the Rule as recommended in the Staff Report.[47] The majority of comments submitted by individuals, and the comments submitted by CAI and PSA, opposed the Commission's decision to narrow the scope of the Rule to avoid broadly sweeping in MLMs.[48] In crafting the final Rule, the Commission has carefully considered the comments received in response to the Staff Report and throughout the Rule amendment proceeding.[49]

C. Overview of the Final Rule

The final Rule significantly modifies the scope, disclosure requirements, and prohibitions of the interim Business Opportunity Rule. This proceeding was, in major part, prompted by the recognition that the interim Business Opportunity Rule's extensive disclosure requirements are ill-suited to many business opportunities and place unnecessary compliance costs on both business opportunity sellers and buyers. Similarly, commenters have observed that business opportunities and business format franchises are distinct business arrangements that pose very different regulatory challenges. To account for these differences, to avoid unnecessary compliance burdens, and to ensure that consumers are best protected against deceptive practices in the sale of business opportunities, the Commission has amended the interim Rule to:

(1) Expand its scope to cover many business opportunities that were not covered under the interim Business Opportunity Rule;

(2) Streamline pre-sale disclosures;

(3) Prohibit various specific misrepresentations and other misleading practices often engaged in by fraudulent business opportunity sellers; and

(4) Require that for offers conducted in Spanish or other languages besides English, that the disclosures be provided in the same language as the offer is made. The sections that follow describe these four aspects of the final Rule.

1. Scope of the Final Rule

The definition of ''business opportunity'' dictates the scope of coverage under the final Rule. To ensure appropriate coverage, this definition has been crafted to capture the sale of business opportunities that historically have been associated with deceptive practices. As discussed below, the final Rule (1) extends coverage to those types of opportunities that previously were not covered under the Original Franchise Rule and the interim Business Opportunity Rule; (2) continues to cover business opportunities that previously were covered under the Original Franchise Rule and interim Business Opportunity Rule; and (3) avoids broadly sweeping in MLMs and certain other types of arrangements that are not characterized by the deceptive and unfair practices the final Rule aims to prevent.

a. The Final Rule Covers Many Business Opportunities That Previously Escaped Coverage

The final Rule includes an expansive definition of ''business opportunity'' aimed at extending the scope of the Rule to certain business opportunities—namely work-at-home opportunities such as envelope-stuffing, product assembly, and medical billing—that often were not covered by the interim Business Opportunity Rule. The Commission's law enforcement experience and complaint data show that these types of business opportunities are sources of prevalent and persistent problems. These opportunities, however, often escaped coverage of the Original Franchise Rule and the interim Business Opportunity Rule due to the following two limitations: (1) A minimum payment threshold set at $500; and (2) coverage was limited to business opportunities in which products were sold directly to third party end-users, rather than back to the business opportunity seller.[50] Each limitation is discussed below.

First, the Original Franchise Rule and the interim Business Opportunity Rule covered only business opportunity ventures costing $500 or more. Ventures such as product assembly, medical billing, and envelope stuffing, however, often require payments of less than $500 and thus were not covered by the interim Business Opportunity Rule.[51]

transcript from the June 2009 Business Opportunity Rule public workshop are cited herein as: Name of commenter, June 09 Tr at page no. (*e.g.,* Jost, June 09 Tr at 12).

[42] Comments received in response to the Workshop Notice are available at *http://www.ftc.gov/os/comments/bizoprulerevwrkshp/index.shtm.* References to workshop comments are cited herein as: Name of commenter-Workshop.

[43] *See* Bureau of Consumer Protection, *Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule (16 CFR Part 437)* (Nov. 2010) (''Staff Report''). The Staff Report is available at *http://www.ftc.gov/os/fedreg/2010/october/101028businessopportunitiesstaffreport.pdf.* In November, the Commission published a notice in the **Federal Register** announcing the availability of, and seeking comment on, the Staff Report. *See* 75 FR 68559 (Nov. 8, 2010).

[44] Comments received in response to the Staff Report are available at *http://www.ftc.gov/os/comments/bizoppstaffreport/index.shtm.* References to Staff Report comments are cited herein as: Name of commenter—Staff Report.

[45] Comments on behalf of the MLM industry were submitted by Tupperware and Primerica.

[46] *E.g.,* Dub-Staff Report; Tupperware-Staff Report.

[47] DOJ-Staff Report; Primerica-Staff Report; DSA-Staff Report.

[48] *E.g.,* CAI-Staff Report; PSA-Staff-Report; O'Handley-Staff Report; Brooks-Staff Report; Johnson-Staff Report.

[49] The Staff Report comments addressing specific provisions of the Rule are discussed within the substantive discussions on the relevant provisions. The comments regarding MLMs are discussed in Subsection C.1.c below, addressing the Commission's decision to exclude MLMs from coverage.

[50] 73 FR at 16112.

[51] *See, e.g., FTC* v. *Med. Billers Network, Inc.,* No. 05 CIV 2014 (RJH) (S.D.N.Y. 2005) ($200–$295 fee); *FTC* v. *Sun Ray Trading,* No. Civ. 05–20402–CIV–Seitz/Bandstra (S.D. Fla. 2005) ($160 fee); *FTC* v. *Wholesale Mktg. Group, LLC,* No. 05 CV 6485 (N.D. Ill. 2005) ($65 to $175 registration fees); *FTC* v. *Vinyard Enters., Inc.,* No. 03–23291–CIV–ALTONAGA (S.D. Fla. 2003) ($139 fee); *FTC* v. *Leading Edge Processing, Inc.,* 6:02–CV–681–ORL–19 DAB (M.D. Fla. 2002) ($150 fee); *FTC* v. *Healthcare Claims Network, Inc.,* No. 2:02–CV–4569 MMM (AMWx) (C.D. Cal. 2002) ($485 fee); *FTC* v. *Stuffingforcash.com, Corp.,* No. 92 C 5022 (N.D. Ill. 2002) ($45 fee); *FTC* v. *Kamaco Int'l,* No. CV 02–04566 LGB (RNBx) (C.D. Cal. 2002) ($42 fee); *FTC* v. *Medicor LLC,* No. CV01–1896 (CBM) (C.D. Cal. 2001) ($375 fee); *FTC* v. *SkyBiz.com,* No. 01–

Some commenters asserted that setting the threshold for coverage at a specific dollar amount simply provides scam operators a means to circumvent the Rule, noting that sellers of business opportunities may charge less than $500 to skirt the interim Business Opportunity Rule's disclosure requirements.[52] The Commission has concluded that the scope of the final Rule should be broad enough to reach business opportunities that the Commission's law enforcement history and consumer complaints show are a widespread and persistent problem, regardless of the price at which they are offered. Accordingly, the final Rule eliminates the monetary threshold.

A second limitation to the Original Franchise Rule and the interim Business Opportunity Rule's scope of coverage was the requirement that the purchaser of the opportunity had to sell goods or services directly to third party end-users—someone other than the business opportunity seller. The effect of this limitation was to exclude most work-at-home opportunities—such as envelope stuffing and craft assembly ventures—from coverage. Promoters of these types of opportunities often tell prospective purchasers that they (1) will work directly for the seller or a third party the seller identifies or (2) will produce various goods for the seller, who will then purportedly distribute the goods to end-users or retail markets.[53] In order to reach these types of business opportunities, coverage of the final Rule is not limited to transactions where the purchaser of the opportunity sells goods or services directly to individuals other than the business opportunity seller.

b. The Final Rule Continues To Cover Those Types of Opportunities Covered Under the Original Franchise Rule and the Interim Business Opportunity Rule

In addition to those types of business opportunities that often evaded coverage under the Original Franchise Rule and Interim Business Opportunity Rule, the final Rule continues to cover the types of business opportunities that previously had been covered, such as vending machine opportunities, rack display opportunities, and similar arrangements. The Commission's law enforcement experience demonstrates that sales of these types of opportunities are fraught with unfair and deceptive practices, in particular, false or unsubstantiated earnings claims. Indeed, such practices are widespread in promotion and sale of such business opportunities. Since 1995, the Commission has brought over 80 law enforcement actions [54] in connection with more than ten law enforcement sweeps [55] that targeted business opportunity scams involving the sale of vending machines,[56] rack displays,[57] public telephones,[58] Internet kiosks,[59] and 900-number ventures,[60] among others. These persistent scams will continue to be covered under the final Rule.

c. The Final Rule Avoids Broadly Sweeping in MLMs

The final Rule's definition of business opportunity avoids broadly sweeping in all sellers of MLM opportunities.[61] The decision in the RPBOR to exclude MLMs from the scope of the Rule's coverage was based on the overwhelming majority of the approximately 17,000 comments that argued that the IPBOR failed to differentiate between unlawful pyramid

CV–0396–EA (X) (N.D. Okla. 2001) ($125 fee); *FTC* v. *Para-Link Int'l,* No. 8:00–CV–2114–T–27E (M.D. Fla. 2000) ($395 to $495 fee); *see also Consumer Fraud in the United States: The Second FTC Survey* (October 2007) at 48, *available at http://www.ftc.gov/opa/2007/10/fraud.pdf* (indicating a median payment for work-at-home schemes of $200).

[52] *See* 71 FR at 19079 (citing comments submitted in earlier proceedings by NCL, SBA Advocacy, Finnigan, and Purvin).

[53] *E.g., FTC* v. *Darling Angel Pin Creations, Inc.,* No. 8:10–cv–00335–JSM–TGW (M.D. Fla. Feb. 2010); *FTC* v. *Indep. Mktg. Exch. Inc.,* No. 1:10–cv–00568–NLH–KMW (D.N.J. Feb. 2010); *FTC* v. *Preferred Platinum Svcs. Network LLC,* No. 3:10–cv–00538–MLC–LHG (D.N.J. Feb. 2010).

[54] In bringing these FTC law enforcement actions, the FTC partnered with sister federal agencies—such as the DOJ and the United States Postal Inspection Service—and with the various state attorneys general, including the District of Columbia. Thus, these ''sweeps'' entailed many more actions besides those brought by the FTC.

[55] *E.g.,* Project Fal$e Hope$, *see* FTC News Release: Federal, State Law Enforcers Complete Bogus Business Opportunity Sweep (Dec. 12, 2006), *available at http://www.ftc.gov/os/caselist/projectfalsehopes.shtm;* Project Biz Opp Flop, *see* FTC News Release: Criminal and Civil Enforcement Agencies Launch Major Assault Against Promoters of Business Opportunity and Work-at-Home Schemes (Feb. 22, 2005), *available at http://www.ftc.gov/opa/2005/02/bizoppflop.htm;* Project Busted Opportunity, *see* FTC News Release: State, Federal Law Enforcers Launch Sting on Business Opportunity, Work-at-Home Scams (June 20, 2002), *available at http://www.ftc.gov/opa/2002/06/bizopswe.shtm;* Project Biz-illion$, *see* FTC News Release: State-Federal Crackdown on Phony Business Opportunities Intensifies (March 6, 2000), *available at http://www.ftc.gov/opa/2000/03/biz.shtm;* Operation Money Pit, *see* FTC News Release: ''Operation Money Pit'' Targets Fraudulent Business Opportunity Schemes (Feb. 20, 1998), *available at http://www.ftc.gov/opa/1998/02/moneypit.shtm;* Project Vend Up Broke, *see* FTC News Release: FTC Announces ''Operation Vend Up Broke'' (Sept. 3, 1998), *available at http://www.ftc.gov/opa/1998/09/vendup2.shtm;* Project Trade Name Games, *see* FTC News Release: Display Racks for Trade-Named Toys and Trinkets rre Lastest in Business Opportunity Fraud Schemes (Aug. 5, 1997), *available at http://www.ftc.gov/opa/1997/08/tradenam.shtm;* Operation Missed Fortune FTC News Release: Operation Missed Fortune (Nov. 13, 1996), *available at http://www.ftc.gov/opa/1996/11/misdfort.shtm;* Project Telesweep, *see* FTC News Release: Major State-Fed Crackdown Targets Business Opportunity Scam ''Epidemic'' (July 18, 1995), *available at http://www.ftc.gov/opa/1995/07/scam.shtm.* Recent law enforcement sweeps ''Operation Bottom Dollar'' and ''Operation Short Change,'' challenged, among other things, ''work-at-home'' opportunities. *See* FTC News Release: FTC Cracks Down on Scammers Trying to Take Advantage of the Economic Downturn (Feb. 17, 2010), *available at http://www.ftc.gov/opa/2010/02/bottomdollar.shtm;* FTC News Release: FTC Targets Scams Spawned by Economic Downturn (July 1, 2009), *available at http://www.ftc.gov/opa/2009/07/shortchange.shtm.*

[56] *See, e.g., United States* v. *Lifestyle Vending, Inc.,* No. CV–06–6421 (E.D.N.Y. 2006); *FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Huck (2004); *FTC* v. *Inspired Ventures, Inc.,* No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Essex Mktg. Group, Inc.,* No. 2:02–cv–03415–TCP–AKT (E.D.N.Y 2002); *United States* v. *Univend, LLC,* No. 02–0433–P–L (S.D. Ala. 2002); *FTC* v. *Pathway Merch., Inc.,* No. 01–CIV–8987 (S.D.N.Y. 2001); *United States* v. *Photo Vend Int'l, Inc.,* No. 98–6935–CIV–Ferguson (S.D. Fla. 1998); *FTC* v. *Hi Tech Mint Sys., Inc.,* No. 98 CIV 5881 (JES) (S.D.N.Y. 1998); *FTC* v. *Claude A. Blanc, Jr.,* No. 2:92–CV–129–WCO (N.D. Ga. 1992); *see also* FTC News Release: FTC Announces ''Operation Vend Up Broke'' (Sept. 3, 1998), *available at http://www.ftc.gov/opa/1998/09/vendup2.shtm* (FTC and 10 states announce 40 enforcement actions against fraudulent vending business opportunities).

[57] *See, e.g., United States* v. *Elite Designs, Inc.,* No. CA 05 058 (D.R.I. 2005); *United States*. v. *QX Int'l,* No. 398–CV–0453–D (N.D. Tex. 1998); *FTC* v. *Carousel of Toys,* No. 97–8587–CIV–Ungaro-Benages (S.D. Fla. 1997); *FTC* v. *Raymond Urso,* No. 97–2680–CIV–Ungaro-Benages (S.D. Fla. 1997); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996); *FTC* v. *O'Rourke,* No. 93–6511–CIV–Ferguson (S.D. Fla. 1993); *see also* FTC News Release: Display Racks for Trade-Named Toys and Trinkets are the Latest in Business Opportunity Fraud Schemes (Aug. 5, 1997), *available at http://www.ftc.gov/opa/1997/08/tradenam.htm* (FTC and 8 states filed 18 enforcement actions against sellers of bogus display opportunities that use trademarks of well-known companies).

[58] *See, e.g., FTC* v. *Advanced Pub. Commc'ns Corp.,* No. 00–00515–CIV–Ungaro-Benages (S.D. Fla. 2000); *FTC* v. *Ameritel Payphone Distribs., Inc.,* No. 00–0514–CIV–Gold (S.D. Fla. 2000); *FTC* v. *ComTel Commc'ns Global Network, Inc.,* No. 96–3134–CIV-Highsmith (S.D. Fla. 1996); *FTC* v. *Intellipay, Inc.,* No. H92 2325 (S.D. Tex. 1992).

[59] *See, e.g., FTC* v. *Bikini Vending Corp.,* No. CV–S–05–0439–LDG–RJJ (D. Nev. 2005); *FTC* v. *Network Serv. Depot, Inc.,* No. CV–S0–05–0440–LDG–LRL (D. Nev. 2005); *United States* v. *Am. Merch. Tech.,* No. 05–20443–CIV–Huck (S.D. Fla. 2005); *FTC* v. *Hart Mktg. Enter. Ltd., Inc.,* No. 98–222–CIV–T–23 E (M.D. Fla. 1998); *see also FTC* v. *FutureNet, Inc.,* No. CV–98–1113 GHK (BQRx) (C.D. Cal. 1998); *FTC* v. *TouchNet, Inc.,* No. C98–0176 (W.D. Wash. 1998).

[60] *See, e.g., FTC* v. *Bureau 2000 Int'l, Inc.,* No. 2:96–cv–01473–WMB–RC (C.D. Cal. 1996); *FTC* v. *Genesis One Corp.,* No. CV–96–1516–MRP (MCX) (C.D. Cal. 1996); *FTC* v. *Innovative Telemedia, Inc.,* No. 96– 8140–CIV–Ferguson (S.D. Fla. 1996); *FTC* v. *Ad-Com Int'l,* No. 96–1472 LGB (VAP) (C.D. Cal. 1996).

[61] *See* 73 FR at 16120.

schemes—which the Commission intended to cover—and legitimate companies using an MLM model.

As detailed more fully in the RNPR, several common themes emerged from the numerous comments submitted by the MLM industry. Many commenters suggested that the low economic risks of participating in a typical MLM do not justify imposing burdensome regulations that would threaten to strangle the MLM industry.[62] These commenters focused on the low fees—often less than $100—that top MLM companies charge prospective distributors for the right to sell their products, and on the relatively low risk that consumers would lose money on large purchases of inventory.[63] In addition, industry commenters contended that the various disclosure requirements were ill-suited for the MLM business model and that many of the disclosure obligations would show direct selling companies in a distorting negative light.[64] For example, according to one commenter, the requirement to disclose prior legal actions would cast successful and long-established companies in a worse light than fly-by-night frauds simply because larger companies with more sales representatives and more years of operation are likely to get involved in a larger number of lawsuits.[65] Moreover, industry commenters uniformly asserted that the cost of compliance with the IPBOR would be extremely high for them—first, from the burden of developing, providing and keeping records of proposed disclosures, and second, from the impaired ability to recruit prospective distributors.[66] Finally, industry commenters argued that unlike traditional business opportunities, the MLM industry is not permeated with fraud.[67]

In contrast to the overwhelming majority of comments that opposed regulating MLMs through the Business Opportunity Rule, only a small minority of commenters were in favor of a rule that would cover MLMs. These commenters included two consumer groups, CAI and PSA, a few consumer advocates, individuals who regretted becoming involved in MLMs, and other MLM participants.[68] Many of the consumer advocates contended that the MLM industry is comprised primarily of pyramid schemes masquerading as legitimate companies.[69] The commenters also asserted that MLMs deceptively market their distributorships as a low-risk opportunity with high earnings potential, when in fact, the costs of participating in an MLM can be high and the earnings comparatively small.[70]

In the RNPR, the Commission concluded that although there is significant concern that some pyramid schemes may masquerade as legitimate MLMs, assessing the incidence of such practices is difficult and indeed, determining whether an MLM is a pyramid scheme requires a fact-intensive, case-by-case analysis. Further, the record developed was insufficient as a basis for crafting MLM disclosures that would effectively help consumers make an informed decision about the risks of joining a particular MLM.

Based on the record and the Commission's law enforcement experience, the RNPR announced the Commission's determination that it would not be practicable to apply the requirements of the proposed Rule to MLM companies. Drawing on its law enforcement experience, the Commission acknowledged that some MLMs do engage in unfair or deceptive acts or practices, including operating pyramid schemes or making unsubstantiated earnings claims that cause consumer harm. The Commission, however, was not persuaded that workable, meaningful disclosures could be devised that would help consumers identify a fraudulent pyramid scheme. This being the case, the Commission decided that the proposed Rule was too blunt an instrument to alleviate fraud in the sale of MLMs. The Commission therefore determined to continue to challenge unfair or deceptive practices in the MLM industry through law enforcement actions alleging violations of Section 5 of the FTC Act and not through the Business Opportunity Rule. The Staff Report's recommendations were consistent with this decision.[71]

In response to the Staff Report, the Commission received 24 comments addressing the Commission's decision to narrow the scope of the Rule to avoid broadly sweeping in MLMs. Specifically, 19 comments opposed the Commission's decision,[72] one commenter agreed with the decision to narrow the scope of the Rule, but suggested modifying the Rule to contain bright line exemptions and to clarify the definition of ''required payment,'' [73] and two commenters advocated that the Commission adopt the Rule as recommended.[74]

Commenters opposing the decision to avoid sweeping MLMs within the scope of the Rule's coverage set forth the same basic premise—that MLMs frequently misrepresent the level of earnings achieved by their distributors and therefore, should be subject to regulation.[75] More specifically, many of the commenters advocated that the MLM industry should be required to disclose the average income of their participants.[76] The Commission has carefully considered the comments submitted in response to the Staff Report on the issue of MLMs. While some of the commenters provided an analysis of the MLM industry with concrete examples of the types of problems that exist within that industry,[77] many did not. Instead, many commenters expressed in general terms their low opinion of MLMs and their general opinion that MLMs should be regulated.[78] More to the point, none of the commenters provided persuasive arguments for why the Business Opportunity Rule is the proper vehicle to address the problems they identified within the MLM industry.

Before discussing the comments in further detail, however, one point in the rulemaking record requires clarification. Several comments focused on the

[62] *Id.* at 16114.

[63] *Id.*

[64] *Id.* at 16115.

[65] *Id.*

[66] *Id.* at 16116.

[67] *Id.* at 16114.

[68] *Id.* at 16116.

[69] CAI–INPR at 2 (''I can certify that *MLM (sic) are not direct selling programs, but chain selling programs''*); CAI–INPR Rebuttal of DSA Comments at 3 (''The Direct Selling Association (DSA), recently taken over by chain sellers now promotes chain selling (pyramid marketing)—even more than legitimate direct selling''); *see also* Brooks-INPR at 2 (''In my opinion, most MLM firms operate in a deceptive or fraudulent manner'').

[70] PSA–INPR at 3–4; Brooks-INPR at 4; Johnson-INPR at 1.

[71] Staff Report at 20.

[72] These included eleven comments submitted by consumer group CAI, as well as comments submitted by PSA and seven individuals. In addition, two individuals submitted comments supporting the statistical analysis provided by CAI President, Jon Taylor. *See* McKee-Staff Report; Ashby-Staff Report.

[73] Tupperware-Staff Report.

[74] DSA–Staff Report; Primerica-Staff Report.

[75] *See, e.g.,* O'Handley-Staff Report (''I personally believe that this industry is a borderline scam at best and needs MORE oversight than everyone else-NOT LESS.''); Welling-Staff Report (''I find it amazing that * * * the MLM industry has little or no regulations.'').

[76] *See, e.g.,* Barrett-Staff Report (FTC should ''demand truthful disclosure of income potentials for MLM''); Brooks-Staff Report (MLMs should produce ''actual, verifiable data concerning the earnings and losses of their distributors''); CAI–Staff Report at 7–3 (advocating for the disclosure of ''information supporting earnings claims'').

[77] *See, e.g.,* CAI-Staff Report (reporting research on the MLM industry and quoting representations made by various MLMs).

[78] *See, e.g.,* Craig-Staff Report (there is ''ample evidence of problems with MLM to warrant inclusion in the rule''); Afoa-Staff Report (commenting on personal experience with one MLM).

following language contained in the Staff Report: ''Two key problems emerged with the IPBOR's breadth of coverage. First, the IPBOR would have unintentionally swept in numerous commercial arrangements where there is little or no evidence that fraud is occurring.'' [79] The commenters suggest, incorrectly, that the quoted language reveals a finding by the Commission that there is little or no evidence of fraud occurring within the MLM industry.[80] This language, however, referred to a passage from the RNPR that addressed traditional product distribution arrangements, not MLMs.[81] The Commission has not made a finding that there is little or no evidence of fraud within the MLM industry; to the contrary, it has specifically recognized, through its own law enforcement experience, that some MLMs may be pyramid schemes in masquerade and may make false and unsubstantiated earnings claims.[82]

In any event, the comments submitted in response to the Staff Report do not persuade the Commission that the Business Opportunity Rule is the proper tool to address these problems.[83] Two of the affirmative disclosure requirements illustrate the difficulty in applying the Rule to MLMs: (1) The disclosure of substantiation for earnings claims; and (2) the disclosure of references.

First, as the Commission has acknowledged, the varied and complex structure of MLMs makes it exceedingly difficult to make an accurate earnings disclosure and likely would require different disclosures for different levels of participation in the company. For instance, it would be difficult to craft an accurate earnings disclosure that would account for ''inactive'' participants that use their distributorship as a ''buyers club'' and are interested only in purchasing goods at a wholesale price for their own use.[84] This problem appears to be unique to MLMs and, so far as the Commission is aware, does not arise in other forms of business opportunities.

Furthermore, it may be difficult to determine retail income if the MLM is not in a position to verify the extent to which a distributor has resold the product at retail, is warehousing the product, or bought the product for his or her own personal consumption. Even where the MLM has policies in place purportedly to ensure that a portion of its distributors' income is derived from retail sales, these policies could go unenforced, or even where ostensibly enforced, could be circumvented by distributors who may have an incentive to ''inflate'' their retail sales by ''certifying'' that such sales occurred in order to qualify for higher levels of commissions. In light of these difficulties, and because the comments submitted in response to the Staff Report did not refute these findings, the Commission continues to believe that developing a standard, useful, and understandable earnings disclosure that would apply to both the MLM industry and the other business opportunities covered by the Rule remains elusive.[85]

Second, the reference disclosure required under the final Rule would make little sense in the MLM context. As the Commission has previously recognized, those prior purchasers appearing on the reference list likely would stand to receive a financial benefit if they could convince a prospect to enroll into their downline.[86] Under these circumstances, information provided by such a reference might not be a reliable indicator of the potential risk and rewards of enrollment in the MLM.

In response to the Staff Report, the Commission received one comment attempting to refute this reasoning. The commenter argued that, contrary to the Commission's view, prior purchasers would have little incentive to misrepresent the success of the MLM because that incentive would exist only if the prospective purchaser would become part of the prior purchaser's downline, which the commenter implies would not always be the case.[87] The commenter further argued that the fact that the prospective purchaser had received the disclosure document would indicate that the prospective purchaser had already been recruited, and therefore would be unlikely to face further recruitment by the prior purchaser.[88]

The Commission finds these arguments unpersuasive. To the extent there is any financial incentive for a reference to puff or exaggerate the benefits of buying into a business, that reference obviously cannot provide a disinterested opinion to the prospect. The MLM model is inherently structured to create financial incentives for distributors to recruit prospects into their downlines.[89] Thus, those financial incentives are present whenever a potential recruit enquires into the business. To illustrate the point, even dissatisfied distributors have an incentive to refrain from disparaging the MLM because any losses they have suffered could potentially be recouped by the recruitment of the prospect into their downline. Whether they are ultimately successful in their attempt to woo a recruit from another distributor is immaterial; they have every incentive to try.[90]

Thus, the Commission continues to believe that the final Rule's reference disclosure would not provide prospective MLM participants with an accurate account of the MLM experience or with information necessary to make an informed purchasing decision. Moreover, these challenges appear to be unique to MLMs, and as far as the Commission is aware, are not inherent in the other types of business opportunities addressed by the final Rule.

Accordingly, while the Commission recognizes that problems may exist within the MLM industry, it continues to find that the Business Opportunity Rule is not the appropriate vehicle through which to address them. Rather, the Commission will continue to challenge unfair or deceptive practices in the MLM industry through Section 5 of the FTC Act. Thus, the final Rule has

[79] *See, e.g.,* CAI-Staff Report at 1, 10–41; PSA–Staff Report.

[80] CAI-Staff Report at 10–41; PSA-Staff Report (''The basis of the exclusion appears to be the extraordinary claim that there is insufficient evidence of widespread fraud in the multi-level marketing field.'').

[81] Indeed, the language quoted by CAI and PSA contains a footnote referencing the section of the RNPR that discussed traditional product distribution arrangements. *See* Staff Report at 30 (citing 73 FR at 16113).

[82] *See* 73 FR at 16119; *see also* Staff Report at 20.

[83] Indeed, one commenter recommended a completely separate set of disclosures for MLM opportunities, further suggesting that the Business Opportunity Rule is a poor fit for the MLM industry. *See* Johnson-Staff Report (recommending that the FTC convert its consumer education on investing with an MLM into a series of disclosures that would be MLM-specific).

[84] *See* 73 FR at 16120.

[85] While CAI presented its proposal for an earnings disclosure, it is clear that the disclosure would be specific to MLMs and would have no application to the other types of business opportunities addressed by the Rule. *See* CAI–Staff Report at 7–33.

[86] *See* 73 FR at 16121.

[87] Brooks-Staff Report at 8.

[88] *Id.*

[89] Multi-level marketing is a business model in which a company distributes products through a network of distributors who earn income from their own retail sales of the product and from retail sales made by the distributors' direct and indirect recruits. Because they earn a commission from the sales their recruits make, each member in the MLM network has an incentive to continue recruiting additional sales representatives into their ''down lines.'' *See* Vander Nat & Keep, supra note 13.

[90] Comments submitted in response to the Staff Report did not refute these arguments, but actually bolstered them. For instance, one commenter noted that MLM recruiters will often pretend they are wealthy when they are not, simply to entice others to join the MLM. *See* O'Handley-Staff Report at 2; *see also* CAI–Staff Report at 5 (noting that in MLMs, ''every major victim is of necessity a perpetrator (recruiter) because to have any hope of recouping their ongoing investments * * * they must recruit others to do what they have done'').

been crafted to avoid broadly sweeping in MLMs.[91]

2. Streamlined Disclosure Requirements

Although the scope of coverage is broader, the compliance burden is lighter under the final Rule than under the interim Business Opportunity Rule. In contrast to the voluminous disclosures that business opportunity sellers are required to make under the interim Business Opportunity Rule, the final Rule has significantly streamlined the disclosures to focus on the types of information most material to business opportunity purchasers: (1) The seller's identifying information; (2) whether the seller makes an earnings claim; [92] (3) whether the seller, its affiliates, or key personnel, have been involved in any legal actions; [93] (4) whether the seller has a cancellation or refund policy; and (5) a list of purchasers who have bought the business opportunity within the previous three years. The final Rule also requires the disclosure of supplementary information that substantiates earnings claims, identifies legal actions, and states the material terms of the seller's cancellation or refund policy. These disclosures are consistent with the Commission's experience concerning common practices in the sale of business opportunities, and the types of information most meaningful to prospective purchasers.[94] For example, the Commission's experience demonstrates that earnings claims are highly relevant to consumers in making their investment decisions and are often the single most decisive factor in such decisions. Furthermore, the presence of a legal action against the seller or its key personnel may warn the purchaser of potential risk associated with the business opportunity. Information about the seller's cancellation or refund policy is relevant to consumers when weighing their investment risks. Finally, providing the contact information for prior purchasers will allow prospective purchasers to discuss the business opportunity with other purchasers prior to committing themselves to the business opportunity venture.

These streamlined disclosure requirements strike the appropriate balance by providing consumers with material information in a straightforward and focused document that will allow them to make informed purchasing decisions. At the same time, the streamlined form eases the compliance burden currently imposed on business opportunity sellers. Like the Original Franchise Rule and the interim Business Opportunity Rule, the final Rule is posited on the notion that a fully informed consumer is in a better position to determine whether a particular offering is in his or her best interest when sellers are required to disclose to them material information. Consumers should be protected against receiving inaccurate information and self-serving unsubstantiated statements from business opportunity sellers. Accordingly, the final Rule requires that business opportunity sellers disclose just the types of information that the Commission has determined are most material to potential purchasers in making a purchasing decision: The seller's identifying information; whether the seller makes an earnings claim, and if so, the substantiation for that claim; whether the seller offers a refund or cancellation policy, and if so, the material terms of that policy; whether the seller or its affiliates and key personnel have been the subject of prior legal actions; and the names and business telephone numbers of prior purchasers to contact. The Commission has determined that these streamlined disclosure requirements will provide potential purchasers with the tools they need to protect themselves from false claims, while at the same time minimizing compliance costs for legitimate business opportunity sellers.

3. Express Prohibitions

In addition to mandating disclosures to prospective purchasers, the final Rule includes prohibitions on sellers from engaging in a number of deceptive practices, which were absent from the interim Business Opportunity Rule. In drafting the final Rule, the Commission relied heavily on its experience in addressing a wide array of deceptive and unfair business opportunity practices through law enforcement actions under the Original Franchise Rule, the interim Business Opportunity Rule, and Section 5 of the FTC Act. The Commission also relied on the staff's analysis of consumer complaints submitted to the FTC. By far, the most frequent allegations in Commission business opportunity cases pertain to false or unsubstantiated earnings claims.[95] False testimonials or fictitious references and misrepresentations concerning the profitability of locations, availability of support and assistance, nature of the products or services sold, prior success of the seller or locator, full extent of investment costs, and refund policies are also prevalent in Commission business opportunity cases.[96] These alleged material misrepresentations or omissions also were frequently mentioned in complaints to the Commission submitted by business opportunity purchasers.[97]

[91] The final Rule, however, does not explicitly exempt MLMs from coverage, but instead contains a narrow definition of ''business opportunity.'' As discussed in Section III.A.3 *infra,* the final Rule's definition of ''business opportunity'' eliminates two types of business assistance that previously would have triggered the Rule's coverage of MLMs: (1) Tracking or paying commissions or other compensation for recruitment or sales; and (2) providing generalized training or advice for the business. The final Rule is thus more narrowly tailored to those types of deceptive business assistance representations that are the hallmark of fraudulent business opportunity schemes: location, account, and ''buy back'' assistance. 73 FR at 16123.

[92] If the business opportunity seller indicates that it does make earnings claims, then it must complete a separate earnings claim statement setting forth the earnings claim, the number and percentage of purchasers who achieved the represented level of earnings, the date range during which the represented earnings were achieved, and additional information.

[93] If the business opportunity seller indicates that it or its affiliates or key personnel have been subject to legal actions, then it must complete a separate attachment setting forth the full caption of each action, and may choose to include a brief 100-word description of the action.

[94] To fully develop the rulemaking record on business opportunities, in the ANPR, the Commission solicited comment about what pre-sale disclosures would ensure that business opportunity purchasers receive material information necessary to make an investment decision and prevent fraud in the sale of business opportunities. 62 FR at 9121, Questions 15 & 16.

[95] *See, e.g., FTC* v. *Darling Angel Pin Creations, Inc.,* No. 8:10–cv–00335–JSM–TGW (M.D. Fla. Feb. 2010) (representing likely earnings of $500 per week); *FTC* v. *Route Wizard, Inc.,* No. 1:06–cv–00815–KD–B (S.D. Ala. 2006) (representing that purchasers could earn $3,000 a month); *FTC* v. *Bus. Card Experts, Inc.,* No. 06–CV–4671 (PJS/RLE) (D. Minn. 2006) (claiming likely earnings of $150,000 in first year); *FTC* v. *Richardson d/b/a Mid-South Distribs.,* No. CV–06–S–4754–NW (N.D. Ala. 2006) (representing likely earnings of over $2,000 a month or $65,000 a year); *FTC* v. *Accent Mktg., Inc., et al.,* No. 02–405–CB–M (S.D. Ala. 2002) (representing likely earnings of $3,200 per month to $16,000 per month).

[96] *See, e.g., FTC* v. *Bus. Card Experts, Inc.,* No. 06–CV–4671 (PJS/RLE) (D. Minn. 2006) (used paid references); *FTC* v. *Route Wizard, Inc.,* No. 1:06–cv–00815–KD–B (S.D. Ala. 2006) (misrepresented location assistance); *FTC* v. *Richardson d/b/a Mid-South Distribs.,* No. CV–06–S–4754–NW (N.D. Ala. 2006) (promised high-traffic, high-profit locations); *FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–Civ–Martinez (S.D. Fla. 2004) (used fictitious references, misrepesented locations); *FTC* v. *Fidelity ATM, Inc.,* No. 06–81101–Civ–Hurley/Hopkins (S.D. Fla. 2004) (misrepresented level of support or assistance); *FTC* v. *Accent Mktg., Inc., et al.,* No. 02–405–CB–M (S.D. Ala. 2002) (misrepresented that references purchased the business venture or would provide reliable descriptions of their experience); *FTC* v. *Associated Record Distribs., Inc.,* No. 02–21754–CIV–Graham/Garber (S.D. Fla. 2002) (misrepresented business assistance and that references either purchased the business venture or would provide reliable descriptions of their experience).

[97] In 2010, the Commission logged over 12,000 complaints against franchises, business opportunities, and work-at-home schemes. *See* Consumer Sentinel Network Databook (March 2011) at 76, *available at http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf.*

Therefore, among other things, under the final Rule, business opportunity sellers are prohibited from misrepresenting: (1) Earnings; (2) the cost, efficacy, nature, or central characteristics of the business opportunity or the goods or services sold to the purchaser as part of the business opportunity; (3) their cancellation or refund policies; (4) promised assistance; (5) the calculation and distribution of commissions, bonuses, incentives, premiums, or other payments from the seller; (6) the likelihood of finding locations for equipment or accounts for services; (7) that the business opportunity is an offer of employment; (8) territorial exclusivity or more limited territorial protections; (9) endorsements; and (10) references. The final Rule also prohibits business opportunity sellers from failing to make promised refunds, and from assigning to any purchaser a purported exclusive territory that has been sold to another purchaser.

The final Rule prohibits entities covered by the Rule from engaging in the specific acts or practices identified as deceptive or unfair through the Commission's law enforcement experience, as well as the rulemaking record. Engaging in any of those acts or practices is a violation of both the final Rule and Section 5 of the FTC Act.[98] Of course, the Commission, under Section 5, also may challenge any conduct that is not enumerated in the final Rule if the Commission determines that such conduct constitutes an unfair or deceptive act or practice.

4. Disclosures in Spanish or Other Languages Besides English

The Commission's law enforcement history demonstrates that some business opportunities are marketed primarily to Spanish speaking consumers.[99] Based on this experience, the Staff Report discussed the limited utility of English-language disclosures for business opportunities marketed in Spanish. Specifically, the staff questioned whether the disclosure document could be made more effective by translating it into Spanish and requiring that when a business opportunity is marketed in Spanish, the disclosure document and any disclosures required by the Rule be provided in Spanish. The Staff Report further suggested that when a business opportunity seller purposefully reaches out to a particular population by marketing in the foreign language spoken by members of that community, all of the disclosures required by the Rule should be accessible and comprehensible to each of those potential purchasers. The Staff Report recommended, therefore, that because the Commission has specific law enforcement experience with business opportunities marketed in Spanish, a Spanish translation of the disclosure document was necessary to attach as an appendix to the final Rule. It further recommended that where the business opportunity is marketed in a language other than Spanish, the business opportunity seller should be required to translate the disclosure document into the language of the sale and provide all the disclosures required by the Rule in that language.

It is the long-held policy of the Commission that disclosures required by Commission orders, rules, or guides should be made in the predominant language used in the related advertisement or sales material.[100] Upon consideration of this policy, the staff's recommendation, and the rationale for the staff's recommendation, the Commission agrees with the staff's recommendation. Accordingly, the final Rule contains a new provision, § 437.5, which specifies the disclosure requirements for sales conducted in Spanish or other languages besides English.

II. The Legal Standard for Amending the Rule

The Commission is amending 16 CFR Part 437 pursuant to Section 18 of the FTC Act, 15 U.S.C. 57a *et seq.,* and Part 1, subpart B of the Commission's Rules of Practice.[101] This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Commission's Rules of Practice further provide that if the Commission determines to promulgate a rule, it shall adopt a Statement of Basis and Purpose (''SBP''), which must address four factors: (1) The prevalence of the acts or practices addressed by the rule; (2) the manner and context in which the acts or practices are unfair or deceptive; (3) the economic effect of the rule, taking into account the effect on small businesses and consumers; and (4) the effect of the rule on state and local laws.[102] In this section, the Commission summarizes its findings regarding each of these factors.[103]

A. Prevalence of Acts or Practices Addressed by the Rule

The Commission promulgated the Original Franchise Rule in 1978 based upon its finding of prevalent deception in the offer and sale of franchises and business opportunity ventures, leading to significant consumer injury. Since 1995, when the Commission commenced a regulatory review of the Original Franchise Rule to ensure that the Original Franchise Rule continued to serve a useful purpose, the Commission has sought comment several times to ascertain the need for a separate trade regulation rule to address widespread fraud in the sale of business opportunities.[104]

Throughout the Rule amendment proceedings, the Commission has described its experience in combating a wide array of business opportunity fraud through law enforcement actions. Indeed, the Commission's law enforcement experience in conducting numerous sweeps of the business opportunity industry demonstrates that deceptive and unfair practices in the sale of business opportunities are not only prevalent but persistent.[105]

[98] 15 U.S.C. 57a(d)(3).

[99] *E.g., FTC* v. *Zoilo Cruz,* No. 3:08–cv–01877–JP (D. P.R. 2008) (envelope stuffing scheme marketed in Spanish-language newspapers and on a Web site available in Spanish and English); *FTC* v. *Integrity Mktg. Team, Inc.,* No. 07–cv–61152 (S.D. Fla. 2007) (envelope stuffing scheme marketed in Spanish-language classified advertisements); *FTC* v. *Hispanexo, Inc.,* No. 1:06–cv–00424–JCC–TRJ (E.D. Va. 2006) (assistance in starting a construction, gardening, or cleaning business marketed through Spanish-language television and radio stations); *FTC* v. *Juan Matos,* No. 06–61429–CIV–Altonaga (S.D. Fla. 2006) (craft assembly business marketed through Spanish-language advertisements); *FTC* v. *Nat'l Vending Consultants, Inc.,* CV–S–05–0160–RCJ (PAL) (D. Nev. 2005) (deceptively marketed vending machine business opportunities—with many marketing efforts specifically targeting Spanish-speaking consumers); *FTC* v. *Amada Guerra,* No. 6:04–CV–1395 (M.D. Fla. 2004) (product assembly scheme telemarketed to Spanish-speaking consumers); *FTC* v. *USS Elder Enter., Inc.,* No. SACV–04–1039 AHS (Anx) (C.D. Cal. 2004) (work at home assembly scheme offered through Spanish-language newspapers and magazines); *FTC* v. *Esteban Barrios Vega,* No. H–04–1478 (S.D. Tex. 2004) (deceptive product assembly opportunity marketed through Spanish-language newspaper and magazine advertisements).

[100] FTC Enforcement Policy Statement Concerning Clear and Conspicuous Disclosures in Foreign Language Advertising and Sales Materials, 16 CFR 14.9.

[101] 16 CFR 1.7, 5 U.S.C. 551 *et seq.*

[102] Rules of Practice, 16 CFR 1.14(a)(1)(i)–(iv). In addition, in accordance with 16 CFR 1.14(a)(1)(v), the regulatory analysis is provided at Section V of this Statement of Basis and Purpose.

[103] Support in the record for each factor is set forth in the substantive discussion of each provision of the final Rule.

[104] *See* 60 FR at 17657; 62 FR at 9117; 71 FR at 19084; 73 FR at 16133; 74 FR at 18172; 75 FR at 68559.

[105] Since 1995, the Commission has conducted more than 18 law enforcement sweeps to combat deceptive business opportunity programs, many

Continued

The Commission has amended the interim Rule to address the sale of deceptive work-at-home schemes, where unfair and deceptive practices have been both prevalent and persistent. These schemes prey upon stay-at-home parents, the physically disabled, those who do not speak English, and others who cannot obtain employment outside of the home. Sellers of fraudulent work-at-home opportunities deceive their victims with promises of an ongoing relationship in which the seller will buy the output that business opportunity purchasers produce, often misrepresenting to purchasers that there is a market for the purchasers' goods and services. In addition, the Commission's law enforcement experience demonstrates that fraudulent work-at-home opportunity sellers frequently invent undisclosed conditions and limitations for rejecting the work performed by purchasers and refusing to buy back the goods the purchasers produce. Similarly, these sellers' promises of continuing support and assistance frequently prove empty, leaving work-at-home opportunity purchasers with no help in figuring out how to assemble misshapen components into finished products. Finally, as the Commission's cases and complaint data demonstrate, con artists who promote fraudulent work-at-home schemes frequently dupe consumers with false earnings claims.

Since 1990 the Commission has brought over 75 work-at-home cases.[106] These actions have targeted a variety of schemes, ranging from envelope stuffing and craft assembly programs, to technology-driven opportunities and medical billing plans.[107]

Data compiled by the Commission demonstrate the prevalence of work-at-home opportunities that do not deliver the represented level of earnings. Indeed, the Commission's 2005 consumer fraud survey revealed that work-at-home plans from which the respondents who had purchased them did not earn at least half the level of promised earnings ranked fifth in terms of the estimated number of victims and third in terms of estimated number of incidents reported during the year.[108] According to the survey, an estimated 2.4 million individuals experienced work-at-home fraud, and there were an estimated 3.8 million incidents during the one year period surveyed.[109]

Consumer complaints, survey data, and the Commission's law enforcement experience convince the Commission that deception is prevalent in work-at-home offers. The final Rule's disclosure requirements and prohibitions provide potential work-at-home purchasers with the tools they need to protect themselves from false claims.

In addition to work-at-home opportunities, the final Rule also covers the same types of business opportunities that previously were covered under the Original Franchise Rule and the interim Business Opportunity Rule, such as opportunities involving vending machines, rack displays, Internet kiosks, and the like, which, as the Commission's experience demonstrates, have been a persistently fertile ground for fraud and deception.[110] The Commission has conducted numerous law enforcement sweeps that targeted a wide variety of business opportunity scams involving the sale of vending machines, rack displays, and other opportunities covered by the Original Franchise Rule and the interim Business Opportunity Rule.[111] Consumer complaint data indicates that these types of business opportunities continue to be a significant source of consumer injury.[112]

B. Manner and Context in Which the Acts or Practices Are Deceptive or Unfair

The final Rule has been carefully crafted to address common deceptive or unfair practices engaged in by fraudulent business opportunity sellers.[113] By far, the most frequent allegations in the Commission's business opportunity cases pertain to inducing consumers to pay significant amounts of money by means of false or unsubstantiated earnings claims.[114] This is followed by inducement through false testimonials or fictitious references and by misrepresentations concerning: The profitability of locations; the availability of assistance; the nature of the products or services being sold; the prior success of third-party entities in finding successful locations; the full extent of

with other law enforcement partners. *E.g.,* Operation Bottom Dollar (2010); Operation Short Change (2009); Project Fal$e Hope$ (2006); Project Biz Opp Flop (2005); Project Busted Opportunity (2002); Project Telesweep (1995); Project Biz-illion$ (1999); Operation Money Pit (1998); Project Vend Up Broke (1998); Project Trade Name Games (1997); and Operation Missed Fortune (1996). In addition to joint law enforcement sweeps, the Commission also targeted specific business opportunity ventures such as envelope stuffing (Operation Pushing the Envelope, *see* FTC News Release: Agencies ''Pushing the Envelope'' to Protect Consumers (Dec. 16, 2003), *available at http://www.ftc.gov/opa/2003/12/pushenvelope.shtm*); medical billing (Operation Dialing for Deception, *see* FTC News Release: FTC Sweep Protects Consumers from ''Dialing for Deception'' (Apr. 15, 2002), *available at http://www.ftc.gov/opa/2002/04/dialing.shtm* and Project Housecall, *see* FTC News Release: Bogus Business Opportunity Scams Targeted by FTC (Jan. 28, 1998), *available at http://www.ftc.gov/opa/1998/01/housecal.shtm*); seminars (Operation Showtime, *see* Operation ''Show Time'' Targets Seminars Selling Fraudulent Business Opportunities and Investments (May 5, 1998), *available at http://www.ftc.gov/opa/1998/05/showtime.shtm*); Internet-related services (Net Opportunities 1998); vending machines (Operation Yankee Trader, *see* FTC News Release: Operation ''Yankee Trader'' Targets Bogus Vending Machine Business Opportunities (Sept. 11, 1997), *available at http://www.ftc.gov/opa/1997/09/still.shtm*); and 900 numbers (Project Buylines, *see* FTC News Release: Newest Business Opportunity Fraud Is For 900-Number Lines, Warns Federal Trade Commission (March 7, 1996), *available at http://www.ftc.gov/opa/1996/03/buyline.shtm*).

[106] Many of these cases were brought in connection with law enforcement sweeps of fraudulent work-at-home and related employment opportunities, including Operation Bottom Dollar (2010); Operation Short Change (2009); Project Fal$e Hope$ (2006); Project Biz Opp Flop (2005); Project Homework (2001); Operation Top Ten Dot Con, *see* FTC News Release: Law Enforcers Target ''Top 10'' Online Scams (Oct. 31, 2000), *available at http://www.ftc.gov/opa/2000/10/topten.shtm;* and Operation Missed Fortune, *see* FTC News Release: FTC, State Enforcers Target Get-Rich-Quick Self-Employment Schemes (Nov. 13, 1996), *available at http://www.ftc.gov/opa/1996/11/misdfort.shtm.*

[107] *See, e.g., FTC* v. *Real Wealth, Inc.,* 10–CV–0060–W–FJG (W.D. Mo. 2010) (envelope stuffing); *FTC* v. *Darling Angel Pin Creations, Inc.,* No. 8:10–cv–00335–JSM–TGW (M.D. Fla. 2010) (craft assembly); *FTC* v. *The Results Group L.L.C,* No. CV 06 2843 PHX JAT (D. Ariz. 2006) (work-at-home involving becoming a Web-based affiliate); *FTC* v. *Mazzoni & Son, Inc.,* No.1:06CV2385 (N.D. Ohio 2006) (medical billing).

[108] *See* Consumer Fraud in the United States: The Second FTC Survey (October 2007) at 22, *available at http://www.ftc.gov/opa/2007/10/fraud.pdf* (studying consumer experience with a variety of products and services, including weight-loss products, foreign lotteries, and prize promotions, among others).

[109] *Id.*

[110] *See id.* at 16 (reporting that an estimated 800,000 individuals were victims of business opportunity fraud during the year surveyed).

[111] *E.g.,* Project Fal$e Hope$ (2006) (vending machine and rack display opportunities); Project Biz Opp Flop (2005) (vending machine opportunities); Project Busted Opportunity (2002) (vending machine and rack display opportunities); Project Biz-illion$ (1999); Operation Money Pit (1998) (rack display opportunities); Project Vend Up Broke (1998) (vending machine opportunities); Project Trade Name Games (1997) (rack display opportunities); Operation Missed Fortune (1996); Project Telesweep (1995) (vending machine and rack display opportunities); *see also supra* note 55.

[112] *See* Consumer Sentinel Network Databook (March 2011) at p. 76, *available at http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf* (reporting that in 2010, over 12,000 complaints were filed against franchises, business opportunities, and work-at-home schemes).

[113] An act or practice is deceptive under Section 5(a) if it involves a material representation or omission that is likely to mislead consumers, acting reasonably under the circumstances, to their detriment. *See* FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.,* 103 F.T.C. 110, 174 (1984). An act or practice is unfair under Section 5 if: (1) It causes or is likely to cause substantial injury to consumers; (2) the harm to consumers is not outweighed by any countervailing benefits; and (3) the harm is not reasonably avoidable by consumers. *See* FTC Policy Statement on Unfairness, *appended to In re International Harvester,* 104 F.T.C. 949, 1062 (1984). *See* 15 U.S.C. 45(n).

[114] *See supra* note 95.

the investment costs; and refund policies.[115] The numerous business opportunity complaints that consumers submit to the Commission each year consistently reference these same concerns. The disclosure requirements under the final Rule address each of these deceptive or unfair practices.

1. Earnings Claims

In the Commission's experience, earnings claims are highly material to consumers in making their investment decisions and typically are the single most decisive factor in such decisions. Earnings claims lie at the heart of business opportunity fraud, and are typically the enticement that persuades consumers to invest their money. In the overwhelming majority of the Commission's more than 245 cases against business opportunity sellers, the business opportunity seller has lured unsuspecting consumers through false or deceptive earnings representations. These claims have taken the form of purported historical earnings statistics (*e.g.,* ''Our operators have earned $100,000 a year''), as well as wild and unsupported earnings projections (*e.g.,* ''You will earn $100,000 in your first year''). Promoters of work-at-home opportunities frequently dupe consumers with false earnings claims. For example, in one recent envelope-stuffing case brought under Section 5 of the FTC Act, the defendants promised purchasers weekly earnings ranging from $1,200 to $4,400.[116] In another case targeting Spanish-speaking consumers, the defendants promised that purchasers could earn $1,400 per week stuffing envelopes from home.[117] Often earnings claims are express, but may be implied. Sellers often convey these false and unsubstantiated earnings claims orally, although it is not unusual for such claims to be in writing. Nor is it unusual for these false earnings claims to contradict inconspicuous disclaimers the seller has hidden in contracts or other printed materials. At any rate, false or unsubstantiated earnings claims are inherently likely to mislead consumers. Certainly, no aspect of the sales transaction is more material than the level of earnings a purchaser can reasonably expect. Moreover, prospective purchasers reasonably interpret earnings claims at face value. Thus, false or unsubstantiated earnings claims are deceptive and unlawful under Section 5 of the FTC Act.[118]

Under the Original Franchise Rule and the interim Business Opportunity Rule, the Commission sought to ensure the accuracy and reliability of earnings claims, both written and oral, express or implied, by prohibiting sellers from making an earnings claim, unless the seller possessed a reasonable basis for the claim, along with written substantiation for the claim, at the time the claim was made. Sellers were also required to provide prospective purchasers with a separate earnings claims statement that set forth the claim and the substantiation for that claim. The final Rule continues to address false and deceptive earnings claims by requiring business opportunity sellers to disclose whether they make an earnings claim. Sellers who make earnings claims must attach to the required disclosure document an earnings claim statement setting forth the earnings claim, the number and percentage of purchasers who achieved the represented level of earnings, the date range during which the represented earnings were achieved, and other information. These disclosure requirements are designed to help consumers identify and evaluate an earnings claim, if one is made, or to arouse suspicion if an earnings claim is made orally but is disclaimed in writing. The final Rule, in § 437.6(d), also prohibits misrepresenting ''the amount of sales, or gross or net income or profits a prospective purchaser may earn, or that prior purchasers have earned.''

2. References

The use of paid references or ''shills'' is a common practice in the sale of fraudulent business opportunities. In many of the Commission's cases against fraudulent business opportunity sellers, the defendants had offered to provide prospective purchasers with purportedly independent references, who in reality were nothing more than paid shills—individuals who were compensated by the defendants to claim that they were successful operators of defendants' business ventures.[119] The business opportunity sellers, however, had not disclosed to prospective purchasers that the references were paid or otherwise received a benefit for providing a favorable account of the opportunity. The use of fictitious references is an objectionable, but very effective means of misleading consumers about a highly material fact—whether other purchasers have actually achieved earnings as the seller represents, and whether those purchasers' overall experience of operating the business has been positive. When the information a reference provides on these questions is fictitious, a prospective purchaser has no way of knowing the information is false and unreliable. Thus, the use of fictitious references—shills—is a deceptive practice.[120]

The Original Franchise Rule and the interim Business Opportunity Rule sought to remedy this deceptive practice by requiring business opportunity sellers to provide prospective purchasers with the names and contact information for at least 10 current purchasers of the opportunity. The final Rule continues to remedy this deceptive practice by requiring a business opportunity seller to disclose a list of all prior purchasers of the business opportunity during the previous three years. The disclosure of prior purchasers is instrumental in preventing fraud because it enables prospective purchasers to independently verify the seller's claims. The final Rule also, in § 437.6(q), prohibits misrepresenting that any person has purchased a business opportunity, or that any person can provide an independent assessment of the offering, when such is not the case.

3. Refund Policies

Fraudulent business opportunity sellers often offer prospective purchasers the right to cancel or to seek a whole or partial refund, but when a purchaser seeks to cancel, he finds there are hidden limitations or conditions on the refund policy. More often, the seller simply ignores the purchaser's request. Thus, refund offers are frequently just illusory, and misleading. Cancellation or refund offers are material to prospective purchasers because they purport to reflect the potential risk of the proposed transaction, and may create the impression that the business opportunity offer is either risk free or a low financial risk. Purchasers reasonably interpret a refund policy to be, in fact, as stated. Thus, representing

[115] *See supra* note 96.

[116] *FTC* v. *Global U.S. Resources,* No. 10–CV–1457 (RNC) (D. Conn. 2010).

[117] *FTC* v. *Zoilo Cruz,* No. 3:08–cv–01877–JP (D.P.R. 2008).

[118] *See* FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.,* 103 F.T.C. 110, 174 (1984).

[119] *E.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *U.S.* v. *Vaughn,* No. 01–20077–01–KHV (D. Kan. 2001); *FTC* v. *Hart Mktg. Enter. Ltd., Inc.,* No. 98–222–CIV–T–23 E (M.D. Fla. 1998); *FTC* v. *Inetintl.com,* No. 98–2140 (C.D. Cal. 1998); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996); *FTC* v. *Allstate Bus. Consultants Group, Inc.,* No. 95–6634–CIV–Ryskamp (S.D. Fla. 1995).

[120] *See* FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.,* 103 F.T.C. 110, 174 (1984).

an illusory refund policy is deceptive under Section 5 of the FTC Act.

Moreover, the failure to honor refund promises is an unfair practice in violation of Section 5(n) of the FTC Act.[121] It often results in substantial injury to business opportunity purchasers that they cannot reasonably avoid.[122] Moreover, the record is devoid of any evidence suggesting that this harm is outweighed by any countervailing benefits.

To remedy this practice, under the Original Franchise Rule and the interim Business Opportunity Rule, it was a violation for a seller to fail to refund a purchaser's funds, in certain instances. The final Rule continues to address this practice. Under § 437.3(a)(4) of the final Rule, a seller is not required to have a refund or cancellation policy. The seller, however, is required to disclose whether it has either a refund or cancellation policy, and if so, the seller must disclose, in an attachment to the disclosure document, the material terms of the policy. Moreover, § 437.6(k) prohibits any misrepresentation of a seller's refund or cancellation policies, and § 437.6(l) prohibits failure to provide a refund or cancellation when the purchaser has satisfied the terms and conditions disclosed.

4. Legal Actions

The Commission's law enforcement experience amply demonstrates that fraudulent business opportunity sellers often operate through multiple related affiliates, or use, sequentially or simultaneously, a variety of corporate identities in order to obscure their negative reputation or to avoid alerting consumers of the potential for fraud. This subterfuge is designed to mislead, and actually does mislead prospective business opportunity purchasers about a crucially material fact: The reliability and trustworthiness of the seller with whom the consumer is transacting. It is not unreasonable for a consumer to believe that a seller is as represented; the consumer is not obliged to suspect an apparently legitimate seller has a history of fraud hidden behind multiple defunct or impossible to trace corporate entities. Thus, it is a deceptive practice and a violation of Section 5 for a seller to obfuscate past activities that would alert a prospective purchaser of a likelihood of fraud.[123]

One of the key indicia of a seller's reliability and trustworthiness is whether there have been law enforcement actions or lawsuits for fraud and similar infractions targeting that seller. Accordingly, under the Original Franchise Rule and the interim Business Opportunity Rule, the Commission required sellers to disclose certain legal actions in which they or their principals have been involved. Similarly, the final Rule requires a business opportunity seller to disclose any legal actions that the seller, its affiliates, and certain key personnel have been involved in during the previous ten years involving misrepresentation, fraud, securities law violations, or unfair or deceptive practices, including violations of any FTC Rule. Knowledge of such legal actions against the seller and other key persons associated with the seller is material to a prospective purchaser's decision to go forward with the transaction.

These disclosure requirements are tailored to address common deceptive or unfair practices in the sale of business opportunities, as demonstrated by the Commission's extensive law enforcement experience with business opportunity fraud. In addition to these disclosures, the final Rule requires sellers to disclose certain identifying information about themselves and expressly prohibits a variety of material misrepresentations and omissions that the Commission's experience demonstrates to be most commonly associated with deceptive and unfair practices in the sale of business opportunities.

C. The Economic Effect of the Rule

At every stage of the Rule amendment proceeding, the Commission solicited comment on the economic impact of the Rule, as well as the costs and benefits of each proposed Rule amendment. In issuing the final Rule, the Commission has carefully considered the comments received and the costs and benefits of each amendment. As discussed throughout this SBP, the final Rule's disclosure requirements and specific prohibitions will provide a substantial benefit to consumers weighing the risks of investing their money in specific business opportunity offers. In particular, the mandated disclosures will help consumers evaluate the earnings claims made by a seller, investigate the litigation history of the seller, identify the seller's refund or cancellation policy, and check on the experiences of other purchasers. By providing consumers with access to this information before money changes hands, the final Rule will substantially reduce economic harm caused by misleading sales practices.

The Commission has attempted to reduce sellers' compliance costs wherever possible. In general, compliance with the final Rule's disclosure requirements is significantly less burdensome than with the Original Franchise Rule or the interim Business Opportunity Rule. Most notably, the final Rule streamlines the more than 20 separate categories of disclosures required by the interim Business Opportunity Rule to just five. The final Rule also employs specific prohibitions in place of affirmative disclosures wherever possible in an attempt to further reduce compliance costs.

A variety of other amendments have been made in an attempt to reduce compliance costs for business opportunity sellers. For example, in the RNPR, the Commission eliminated the requirement that sellers disclose the litigation histories of their sales personnel, recognizing that such disclosure would place a burden on business opportunity sellers that would not be outweighed by countervailing benefits to prospective purchasers.[124] The final Rule also does not require sellers with prior legal actions against them to detail the nature of the legal action, but rather, permits sellers to provide a brief 100-word description of the case if they so choose. Also, in an attempt to reduce compliance costs, the final Rule permits sellers to comply with the cancellation or refund disclosure requirement by attaching to the disclosure document a copy of a pre-existing document—such as a company brochure—that details the seller's cancellation or refund policy. The final Rule also provides sellers with a less burdensome means of complying with the reference disclosure requirement: In lieu of a list of the 10 prior purchasers nearest the prospect, a seller may provide a prospect with a national list of all purchasers. For example, a seller making disclosures online could simply maintain an electronic list of purchasers that it updates periodically. This would enable the seller to avoid having to tailor the disclosure to each prospective

[121] An act or practice is unfair if it ''causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.'' 15 U.S.C. 5(n).

[122] *See, e.g., In re Orkin Exterminating Co.,* 108 F.T.C. 263 (1986), aff'd, *Orkin Exterminating Co.* v. *FTC,* 849 F.2d 1354 (11 Cir. 1988).

[123] *See* FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.,* 103 F.T.C. 110, 174 (1984).

[124] 73 FR at 16126. The Commission's decision to narrow the Rule so that MLMs would not be burdened with unworkable disclosure requirements was similarly prompted by concern that any potential benefits would be outweighed by compliance costs. *Id.* at 16119–21.

purchaser, thereby further reducing compliance costs.

D. The Effect of the Rule on State and Local Laws

Section 437.9(b) of the final Rule provides that the Commission does not intend to preempt state or local business opportunity laws, except to the extent that they conflict with the Rule. A law does not conflict with the Rule if it affords prospective purchasers equal or greater protection, such as a requirement for registration of disclosure documents or more extensive disclosures.

Although state laws offering equal or greater protections are not preempted, § 437.6(c) of the final Rule, which addresses extraneous materials, prohibits sellers from providing disclosures required under state law in the same document with the disclosures required under the final Rule. One of the main goals of revising and tailoring the disclosure requirements for business opportunity sellers is to simplify and streamline the disclosures into a single-page document. The Commission has determined, therefore, that allowing business opportunity sellers to mix federal and state disclosures into one document would be a means for sellers to present lengthy and confusing information to prospective purchasers, and would be contrary to the Commission's goal of requiring sellers to provide a simple, clear, and concise disclosure document.[125]

III. Section-by-Section Analysis of Part 437

The final Rule is divided into ten sections. Section 437.1 defines 19 key terms employed in the Rule's text. Section 437.2 establishes the business opportunity seller's obligation to furnish prospective purchasers with material information in the form of a written basic disclosure document. Section 437.3 specifies the content and form of the disclosure document. Section 437.4 sets forth the requirements that business opportunity sellers must follow if they elect to make representations regarding earnings. Section 437.5 addresses sales conducted in Spanish or other languages besides English, and the disclosure requirements for those sales. Section 437.6 prohibits a number of specific deceptive claims and other deceptive practices in connection with business opportunity sales. Section 437.7 sets forth the Rule's recordkeeping provisions. Section 437.8 expressly exempts from the Rule those business arrangements that are covered by the Amended Franchise Rule. Finally, two administrative sections—437.9 and 437.10—address other laws, rules, and orders, and severability. The sections that follow discuss each of these rule provisions in turn.

A. Section 437.1: Definitions

The final Rule begins with a list of defined terms in alphabetical order. In several instances, the final Rule's definitions closely track those contained in the interim Business Opportunity Rule or the Commission's interpretations of the Original Franchise Rule.[126] These include the definitions for the terms ''action,'' ''affiliate,'' ''disclose or state,'' ''earnings claim,'' ''person,'' and ''written or in writing.'' In addition, the final Rule includes definitions for the terms ''business opportunity,'' ''designated person,'' ''exclusive territory,'' ''general media,'' ''new business,'' ''prior business,'' ''providing locations, outlets, accounts, or customers,'' ''purchaser,'' ''quarterly,'' ''required payment,'' and ''seller,'' each of which was proposed in the IPBOR and, in certain circumstances, modified in the RPBOR and the proposed Final Rule attached to the Staff Report. Finally, the final Rule includes two new definitions that were recommended in the Staff Report: (1) ''Material'' and (2) ''signature or signed.'' [127] Each definition, including the record support for the definition and the Commission's analysis, is addressed below.

1. Section 437.1(a): Action

The term ''action'' appears in § 437.3(a)(3), which requires business opportunity sellers to disclose material information about the business opportunity seller's litigation history.[128] Specifically, § 437.3(a)(3) of the final Rule requires the disclosure of material information about certain civil or criminal actions within the previous ten years involving the business opportunity seller, its directors, and certain key employees,[129] as well as its affiliates or prior businesses. Information about litigation history based on allegations of misrepresentation, fraud, securities law violations, or unfair or deceptive practices is highly material to assessing investment risk. Discovering that a seller has a history of violating laws and regulations is perhaps the best indication that a particular business opportunity is a high-risk investment.

The definition of ''action'' is intended to make clear that disclosures involving prior litigation include not only civil actions brought before a court but also matters before arbitrators.[130] It also is intended to make clear that an ''action'' includes all government actions, including criminal matters and actions brought to enforce FTC Rules, as well as administrative law enforcement actions, such as cease and desist orders or assurances of voluntary compliance.[131]

During the Business Opportunity workshop, a panelist representing the DOJ suggested that bankruptcy is another type of legal action that should be disclosed to potential purchasers because a bankruptcy filing could be a red flag warning of potential risk associated with a business opportunity.[132] A panelist from the Maryland Attorney General's Office disagreed, arguing that this additional disclosure would not benefit potential business opportunity purchasers because, in his experience, fraudulent business opportunities do not typically file for bankruptcy protection.[133] Instead, in that panelist's experience, fraudulent business opportunity promoters shutter their premises and reopen as an entirely new fraudulent entity. Another panelist posited that disclosure of the existence of a bankruptcy by the business opportunity or its key personnel was not likely to identify fraudulent or problematic business opportunities that would not already be identified through the existing proposed categories of legal actions.[134]

The Commission has determined not to include bankruptcy as a type of legal action that a business opportunity seller must disclose. The Commission's law enforcement experience indicates that when targeted by law enforcement,

[125] 73 FR at 16128.

[126] *See* 16 CFR 437.1; Final Interpretive Guides (''Interpretive Guides'') accompanying the Original Franchise Rule, 44 FR 49966 (Aug. 24, 1978).

[127] At the same time, the final Rule eliminates nine of the interim Business Opportunity Rule's terms and their definitions, which are no longer necessary: ''prospective business opportunity purchaser,'' ''business day,'' ''time for making of disclosures,'' ''fractional business opportunity,'' ''business opportunity broker,'' ''sale of a business opportunity,'' ''cooperative association,'' ''fiscal year,'' and ''personal meeting.''

[128] Section 437.3(a)(3) requires disclosure of ''any civil or criminal action for misrepresentation, fraud, securities law violations, or unfair or deceptive practices, including violations of any FTC Rule.''

[129] The final Rule covers ''any sales managers, or any individual who occupies a position or performs a function similar to an officer, director, or sales manager of the seller.'' *See* § 437.3(a)(3)(i)(c).

[130] 71 FR at 19061.

[131] *Id.*

[132] Jost, June 09 Tr at 32. A second panelist (Taylor, June 09 Tr at 35), and a commenter (Brooks-Workshop comment) agreed that existence of a bankruptcy might be relevant to a potential purchaser.

[133] Cantone, June 09 Tr at 37.

[134] MacLeod, June 09 Tr at 33.

rather than file for bankruptcy, fraudulent business opportunity sellers tend to vanish and then simply reopen under new company names.[135] Thus, there is little meaningful correlation between filing for bankruptcy and promoting a fraudulent business opportunity. Yet, many legitimate businesses have been forced by circumstances to seek the protection of bankruptcy courts. Therefore, bankruptcy filing would not seem to be a reliable marker for potential fraud, and would not likely help business opportunity purchasers avoid being defrauded. Therefore, the final Rule's definition of action does not contain reference to bankruptcy.[136]

Finally, the Staff Report noted that some state administrative proceedings result in parties entering into assurances of voluntary compliance, while other states refer to such orders as assurances of discontinuance. The staff recommended, therefore, adding ''assurance of discontinuance'' to the categories of legal actions enumerated in the proposed definition. The Commission agrees with the staff's recommendation and the final Rule's definition of ''action'' now includes that phrase. Accordingly, § 437.1(a) of the final Rule defines ''action'' as follows: ''A criminal information, indictment, or proceeding; a civil complaint, cross claim, counterclaim, or third party complaint in a judicial action or proceeding; arbitration; or any governmental administrative proceeding, including, but not limited to, an action to obtain or issue a cease and desist order, an assurance of voluntary compliance, and an assurance of discontinuance.''

The definition of ''action,'' as recommended in the Staff Report, received no comment, and the final Rule adopts this definition of ''action'' as recommended.

2. Section 437.1(b): Affiliate

The term ''affiliate'' appears in several sections of the final Rule, most notably in § 437.3(a)(3), which requires a business opportunity seller to disclose not only litigation in which the seller was named as a party, but any litigation naming any of the seller's ''affiliates'' or prior businesses. Section 437.1(b) of the final Rule defines the term ''affiliate'' to mean: ''An entity controlled by, controlling, or under common control with a business opportunity seller.'' This definition also covers litigation involving a parent or subsidiary of the business opportunity seller.

The definition of ''affiliate,'' as proposed in the INPR and RNPR, and recommended in the Staff Report, received no comment, and the final Rule adopts this definition of ''affiliate'' as recommended.

3. Section 437.1(c): Business Opportunity

The definition of ''business opportunity'' delineates the scope of the Rule's coverage. Under the final Rule, a ''business opportunity'' is a commercial arrangement that possesses three required elements. First, a seller must solicit a prospective purchaser to enter into a new business.[137] Second, the prospective purchaser of the business opportunity must make a ''required payment.'' [138] And third, the seller must represent that the seller or one or more designated persons will provide any of three types of business assistance: (1) Providing locations for the purchaser's use or operation of equipment, displays, vending machines, or similar devices; (2) providing outlets, accounts, or customers to the prospective purchaser; or (3) buying back any or all of the goods or services that the purchaser makes, including providing payment for such services as, for example, stuffing envelopes from the purchaser's home.

Because this section triggers the strictures and requirements of the Rule, the definition of ''business opportunity,'' and in particular, its specification of the types of ''business assistance'' that characterize a covered business, has generated substantial comment throughout this proceeding. After careful consideration of the amassed record, the Commission has crafted the final Rule's business opportunity definition to ensure that it is broad enough to encompass many business opportunities that historically were not covered under the Original Franchise Rule or the interim Business Opportunity Rule, but which have routinely been shown to be associated with unfair or deceptive practices.[139] At the same time, the definition of ''business opportunity'' has been narrowly tailored to avoid inadvertently sweeping in other business arrangements, such as traditional product distribution. This has been accomplished primarily through narrowing the types of business assistance that will trigger the Rule's coverage from the five categories originally proposed in the IPBOR to the three categories described above.

Consistent with the approach proposed in the RPBOR, the final Rule's definition of business opportunity eliminates two types of business assistance that under the IPBOR would have triggered the Rule's strictures and disclosure obligations: (1) Tracking or paying, or purporting to track or pay, commissions or other compensation; and (2) providing other advice or training assistance. The sections below describe the evolution of the business opportunity definition, including the rationale for eliminating these types of assistance from the definition of business opportunity.

In the IPBOR, the proposed definition of ''business opportunity'' was designed to be broad enough to cover the sale of virtually any type of business opportunity, including two types in particular that historically had fallen outside the scope of the Original Franchise Rule—work-at-home and pyramid marketing opportunities.[140] As explained more fully in the INPR, the Commission's law enforcement experience and consumer complaints demonstrate that these two types of opportunities are sources of prevalent and persistent problems,[141] which the Commission has traditionally challenged under Section 5 of the FTC Act.[142]

In order to reach these two types of opportunities, the INPR proposed a broad definition of ''business opportunity'' comprised of three

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[135] *See, e.g., FTC* v. *Nat'l Vending Consultants, Inc.,* CV–S–05–0160–RCJ–PAL (D. Nev. 2005); *FTC* v. *USA Beverages, Inc.,* CV–05–61682 (S.D. Fla. 2004); *FTC* v. *Allstate Bus. Distribution Ctr., Inc.,* CV–00–10335AHM (C.D. Cal. 2001); *FTC* v. *O'Rourke,* No. 93–6511–Civ–Gonzalez (S.D. Fla. 1993); *FTC* v. *Inv. Dev., Inc.,* 1989 U.S. Dist. LEXIS 6502 (E.D. La. June 7, 1989).

[136] Similarly, the scope of 437.3(c)(3)(i) has remained unchanged and does not require the disclosure of bankruptcy filings.

[137] Section 437.1(j) defines ''new business'' as ''a business in which the prospective purchaser is not currently engaged, or a new line or type of business.''

[138] *See* § 437.1(p) (defining ''required payment'').

[139] As discussed *supra* in Section I.C, the definition of business opportunity no longer excludes transactions falling below a minimum monetary payment threshold nor does it require that the purchaser of the opportunity sell goods or services directly to end-users other than the business opportunity seller. These changes extend the scope of coverage to many business opportunities that previously escaped coverage.

[140] 71 FR at 19059.

[141] In 2010, pyramid schemes generated approximately 2,000 consumer complaints, while work-at-home schemes generated over 8,000 complaints. *See* Consumer Sentinel Network Databook (March 2011) at 76, 79, *available at http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf.*

[142] Many of these schemes fell outside the ambit of the Original Franchise Rule because: (1) The purchase price was less than $500, the minimum payment necessary to trigger coverage; (2) required payments were primarily for inventory, which did not count toward the $500 monetary threshold; (3) the scheme did not offer location or account assistance; or (4) the scheme involved the sale of products to the business opportunity seller rather than to end-users. *See* 71 FR at 19055, 19059.

elements: (1) A solicitation to enter into a new business; (2) payment of consideration, directly or indirectly through a third party; and (3) the making of either an ''earnings claim'' or an offer to provide ''business assistance.'' [143] The IPBOR's definition of ''business assistance'' included assistance in the form of ''tracking or paying, or purporting to track or pay, commissions or other compensation based upon the purchaser's sale of goods or services or recruitment of other persons to sell goods or services.'' [144] The Commission noted that many pyramid schemes offer this type of assistance, purporting to compensate participants not only for their own product sales but also for sales made by their participants' downline recruits.[145] Under the IPBOR, ''business assistance'' also included providing other advice or training assistance.[146]

In response to the INPR, many commenters argued that the IPBOR would have unintentionally swept in numerous commercial arrangements where there is little or no evidence that fraud is occurring.[147] Several commenters contended that the IPBOR would have regulated a wide range of legitimate and traditional product distribution arrangements that were not associated with the types of fraud that business opportunity laws are designed to remedy. For example, one commenter suggested that the IPBOR could be read to cover product distribution through retail stores simply because the retailer pays for inventory and the manufacturer provides sales training to its retail accounts.[148] The commenter suggested that its business operations would meet the IPBOR's definition of business opportunity because: (1) The ''payment'' prong of the definition did not exempt voluntary purchases of inventory; and (2) providing retail staff with sales training would have satisfied the ''business assistance'' prong of the definition.[149] Other commenters noted that even if a company provided no ''business assistance,'' it easily could have fallen under the ''business opportunity'' definition if the company made some representation about sales or profits sufficient to constitute an earnings claim.[150]

Other commenters in response to the INPR argued that the IPBOR would have been broad enough to cover other types of commercial arrangements, such as bona fide educational programs offered by colleges and universities, the sale of certain books by publishers or book stores, and even the relationship between newspapers and independent carriers who distribute the newspapers to homes and businesses.[151] Recognizing the unintended overbreadth of the Rule to sweep in these types of commercial arrangements as well as the unworkability of applying the Rule to MLMs, the Commission proposed the RPBOR with a narrower definition of ''business opportunity.'' The RPBOR ''business opportunity'' definition narrowed the types of ''business assistance'' that would trigger Rule coverage by deleting from the Rule text: (1) Tracking payments or commissions and (2) providing other advice or training assistance.[152] The RPBOR definition also eliminated the ''earnings claim'' element from the definition.[153] But for this modification, any business or commercial arrangement that made an earnings claim could have been a ''business opportunity,'' as defined by the Rule. To avoid transforming common commercial transactions into ''business opportunities,'' some commenters suggested narrowing the definition of ''earnings claim.'' [154] In the RNPR, however, the Commission determined that the better approach to address concerns about overbreadth was to tailor the substantive scope of the Rule, in part, by unlinking the definition of ''business opportunity'' from the making of an earnings claim.[155] The Staff Report recommended that the Commission adopt this modification in the final Rule. No comments received in response to the Staff Report addressed this change.

In the RNPR, the Commission solicited comment as to whether the narrowed Rule would adequately reach the field of business opportunity promoters who are likely to engage in unfair or deceptive practices, and conversely, queried whether the newly-proposed narrowing of the definition, and, hence, the scope of the RPBOR's coverage, was sufficient to exclude from the rule traditional distributor relationships [156] that had been inadvertently swept into the IPBOR.[157]

The majority of comments in response to the RNPR focused on whether the revisions to the proposed Rule would capture MLMs.[158] The majority of commenters applauded the Commission's decision to narrow the scope of the rule, while others expressed concern that the MLM industry would continue to be subject to the RPBOR despite the more narrowed definition of ''business opportunity.'' [159] For example, some commenters expressed concern that the buy-back provision, set forth in § 437.1(c)(3)(iii), would sweep in MLM companies that offer to buy back their distributors' unused inventory.[160] These commenters suggested amending this provision to strike the word ''provides'' from § 437.1(c)(3)(iii), so that the definition of ''business opportunity'' would clearly not encompass a return of unused materials or merchandise.[161]

The Commission is not persuaded that such a change is necessary. In the RNPR, the Commission made clear that § 437.1(c)(3)(iii) was intended to capture work-at-home business opportunities in which the seller provides the purchaser with some supplies and the purchaser converts those supplies into a product

[143] *See* 71 FR at 19087.

[144] *Id.*

[145] *Id.* at 19063 & n.106.

[146] *Id.* at 19087 (IPBOR § 437.1(c)(v)).

[147] *See* 73 FR at 16113–14.

[148] Timberland-INPR at 2.

[149] *Id.*

[150] IBA–INPR at 4; *see also* PMI–INPR at 3.

[151] Venable-INPR at 2–3; NAA–INPR at 1–3.

[152] In addition, the RPBOR clarified that a ''required payment'' does not include payments for the purchase of reasonable amounts of inventory at bona fide prices. The final Rule incorporates this clarification.

[153] 73 FR at 16124.

[154] *Id.*

[155] *Id.*

[156] For example, commenters to the INPR noted that the IPBOR would cover ''manufacturers, suppliers and other traditional distribution firms that have relied on the bona fide wholesale price exclusion to avoid coverage'' under the Rule. Sonnenschein-INPR at 1–2. The Cosmetic, Toiletry and Fragrance Association posited that the IPBOR would cover the relationship between a manufacturer and an independent contractor who sells the product to beauty supply companies, salons, and others. CTFA–INPR; *see also* LHD&L–INPR at 2 (noting that the IPBOR could cover the relationship between a manufacturer and a regional distributor of products).

[157] 73 FR at 16133.

[158] DSA–RNPR. In addition, the Commission received more than 40 comments from various MLMs that expressed support and concurrence with DSA's comments. *See, e.g.,* Big Ear-RNPR; Jafra Cosmetics-RNPR; Lia Sophia-RNPR; Longaberger-RNPR; Princess House-RNPR; Shaklee-RNPR. Some commenters expressed disappointment that the Commission proposed to exclude MLMs from coverage by the Rule. *See, e.g.,* CAI–RNPR; Durand-RNPR; PSA–RNPR; Aird-RNPR (Rebuttal); Parrington-RNPR. As previously noted, the Commission decided to narrow the scope of the Rule to avoid broadly sweeping in MLMs.

[159] *See, e.g.,* DSA–RNPR; Avon-RNPR; Bates-RNPR; IBA–RNPR; MMS–RNPR; Mary Kay-RNPR; Melaleuca-RNPR; Primerica-RNPR; Pre-Paid Legal-RNPR; IDS–RNPR; Tupperware-RNPR; Venable-RNPR.

[160] DSA requires that its members offer to buy back, at 90% of the salesperson's cost, all resalable inventory and other sales materials. DSA–INPR at 35.

[161] DSA–RNPR at 6 n.14 (noting that ''the buy-back provision is the cornerstone of the DSA's self regulatory regime and a valuable protection for individual direct sellers''); Mary Kay-RNPR at 6; Babener-RNPR; Melaleuca-RNPR.

or other ''good'' for repurchase by the seller or other person.[162] As the Staff Report noted, it would require a labored reading of this section to suggest that the word ''provides'' means ''to return unused inventory the purchaser bought from the seller but was not able to sell.'' [163] Moreover, the Commission has explicitly stated that this provision ''would not include the offer to buy back inventory or equipment needed to start a business.'' [164]

In addition, some commenters argued that § 437.1(c)(3)(i) would inadvertently cover entities that offer, at no cost to purchasers, the use of office space and equipment for the operation of the purchasers' business.[165] These commenters were concerned that such offers could be construed under § 437.1(c)(3)(i) to be providing ''locations for the use or operation of equipment * * * on premises neither owned nor leased by the purchaser.'' In the RNPR, the Commission stated that this provision was intended to capture fraudulent vending machine and rack display schemes,[166] as well as schemes where a purchaser is forced to lease office space, telephones and other equipment for operation of his or her business.[167] Noting that the Commission did not intend to capture the incidental use of office space and equipment that the purchaser does not own, lease, or control, and for which the purchaser makes no payment, the Staff Report recommended a slight modification to § 437.1(c)(3)(i), amending it to state: ''provide locations for the use or operation of equipment, displays, vending machines, or similar devices, owned, leased, controlled, or paid for by the purchaser.'' [168]

No comments responding to the Staff Report addressed this proposal. The Commission adopts the change recommended in the Staff Report. This change clarifies that the third prong of the ''business opportunity'' definition is triggered only when the seller offers to provide the purchaser, directly or through an intermediary, with locations in which to place equipment, displays, vending machines, or similar devices that the purchaser controls. This change will not compromise the long-standing coverage of the Rule, and will allow legitimate sellers to offer beneficial assistance to purchasers, at no cost to those purchasers.[169]

4. Section 437.1(d): Designated Person

The term ''designated person'' appears in the definition of ''business opportunity'' to ensure coverage over those transactions in which a seller refers a purchaser to a third party for the provision of business locations, accounts, or assistance such as buy-back services, as specified in § 437.1(c)(3). That section makes clear that in order to fall within the scope of the business opportunity definition, the business assistance being offered need not be provided to the purchaser by the seller directly. Rather, a seller who represents that business assistance may or will be provided by a third party, such as a locator or a supplier, will still be covered by the Rule. Section 437.1(c)(3) uses the term ''designated person'' to refer to any third parties who would provide business assistance to a business opportunity purchaser and to close a potential loophole. For example, a fraudulent vending machine route seller would not be able to circumvent the final Rule by representing to a prospective purchaser that a specific locator will place machines for the purchaser.[170] The referral to a third party would be sufficient to bring the transaction within the ambit of the Rule.[171] Section 437.1(d) of the final Rule defines the term ''designated person'' to mean ''any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business.'' [172]

One commenter argued that the proposed definition of ''designated person'' was overbroad and that its application would result in many multi-level marketing opportunities being swept into the Rule.[173] For instance, if an MLM company requires its managers to provide the use of office space, equipment and supplies, and general business advice to new agents (and presumably to describe these types of assistance to prospective purchasers as part of a sales pitch),[174] one could argue that the company would be covered by the Rule.[175] The commenter offered several suggested revisions to resolve this problem, one of which was to specify that ''designated person'' does not include entities that receive no payment from the purchaser in order to receive the services provided.[176] The Staff Report noted that alternate resolutions were more appropriate—namely the modification to the definitions of ''business opportunity'' and ''providing locations, outlets, accounts, or customers,'' and recommended, therefore, that the definition of ''designated person'' be adopted in the form proposed in the RNPR. No comments in response to the Staff Report addressed this definition, and the final Rule adopts the definition as recommended.

5. Section 437.1(e): Disclose or State

Section 437.1(e) of the final Rule defines ''disclose or state'' to mean ''to give information in writing that is clear and conspicuous, accurate, concise, and legible.'' [177] The purpose of this definition is to ensure that a prospective purchaser will receive complete information in a form that a prospective purchaser easily can read. For example, the furnishing of a disclosure document without punctuation or appropriate

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[162] *See* 73 FR at 16123.

[163] Staff Report at 34.

[164] *See* 71 FR at 19062.

[165] For example, Primerica, an MLM that sells insurance products and services, requires that its regional managers provide at no cost to ''downline'' sales agents the use of office space, supplies, and equipment (such as computers and printers) for the operation of his or her business. Primerica noted that, as a practical matter, it must require this assistance, as the regulatory structure in which Primerica operates necessitates that regional managers exercise compliance oversight functions with respect to the agents in their downlines. Primerica-RNPR; *see also* Avon-RNPR; Tupperware-RNPR.

[166] 73 FR at 16123 (citing *FTC* v. *Am. Entm't Distribs.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *FTC* v. *Advanced Pub. Commc'ns Corp.,* No. 00–00515–CIV–Ungaro-Benages (S.D. Fla. 2000); *FTC* v. *Ameritel Payphone Distribs., Inc.,* No. 00–0514–CIV–Gold (S.D. Fla. 2000); *FTC* v. *Mktg. and Vending Concepts,* No. 00–1131 (S.D.N.Y. 2000)).

[167] *FTC* v. *Equinox, Int'l,* No. CV–S–99–0969–JAR–RLH (D. Nev. 1999).

[168] The Staff Report recommended that the Commission strike the final clause of this provision of the RPBOR—''on premises neither owned or leased by the purchaser''—noting that the clause is superfluous, as a buyer would never need a seller's assistance in identifying locations that the buyer already owns or leases. The Commission agrees, and the final Rule does not include this language.

[169] In the final Rule, a non-substantive change was made to the definition of ''business opportunity'' proposed in the Staff Report—the colon and number signaling the first element of the definition was moved. This change simply makes the sentence structure parallel.

[170] The Commission's law enforcement experience demonstrates that closing this potential loophole is necessary. For example, in *FTC* v. *Greeting Cards of Am., Inc.,* No. 03–60746–CIV–Gold (S.D. Fla. 2003), the FTC alleged that the business opportunity seller represented that a third party locator would secure locations for the prospective purchaser, and the locator failed to do so.

[171] *See* 71 FR at 19064.

[172] This approach is consistent with the Amended Franchise Rule's analogous definitional elements, extending the scope of that rule's coverage to reach transactions in which the franchisor provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites, or locations. *See* 16 CFR 436.1(j).

[173] Primerica-RNPR at 11.

[174] The MLM company compensates managers for this service; there is no cost to down-line agents. Primerica-RNPR at 11.

[175] *Id.*

[176] *Id.* at 13.

[177] *See* FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.,* 103 F.T.C. 110, 174 (1984) (discussing the standard for clear and conspicuous disclosures).

spacing between words would not be ''clear.'' Similarly, required information such as the number and percentage of prior purchasers who obtained a represented level of earnings would not be ''conspicuous'' if set in small type, printed in a low-contrast ink, or buried amid extraneous information.

The proposed definition of ''disclose or state'' received no comment. The final definition, therefore, is adopted as proposed.

6. Section 437.1(f): Earnings Claim

The final Rule's key feature is the disclosure document, which provides a potential purchaser of a business opportunity with five items of material information, including written disclosure of all ''earnings claims'' made by the seller, before the purchaser pays any money or executes a contract. This will allow a potential purchaser to compare a seller's written representations with any oral representations made. The term ''earnings claim'' is defined in the final Rule as ''any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits.'' [178] This intentionally broad definition will cover all variations of earnings representations that the Commission's law enforcement experience shows are associated with business opportunity fraud.[179]

For illustrative purposes, the definition includes two examples of communications that constitute earnings claims. The first of these examples describes common types of potentially fraudulent earnings claims: ''A chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables.'' This example is intended to clarify that sales matrices that purport to show income from an array of ''vends'' per day from a vending machine, for example, would constitute an ''earnings claim'' under the final Rule.[180]

The second example incorporates the principle, as expressed in the Interpretive Guides to the Original Franchise Rule, that ''any statements from which a prospective purchaser can reasonably infer that he or she will earn a minimum level of income'' constitute an earnings claim.[181] Given the prevalence of earnings claims in business opportunity sales, the Commission believes that a broad earnings disclosure requirement is necessary to prevent fraud. Therefore, the final Rule is not limited to express earnings claims, but also includes implied claims. Indeed, such implied claims are at least as likely to mislead prospective purchasers as express claims.[182] The final Rule's definition includes three specific examples illustrative of this type of earnings claim, as follows: ''Earn enough to buy a Porsche,'' ''earn a six-figure income,'' and ''earn your investment back within one year.'' Each of these three illustrative examples implies a minimum value—the cost of the lowest priced Porsche in the first example; at least $100,000 in the second; and an amount equal to the purchaser's initial investment in the third. Accordingly, this language makes clear that these types of representations are indistinguishable from direct, express earnings claims.

Some commenters have argued that the definition of ''earnings claim'' is overly broad and that the Commission should narrow the definition.[183] Earnings claims, however, lie at the heart of business opportunity fraud and typically entice consumers into investing their money. The Commission has determined that narrowing the definition of ''earnings claim'' could allow business opportunity sellers to avoid disclosing critical information to prospective purchasers. Accordingly, the definition of ''earnings claim,'' as proposed in the RPBOR and recommended in the Staff Report, is adopted without change.

7. Section 437.1(g): Exclusive Territory

This term is defined because it is referenced in § 437.6(n), which prohibits misrepresentations concerning territory exclusivity. Representations about exclusive territories are material because they purport to assure a potential purchaser that he or she will not face competition from other purchasers of the same business opportunity in his or her chosen location, or from the seller offering the same goods or services through alternative channels of distribution.[184] Exclusive territory promises go to the viability of the business opportunity and to the level of risk entailed in the purchase.[185] Indeed, misrepresentations about territories have commonly been made by business opportunity sellers to lure consumers into believing that a purchase poses little financial risk.[186]

Section 437.1(g) of the final Rule defines the term ''exclusive territory'' as ''a specified geographic or other actual or implied marketing area in which the seller promises not to locate additional purchasers or offer the same or similar goods or services as the purchaser through alternative channels of distribution.'' This definition reflects the common industry practice of establishing geographically delimited territories—such as a city, county, or state borders—as well as other marketing areas, such as those delineated by population.[187] The definition includes both representations that other business opportunity purchasers will not be allowed to compete with a new purchaser within the territory, as well as representations that the business opportunity seller itself or other purchasers will not compete with the new purchaser through alternative means of distribution, such as through Internet sales.

The definition also covers implied marketing areas, such as representations that the seller or other operators will not compete with the purchaser, without delineating a specific territory, or stating a vague or undefined territory, such as ''in the metropolitan area'' or ''in this region.'' If untrue, any of these kinds of representations can mislead a prospect about the likelihood of his or her success.[188]

The definition of ''exclusive territory'' received no comment. Accordingly, the definition of ''exclusive territory,'' as proposed in the RNPR and recommended in the Staff Report, is adopted without change.

8. Section 437.1(h): General Media

The term ''general media'' appears in § 437.4(b), which prohibits business opportunity sellers from making unsubstantiated earnings claims in the ''general media.'' [189] Section 437.1(h) of

[178] This definition is substantially similar to the Amended Franchise Rule's definition of ''financial performance representation,'' which is the Amended Franchise Rule's equivalent of an earnings claim. *See* 16 CFR 436.1(e).

[179] 71 FR at 19065.

[180] *Id.*

[181] 44 FR at 49982.

[182] Interpretive Guides, 44 FR 49966.

[183] 73 FR at 16124.

[184] *See* 71 FR at 19065.

[185] *Id.*

[186] *E.g., FTC* v. *Vendors Fin. Serv., Inc.,* No. 98–1832 (D. Colo. 1998); *FTC* v. *Int'l Computer Concepts, Inc.,* No. 1:94CV1678 (N.D. Ohio 1994); *FTC* v. *O'Rourke,* No. 93–6511–CIV–Ferguson (S.D. Fla. 1993); *FTC* v. *Am. Safe Mktg.,* No. 1:89–CV–462–RLV (N.D. Ga. 1989).

[187] 71 FR at 19065.

[188] *Id.*

[189] This provision is based on an analogous provision in the Amended Franchise Rule, 16 CFR 436.1(e). The Commission has challenged allegedly unsubstantiated earnings claims made through the general media in numerous cases, *e.g., FTC* v. *Wealth Sys., Inc.,* No. CV 05 0394 PHX JAT (D. Ariz. 2005); *United States* v. *Am. Coin-Op Servs., Inc.,* No. 00–0125 (N.D.N.Y. 2000); *United States* v. *Cigar Factory Outlet, Inc.,* No. 00–6209–CIV–Graham-

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the final Rule defines ''general media'' to mean: ''Any instrumentality through which a person may communicate with the public, including, but not limited to, television, radio, print, Internet, billboard, Web site, commercial bulk email, and mobile communications.'' [190] Due to the explosive growth of advertising through mobile devices, the Staff Report recommended adding the phrase ''mobile communications'' to the list of instrumentalities enumerated in the definition.[191]

The definition of general media recommended in the Staff Report received no comment. The Commission has determined to adopt the staff's recommendation and has therefore modified the definition of general media to include mobile communications. Moreover, the definition of general media is not intended to contain an exhaustive list of instrumentalities, and other current (and future) types of mass communication could also fall within the general media definition.

9. Section 437.1(i): Material

The term ''material'' is used in several sections of the final Rule.[192] Section 437.3(a)(4) of the final Rule requires sellers that offer refunds and cancellations to ''state all material terms and conditions of the refund or cancellation policy in an attachment to the disclosure document.'' The term ''material'' is also used in other provisions of the Rule. For example, under § 437.2 (the obligation to furnish written documents), it is a violation of the Rule for the seller to fail to disclose the ''material'' information specified in § 437.3. Section 437.3, in turn, specifies the items of ''material'' information that must be disclosed. The definition of ''material'' at § 437.1(i) was added to the final Rule because some workshop participants expressed concern that § 437.3(a)(4) as originally proposed would not provide sellers with sufficient guidance about the types of information that should be disclosed.[193] In the Staff Report, the staff recommended that ''material'' be defined to mean as ''likely to affect a person's choice of, or conduct regarding, goods or services.'' [194] This definition is consistent with the definition of ''material'' used in the Telemarketing Sales Rule (''TSR'').[195]

The definition of ''material'' recommended in the Staff Report received one comment.[196] The commenter expressed concern that the definition could be used by sellers as a potential loophole. The commenter suggested that the definition effectively would permit a seller to avoid disclosing the information required by the Rule by arguing that such information is not likely to affect a buyer's decision.[197] The commenter further stated that if the Commission retained the recommended definition, the Rule should contain the following language: ''Even though this Rule imposes various requirements for specific disclosures, sellers are permitted to dispense with any disclosures which would not be likely to affect a buyer's choice of, or conduct regarding goods or services.'' [198]

The Commission disagrees with the commenter. The final Rule mandates the disclosure of certain types of information, which the Commission has determined are material to a purchaser's investment decision.[199] The language the commenter proposes does nothing to close any perceived loophole. The Commission is not persuaded that the commenter's suggested change will improve clarity. In fact, it may obscure the definition. The Commission is persuaded by the Staff Report that a definition of ''material'' is necessary and adopts the definition as recommended.

10. Section 437.1(j): New Business

The term ''new business'' appears in the first of three definitional elements of the term ''business opportunity.'' [200] Section 437.1(j) of the final Rule defines ''new business'' as a ''business in which the prospective purchaser is not currently engaged, or a new line or type of business.'' Because it is reasonable to assume that a veteran businessperson may need the final Rule's protections as much as a novice,[201] the latter language of the definition covers the sale of business opportunities to persons who may already be involved in some type of business other than that which is being offered by the seller.[202]

The proposed definition of ''new business'' received no comment. Accordingly, the Commission adopts the definition of ''new business,'' as proposed in the RNPR and recommended in the Staff Report.

11. Section 437.1(k): Person

Section 437.1(k) of the final Rule defines the term ''person,'' a term used in many of the final Rule's definitional or substantive provisions.[203] The Staff Report recommended that the term be defined as ''an individual, group, association, limited or general partnership, corporation, or any other entity.'' [204]

The Commission received no comments related to the proposed definition of ''person.'' The Commission adopts the definition of ''person'' as recommended in the Staff Report, with one slight modification. To clarify that the term encompasses entities that are businesses, the Commission added the word ''business'' to the last clause of the definition. Accordingly, the final Rule defines the term as ''an individual, group, association, limited or general partnership, corporation, or any other business entity.'' [205] The term ''person'' is to be read broadly to refer to natural persons, businesses, associations, and other business entities. Where the Rule refers to a natural person only, it uses the term ''individual.'' [206]

Turnoff (S.D. Fla. 2000); *United States* v. *Emily Water & Beverage Co., Inc.,* No. 4–00–00131 (W.D. Mo. 2000); and *United States* v. *Greeting Card Depot, Inc.,* No. 00–6212–CIV–Gold (S.D. Fla. 2000).

[190] *See* Interpretive Guides, 44 FR at 49984–85 (earnings claims made ''for general dissemination'' include ''claims made in advertising (radio, television, magazines, newspapers, billboards, *etc.*) as well as those contained in speeches or press releases''). The Commission notes that the Interpretive Guides recognize several exemptions to the general media claim, such as claims made to the press in connection with bona fide news stories, as well as claims made directly to lending institutions. *Id.* The Commission has proposed that future Compliance Guides to the new Business Opportunity Rule retain these standard general media claims exemptions. *See* 71 FR at 19065.

[191] Staff Report at 42–43.

[192] *See* §§ 437.1, 437.2, 437.3, 437.4, 437.6, 437.7, and 437.8.

[193] Morrissey, June 09 Tr at 41; Taylor, June 09 Tr at 43; Cantone, June 09 Tr at 47.

[194] Under the TSR, the Commission requires sellers to disclose all material terms and conditions of the seller's refund policy if the seller makes a representation about the refund policy. *See* 16 CFR 310.3(a)(1)(iii).

[195] *See* 16 CFR 310.2(q) (defining ''material'' to mean ''likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution''); *see also* FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.,* 103 F.T.C. 110, 174 (1984) (defining ''material'' misrepresentation or practice to mean ''one which is likely to affect a consumer's choice of or conduct regarding a product'').

[196] Dub-Staff Report.

[197] *Id.* at 2–3.

[198] *Id.* at 2.

[199] *See supra* Section I.C.2 discussing the five substantive disclosure items and why they are material to consumers.

[200] The first of the three definitional elements of a ''business opportunity'' is a ''solicitation to enter into a ''new business.'' Section 437.1(c)(1). This element distinguishes the sale of a business opportunity from the ordinary sale or products and services. 71 FR at 19066.

[201] 71 FR at 19066.

[202] For example, an existing tire business owner could purchase a vending machine route, or a beverage vending machine route owner could purchase an envelope stuffing opportunity.

[203] *E.g.,* §§ 437.1; 437.6(q).

[204] This definition is consistent with the definition of the term ''person'' in both the interim Business Opportunity Rule and the Amended Franchise Rule. *See* 16 CFR 436.1(n); interim Business Opportunity Rule 437.2(b).

[205] This definition is consistent with the definition of the term ''person'' in the TSR. *See* 16 CFR 310.2(v).

[206] 71 FR at 19066.

12. Section 437.1(l): Prior Business

The final Rule requires sellers to disclose certain civil and criminal actions against them, including actions against a ''prior business of the seller.'' [207] Section 437.1(l) of the final Rule defines ''prior business'' to mean:

(1) A business from which the seller acquired, directly or indirectly, the major portion of the business' assets; or

(2) Any business previously owned or operated by the seller, in whole or in part.

This definition is intended to include not only an entity from which a seller acquired the major portion of the seller's assets, but also businesses that the seller previously owned or operated.[208] A broad definition of ''prior business'' is necessary to capture all of a seller's prior operations.[209] The Commission's law enforcement experience shows that sellers of fraudulent business opportunities frequently ply their trade through multiple companies simultaneously or sequentially, disappearing in order to avoid detection, and then reemerging in some new form or in a different part of the country under new names.[210] The definition thus requires a more complete disclosure of the seller's business history.

The final definition of ''prior business'' differs from the definition included in the RPBOR.[211] The Staff Report recommended that the definition eliminate a reference to the prior businesses of the seller's key personnel. Namely, the second prong of the original definition defined prior business to include businesses owned or operated by both the seller and the seller's key personnel.[212] The Commission agrees that this change is necessary for two reasons. First, § 437.3(a)(3)(i)(B) requires disclosure of legal actions pertaining to a prior business ''of the seller,'' and so including the seller's key personnel in the definition of ''prior business'' is confusing. Second, § 437.3(a)(3)(i)(C) separately requires disclosure of legal actions pertaining to the seller's key personnel, namely, ''the seller's officers, directors, sales managers, or by any other individual who occupies a position or performs a function similar to that of an officer, director, or sales manager of the seller.'' The change, therefore, does not affect the scope of the required disclosure of legal actions, but rather clarifies a term that is otherwise confusing and somewhat redundant. Accordingly, the Commission adopts the definition of ''prior business'' with the modification recommended by the staff.

13. Section 437.1(m): Providing Locations, Outlets, Accounts, or Customers

The definition of ''providing locations, outlets, accounts, or customers'' relates to the third prong of the ''business opportunity'' definition, which sets forth the types of assistance the seller represents it will provide to the purchasers of its business opportunity.[213] The Commission's law enforcement history shows that fraudulent business opportunity sellers often falsely promise to assist purchasers in obtaining key elements necessary for the success of the proposed business: A source of customers, locations, outlets, or accounts. For example, deceptive representations concerning location assistance are the hallmark of fraudulent vending machine and rack display opportunities,[214] while deceptive representations concerning the provision of accounts or customers are typical of medical billing schemes.[215] In such schemes, the seller itself may purport to secure locations, outlets, accounts, or customers, or may represent that third parties will do so. Therefore, the final Rule defines ''providing locations, outlets, accounts, or customers'' as:

> furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers, *provided, however, that advertising and general advice about business development and training shall not be considered as ''providing locations, outlets, accounts, or customers.*'' [216]

The proviso, underscored above, has been added to the definition put forth in the RNPR. As originally proposed in the INPR, the definition ended immediately after the clause ''otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers.'' In the RNPR, however, the Commission stated that in interpreting this unqualified clause, it would ''continue to apply its longstanding analysis, which considers the kinds of assistance the seller offers and the significance of that assistance to the prospective purchaser (*e.g.,* whether the assistance is likely to induce reliance on the part of the prospective purchaser).'' [217] In the RNPR, the Commission solicited comment on three issues related to the ''otherwise assisting'' clause of the definition: (1) Whether the ''otherwise assisting'' clause adequately covered all of the business opportunity arrangements that should be within the scope of the rule; (2) whether inclusion of the ''otherwise assisting'' clause in the definition would cause traditional product distribution arrangements, educational institutions, or how-to books to be subject to the Rule; and (3) whether the clause would result in the inclusion of multi-level marketing relationships that otherwise would not be covered by the Rule.[218]

The majority of commenters who addressed this definition in response to the RNPR focused on when the ''otherwise assisting'' clause of the definition would be triggered. Commenters from the MLM industry

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[207] § 437.3(a)(3).

[208] The definition of prior business is broader than the definition of ''predecessor'' found in the Amended Franchise Rule, which covers only an entity from which a seller acquired the major portion of the seller's assets. *See* 16 CFR 436.1(p).

[209] 71 FR at 19066.

[210] *E.g., FTC* v. *Nat'l Vending Consultants, Inc.,* No. 05–0160 (D. Nev. 2005); *FTC* v. *Joseph Hayes,* No. 4:96CV06126 SNL (E.D. Mo. 1996); *FTC* v. *O'Rourke,* No. 93–6511–CIV–Ferguson (S.D. Fla. 1993); *FTC* v. *Inv. Dev. Inc.,* No. 89–0642 (E.D. La. 1989).

[211] Proposed § 437.1(k) of the RPBOR would have defined ''prior business'' to mean:

(1) A business from which the seller acquired, directly or indirectly, the major portion of the business' assets, or

(2) Any business previously owned or operated by the seller, in whole or in part, by any of the seller's officers, directors, sales managers, or by any other individual who occupies a position or performs a function similar to that of an officer, director, or sales manager of the seller.

[212] *Id.*

[213] *See* § 437.1(c)(3).

[214] *E.g., FTC* v. *Am. Entm't Distribs.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *FTC* v. *Advanced Pub. Commc'ns Corp.,* No. 00–00515–CIV–Ungaro-Benages (S.D. Fla. 2000); *FTC* v. *Ameritel Payphone Distribs., Inc.,* No. 00–0514–CIV–Gold (S.D. Fla. 2000); *FTC* v. *Mktg. and Vending Concepts,* No. 00–1131 (S.D.N.Y. 2000).

[215] *E.g., FTC* v. *Mediworks, Inc.,* No. 00–01079 (C.D. Cal. 2000); *FTC* v. *Home Professions, Inc.,* No. 00–111 (C.D. Cal. 2000); *FTC* v. *Data Med. Capital, Inc.,* No. SACV–99–1266 (C.D. Cal. 1999); *see also FTC* v. *AMP Publ'ns, Inc.,* No. SACV–00–112–AHS–ANx (C.D. Cal. 2000).

[216] The proposed definition was intended to capture offers to provide locations that have already been found, as well as offers to furnish a list of potential locations; and includes not only directly furnishing locations, but also ''recommending to prospective purchaser specific locators, providing lists of locators who will furnish the locations, and training or otherwise assisting prospects in finding their own locations.'' 71 FR at 19066.

[217] 73 FR at 16124.

[218] *Id.* at 16133.

were concerned that various types of optional or no-cost assistance that MLM companies frequently offer their sales representatives could be considered to be ''otherwise assisting.'' [219] These include such things as general advice and training about how to succeed in a new business venture,[220] general advertising for the purpose of promoting the MLM's products or services,[221] occasional ad hoc referrals from consumers who contact the company directly,[222] and optional business tools, such as web templates and links to corporate Web sites that some MLM companies offer for sale to its sales representatives. Additionally, one commenter expressed concern that because of this open-ended clause, sellers of general training services, such as training on how to start a new business and advice about how to obtain customers, would be covered by the Rule.[223]

Commenters made a number of suggestions to cure what they perceived to be the overbreadth of this provision. Some commenters suggested omitting the word ''customers'' from the ''otherwise assisting'' provision and the corresponding provisions of the ''business opportunity'' definition.[224] Other commenters recommended that the definition distinguish customers from ''near customers'' so as to exclude the provision of potential customers or businesses that the seller obtains from publicly available records.[225] Others suggested adding a statement that no-cost general business advice is not ''providing customers.'' [226] Another commenter suggested adding a new clause to the definition of business opportunity that would create an exception when the assistance offered by the seller is limited to advice or training.[227] Some commenters suggested eliminating the concept of ''potential customers'' from the scope of the ''otherwise assisting'' language.[228] Finally, one commenter suggested revising the definition of ''business opportunity'' to require that the seller's assistance in providing outlets, accounts or customers be a ''material inducement'' to the purchaser.[229]

The Staff Report noted a concern with narrowing the definition in the ways the commenters suggested, because it would allow promoters of fraudulent schemes to craft their sales pitches carefully to evade the Rule. The staff disagreed with commenters who recommended excising the word ''customers'' from the definition or diluting it in some fashion. Instead, the Staff Report recommended that the Commission continue its long-standing policy of analyzing the significance of assistance in the context of the of the specific business opportunity, focusing on whether the seller's offer is ''reasonably likely to have the effect of inducing reliance on [the seller] to provide a prepackaged business.'' [230]

While urging that the word ''customers'' remain in the definition, the Staff Report did recommend new qualifying language to address the concern that the definition could be read more broadly than intended. Specifically, the Staff Report recommended adding a short proviso to the ''otherwise assisting'' clause as follows: ''provided, however, that advertising and general advice about business development and training shall not be considered as 'providing locations, outlets, accounts, or customers.' '' [231]

The language recommended in the Staff Report received two comments. DOJ strongly agreed that ''customers'' should remain in the definition, noting that the allure of a business opportunity is the purported ready cash flow to the purchaser, which can come either from locations or customers, depending on the nature of the opportunity being offered.[232] DOJ also agreed with the staff's recommendation to include the proviso, but objected to further narrowing of coverage, arguing that any loophole would be vigorously exploited by fraudulent business opportunity sellers.[233] Tupperware similarly encouraged the Commission to adopt the proviso as recommended, stating that the proviso will allow businesses to continue to provide general business advice and training without the risk of inadvertently falling under the aegis of the Rule.[234]

The Commission is persuaded by the Staff Report's recommendation not to eliminate the word ''customers'' from the ''otherwise assisting'' clause of the definition, and to add qualifying language to the definition to tailor coverage more appropriately. Providing the prospective purchaser with assistance in obtaining customers is a feature common to many business opportunities and should be included in the definition. For instance, in the cases the Commission has brought against medical billing opportunities, it is typical for sellers to offer to provide assistance to the potential purchaser in finding customers for the medical billing service.[235] Although the RNPR made clear that the ''otherwise assisting'' provision of the definition was not intended to apply to advertising, no-cost offers of general business advice, and training described by the various commenters,[236] the qualifying language is necessary to prevent the definition from a broader reading than the Commission intends. The final Rule, therefore, contains the proviso recommended in the Staff Report.

14. Section 437.1(n): Purchaser

The final Rule defines the term ''purchaser'' to mean ''a person who buys a business opportunity.'' By operation of the definition of ''person,'' [237] a natural person, as well as any other entity, would qualify as a business opportunity purchaser. The definition of ''purchaser'' received no

[219] *E.g.,* DSA–RNPR at 5 (tools are intended to maintain brand uniformity and promote effective customer service).

[220] *E.g.,* Primerica-RNPR at 5 (provides advice and training about how to identify potential customers and how to make effective sales presentations); Tupperware-RNPR at 4 (provides training about how new representatives can develop own customer bases); Venable-RNPR.

[221] DSA–RNPR at 4 (5/27/2008); Primerica-RNPR at 6.

[222] *E.g.,* Avon-RNPR at 3 (noting that this practice is designed to help potential customers find a sales representative, not to help sales representatives find potential customers); Mary Kay-RNPR at 7 (suggesting that merely providing the ability to search for a sales associate on the company's Web site should not trigger the ''providing locations'' factor of the ''business opportunity'' definition); DSA–RNPR at 5; Melaleuca-RNPR at 2.

[223] Venable-RNPR at 2.

[224] DSA–RNPR at 5; Venable Rebuttal-RNPR at 3; Primerica-RNPR at 5.

[225] Venable-RNPR.

[226] Primerica-RNPR at 8; Tupperware-RNPR at 6; Avon-RNPR; Mary Kay-RNPR.

[227] Pre-Paid Legal-RNPR.

[228] Mary Kay-RNPR at 7 (as an alternative Mary Kay suggests that in the commentary to the Final Rule, the Commission make clear that passing on ad hoc referrals of customers who contact the company directly would not trigger this provision).

[229] Melaleuca-RNPR.

[230] Staff Advisory Opinion 95–10, Business Franchise Guide (CCH) ¶ 6475 (1995).

[231] For example, this new proviso was designed to make clear that giving advice about how to demonstrate products, complete product order forms and how to process returns (Tupperware-RNPR); or providing product advertising in the general media and training in customer and business development (Primerica-RNPR), would not be considered as ''providing locations, outlets, accounts, and customers.''

[232] DOJ-Staff Report at 1–2.

[233] *Id.* at 2.

[234] Tupperware-Staff Report at 2.

[235] *See, e.g., FTC* v. *Med. Billers Network, Inc.,* No. 05–CV–2014 (S.D.N.Y. 2005); *FTC* v. *Med.-Billing.com, Inc.,* No. 3–02CV0702CP (N.D. Tex. 2002); *FTC* v. *Electronic Med. Billing, Inc.,* No. SACV02–368 AHS (C.D. Cal. 2002); *see also FTC* v. *Star Publ'g Group, Inc.,* No. 00cv–023D (D. Wyo. 2000) (offering to everything necessary to earn money processing HUD refunds); *FTC* v. *AMP Publ'ns, Inc.,* SACV–00–112–AHS–Anx (C.D. Cal. 2000) (offering to provide list of companies in need of consumer's home-based computer services).

[236] 73 FR at 16123.

[237] Section 437.1(k).

comment, and the final Rule includes the definition as proposed.

15. Section 437.1(o): Quarterly

To ensure accuracy and reliability of disclosures, § 437.3 (instructions for completing the disclosure document) requires sellers to revise their disclosures at least ''quarterly.'' [238] The definition of ''quarterly'' sets forth a bright line rule that is easy to follow and that ensures uniformity of disclosures: ''Quarterly'' means ''as of January 1, April 1, July 1, and October 1.'' Thus, the final Rule requires sellers to update their disclosure by those specific dates each year. The definition of ''quarterly'' received no comment, and the final Rule includes the definition as proposed.

16. Section 437.1(p): Required Payment

Under the final Rule's definition of ''business opportunity,'' the Rule reaches only those opportunities where the prospective purchaser of a business opportunity makes a ''required payment'' to the seller. Section 437.1(p) of the final Rule defines a ''required payment'' to mean:

all consideration that the purchaser must pay to the seller or an affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the business opportunity. Such payment may be made directly or indirectly through a third party. A required payment does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

The final definition of ''required payment'' is the same as proposed in the RNPR and is substantially similar to that employed in the Amended Franchise Rule. It differs in that it includes language that reaches situations where a payment is made directly to a seller or indirectly through a third party. The RPBOR included this definition because without such a modification, fraudulent business opportunity sellers could circumvent the Rule by requiring payment to a third party with which the seller has a formal or informal business relationship.[239]

The last sentence of the definition excludes payments for reasonable amounts of inventory at bona fide wholesale prices.[240] This effectuates the Commission's determination articulated in the RNPR, that traditional product distribution arrangements should not be covered by the Business Opportunity Rule.[241] Manufacturers, suppliers, and other traditional distribution firms ''have relied solely on the bona fide wholesale price exclusion to avoid coverage as a franchise.'' [242]

The IPBOR had eliminated this inventory exemption in an attempt to bring pyramid schemes that engaged in ''inventory loading'' within the ambit of the Rule.[243] Several commenters contended that the IPBOR would have regulated a wide range of legitimate and traditional product distribution arrangements that were not associated with the types of fraud that business opportunity laws are designed to remedy. For example, one commenter suggested that the IPBOR could be read to cover product distribution through retail stores simply because the retailer pays for inventory.[244] This commenter suggested that its business operations would meet the IPBOR's definition of business opportunity because, among other reasons, the ''payment'' prong of the definition did not exempt voluntary purchases of inventory.[245]

Because the application of the IPBOR to these types of arrangements was unintended, the RPBOR narrowed the definition of ''business opportunity'' by clarifying that a ''required payment'' does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices.[246] Moreover, in the RNPR, the Commission determined that challenging deceptive pyramid schemes in targeted law enforcement actions brought under Section 5 of the FTC Act is a more cost-effective approach than attempting to address pyramid schemes through the elimination of the inventory exemption as proposed in the IPBOR.[247]

In response to the RNPR, MLM industry commenters urged the Commission to expand the inventory exemption additionally to exempt sales of business materials, supplies, and equipment to purchasers on a not-for-profit basis.[248] Commenters stated that the MLM business model often requires that new sales representatives purchase materials, supplies, or equipment to facilitate his or her sales to consumers.[249] At least one commenter also noted that individuals sometimes pay to become sales consultants solely to obtain the products that are part of the company's sales kit for personal use at less than retail cost.[250] These commenters argued that without expanding the exemption, MLMs would be swept within the scope of the Rule.[251]

The Staff Report noted these concerns, but opined that they were misplaced and that the suggested changes to the definition of ''required payment'' were unnecessary.[252] The staff recognized, however, that without making the changes suggested by the commenters, some MLM companies could indeed meet the ''required payment'' prong of the business opportunity definition.[253] But, as noted previously, in order to be covered by the Rule, an entity must meet each of the three definitional components of the term ''business opportunity.'' [254] Meeting one prong is insufficient to come within the scope of the Rule.

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[238] Section 437.3(b) requires that until a seller has at least 10 purchasers, the list of references must be updated monthly.

[239] 73 FR at 16122.

[240] The inventory exemption was originally set forth by the Commission in its 1979 Final Interpretative Guide to the Franchise Rule. 44 FR at 49967. The rationale for excluding payments for inventory was to exclude ''[a]gency relationships in which independent agents, compensated by commission, sell goods or services'' (*e.g.,* insurance salespersons). *Id* at 49967–68.

[241] 73 FR at 16122.

[242] *Id.*

[243] 71 FR at 19055. Inventory loading occurs when a company's incentive program forces recruits to buy more products than they could ever sell, often at inflated prices. If this occurs throughout the company's distribution system, the people at the top of the pyramid reap substantial profits, even though little or no product moves to market.

[244] 73 FR at 16113–14.

[245] *Id.*

[246] *Id.* at 16114.

[247] 73 FR at 16122.

[248] Commenters suggested various ways to expand the exemption. *See* DSA–RNPR at 4 (recommending that the exemption include ''business materials, supplies, and equipment sold on a not-for-profit basis''); Mary Kay-RNPR at 2 (same); Avon-RNPR at 2 (exemption should extend to ''sales aid or kits at cost''); Tupperware-RNPR at 4 (required payment should not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices, which may be used for resale, lease or display, or payments for products for personal use). Also, one commenter expressed concern that under the proposed definition, voluntary payments made to third parties unaffiliated with the seller for items or equipment to be used in a purchaser's business could be considered a ''required payment.'' *See* IBA–RNPR at 4. The Commission disagrees. By its very words, the definition is not intended to capture payments of the type described by the commenter, as such payments are not made directly or indirectly to the seller.

[249] DSA–RNPR at 4; Tupperware-RNPR at 2 (explaining that it requires purchase of a starter Business Kit that contains a selection of Tupperware products sold below retail value for demonstration at parties); Mary Kay-RNPR at 4 (initial sales kit, sold to consultant at below cost, is used to demonstrate products to customers); Avon-RNPR at 2 (sales kits, which explain business fundamentals and provide necessary equipment such as sales brochures, sales receipts, a tote bag, and product samples, are sold to independent sales representatives without a profit).

[250] Tupperware-RNPR at 2 (products in starter Business Kit sold to sales consultants for $79 or $129 have retail value of $350 and $550 respectively).

[251] DSA–RNPR; Mary Kay-RNPR; Tupperware-RNPR; Pre-Paid Legal-RNPR.

[252] Staff Report at 58.

[253] *Id.* at 57.

[254] *Id.* Those components are: (1) A solicitation to enter into a new business; (2) a required payment made to the seller; and (3) a representation that the seller will provide assistance in the form of securing locations, securing accounts, or buying back goods produced by the business. *Id.* at n.186.

Furthermore, the other clarifications and changes to the definitions of ''business opportunity'' and ''providing locations, outlets, accounts, or customers'' under the final Rule tailor coverage appropriately, and make the additional suggested changes to the ''required payment'' definition unnecessary. Accordingly, the Staff Report recommended that the definition of ''required payment'' be adopted in the form proposed in the RNPR.[255]

Moreover, the Commission is concerned that expanding the exemption as the commenters suggested would create enforcement problems. For example, when a ''required payment'' includes both an inventory and non-inventory component, it would be difficult to determine whether non-inventory products—such as sales kits or display-related materials—were, in fact, being sold to purchasers at less than the seller's cost. Finally, the suggested changes could have the unintended effect of allowing some fraudulent business operators to be excluded from the Rule's coverage.[256]

In response to the Staff Report, the Commission received one comment addressing the ''required payment'' definition. The commenter set forth the same suggestion it had provided in response to the RNPR—that a ''required payment'' should not include situations where the seller agrees to buy back from the purchaser any unused inventory within 12 months of purchase for at least 90 percent of the purchaser's cost.[257] The commenter, a large MLM company, continued to argue that incorporating this change into the definition of ''required payment'' would assist in creating regulatory certainty that the Rule would not cover this situation. The commenter disagreed with one of the justifications given in the Staff Report for urging no modification of the definition—namely, that satisfying the ''required payment'' definition, by itself, is insufficient to bring an entity within the scope of the Rule. The commenter argued that legitimate companies that might satisfy the ''required payment'' prong have too much at stake to rely on one of the other two prongs of the ''business opportunity'' definition to avoid coverage under the Rule.[258]

This argument is not persuasive. The definition of ''required payment'' already excludes payments for the purchase of inventory at bona fide wholesale prices. To the extent that the business opportunity seller offers inventory at prices above wholesale, such a payment would generate profit to the seller. If the Rule were modified to exempt payments for inventory not just at wholesale but also retail prices, such a change would give sellers an incentive to structure their payment schemes to require only payment for inventory, in order to avoid coverage by the Rule. Moreover, granting an exemption to sellers that offer to buy back some percentage of unused inventory within 12 months is problematic in light of the Commission's experience that fraudulent business opportunity sellers could go out of business, change names, or disappear during that time.[259] Accordingly, the final Rule incorporates the definition of ''required payment'' as recommended in the Staff Report.

17. Section 437.1(q): Seller

The final Rule defines the term ''seller'' to mean: ''A person who offers for sale or sells a business opportunity.'' Like the ''purchaser'' definition, it contemplates that both natural persons and entities may be business opportunity sellers.[260] The definition of ''seller'' is unchanged from the INPR, received no comment, either in response to the RNPR or the Staff Report, and the final Rule adopts the definition as recommended in the Staff Report.

18. Section 437.1(r): Signature or Signed

Under § 437.3(a)(6) of the final Rule, business opportunity sellers are required to attach a duplicate copy of the disclosure document, which is to be signed and dated by the purchaser. A designation for the signature and date is included at the bottom of the disclosure document. The Staff Report recommended adding a definition of ''signature'' to the Rule to clarify that a signature may include any electronic or digital form of signature to the extent that such signatures are valid under applicable law.[261] The recommended definition of ''signature'' received no comment.

As recommended in the Staff Report, § 437.1(r) of the final Rule states: ''Signature or signed'' means ''a person's affirmative steps to authenticate his or her identity.'' It includes a person's handwritten signature, as well as an electronic or digital form of signature to the extent that such signature is recognized as a valid signature under applicable federal law or state contract law.''[262] This definition effectively permits business opportunity sellers to comply with the Rule electronically, consistent with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001,[263] and is consistent with other rules enforced by the FTC.[264] For example, a seller could obtain the digital signature of a purchaser by providing the disclosure document to the purchaser as a word processing document and require the purchaser to type his or her name into the form in the space provided for the signature. Alternatively, the seller could direct the purchaser to a web page that contains an electronic version of the disclosure document and require the purchaser to input his or her name before submitting the web-based form electronically.

19. Section 437.1(s): Written or In Writing

The final Rule, like the version proposed in the INPR, defines the terms ''written'' or ''in writing,'' which are used throughout the Rule[265] as ''any document or information in printed form or in any form capable of being downloaded, printed, or otherwise preserved in tangible form and read. It includes: type-set, word processed, or handwritten documents; information on computer disk or CD–ROM; information sent via email; or information posted on the Internet. It does not include mere oral statements.'' This definition is designed to capture information stored on computer disks, CD–ROMs, or through new or emerging technologies, as well as information sent via email or posted on the Internet. Nevertheless, the definition seeks a balance, attempting to minimize compliance costs while at the same time preventing fraud. To that end, the definition would make clear that all electronic media must be in a form ''capable of being downloaded, printed, or otherwise preserved in tangible form and read,'' thus ensuring that a prospective purchaser who receives disclosures electronically can

[255] *Id.*

[256] For example, in *United States* v. *Universal Adver., Inc.,* No. 1:06–cv–152–DAK (D. Utah 2006), the fraudulent business opportunity seller told purchasers they could earn significant money by signing up business owners to pay monthly fees to display their business cards in rack display ''profit centers.'' In that case, the entire purchase cost went towards the rack display profit centers, which could be characterized as ''display-related materials.''

[257] Tupperware-Staff Report at 3.

[258] *Id.*

[259] *See* DOJ–Staff Report at 2 (noting that many business opportunities begin and end within a short period of time).

[260] 71 FR at 19067.

[261] Staff Report at 59.

[262] This definition is consistent with the definition of signature in the TSR. *See* 16 CFR 310.3(a)(3).

[263] *See* 71 FR at 19067 n.142.

[264] *See* TSR, 16 CFR 310.3(a)(3)(i); Amended Franchise Rule, 16 CFR 436.3(u) (containing similar definitions).

[265] *E.g.,* §§ 437.2, 437.3(a), 437.4(a).

read them, share them with an advisor, and retain them for future use.[266]

In response to the Staff Report, one commenter expressed concern that the Rule would be overly burdensome if electronic compliance were not permitted.[267] As discussed above, however, the definition of ''written'' or ''in writing'' and the definition of ''signature'' or ''signed'' each makes clear that sellers can comply with the Rule electronically.[268] Thus, the Commission adopts the definition as recommended in the Staff Report.

B. Section 437.2: The Obligation To Furnish Written Documents

The next section of the Rule, § 437.2, imposes a core requirement of the Rule—the obligation of sellers to furnish prospective purchasers with a single-page disclosure document before purchasers execute a contract or pay any money. As noted previously, the disclosure document required under the Original Franchise Rule and interim Business Opportunity Rule was often extremely lengthy, cumbersome, and in some ways ill-suited to business opportunity transactions. Through the INPR and the RNPR, the Commission sought to simplify and streamline this document in order to make the disclosures more meaningful to consumers.

The disclosure document mandated by § 437.2 must be furnished at least seven calendar days before one of two events: Either (1) the execution of any contract in connection with the business opportunity sale; or (2) the payment of any consideration to the seller.[269] This provision is intended to ensure a uniform standard for determining when sellers must furnish disclosures before potential purchasers must put their money at risk. Section 437.2 clarifies that ''payment to the seller'' refers to payments made either directly to the seller, or indirectly through a third party, such as a broker, lead generator, or locator.

The seven calendar-day period was modeled on the Original Franchise Rule's requirement that sellers furnish prospective purchasers with a completed copy of the disclosure document at least ten business days before a potential purchaser pays any fee or executes any agreement in connection with the sale.[270] In the INPR, the Commission proposed shortening the period of time business opportunity sellers would be required to provide the disclosures to potential purchasers.[271] The Commission determined that seven calendar days is sufficient time to enable a prospective purchaser to review the information contained on the simplified and streamlined basic disclosure document and any earnings claims statements, as well as to conduct a due diligence review of the offering, including contacting references.[272] The seven day time period was proposed in the RNPR.[273]

Only one comment received in response to the RNPR addressed this provision. The commenter argued, without providing any evidence, that imposing a ''waiting period'' of any length before a prospective purchaser signs a binding agreement or makes a payment to a seller would chill the sale of legitimate business opportunities.[274] The Commission is not persuaded by this assertion, as both the Original Franchise Rule and interim Business Opportunity Rule have waiting periods in excess of seven days.[275] Furthermore, a waiting period is particularly necessary in the sale of business opportunities, where consumers are often rushed into making investment decisions.[276] No Staff Report comments addressed this provision. The Commission concludes that seven calendar days is sufficient time for purchasers to review the disclosure information and to conduct due diligence, and adopts § 437.2 as recommended in the Staff Report.

C. Section 437.3: Disclosure Document

Section 437.3(a) of the final Rule instructs business opportunity sellers how to prepare the basic disclosure document, identifies the categories of required disclosure, and specifies what information must be included in each of these categories. Section 437.3(a) requires that sellers provide prospective purchasers with information about the seller, the seller's litigation history, any cancellation and refund policy, any earnings claims, and references ''in the form and using the language set forth in Appendix A'' to the Rule. In addition, the final Rule adds a clause to § 437.3(a) requiring that if the offer for sale, sale, or promotion of a business opportunity is conducted in Spanish, the seller must provide the Spanish version of the disclosure document (Appendix B to the Rule) and provide any required disclosures in Spanish. For sales conducted in a language other than English or Spanish, the seller must use the form and an accurate translation of the language set forth in Appendix A.

All disclosures, regardless of the language they are in, must be presented in a ''single written document.'' The Commission concludes that the single written document requirement is necessary to ensure that disclosures are not furnished in piecemeal fashion that easily could be overlooked or lost.[277] In addition, requiring that the disclosure information be presented in the specified format will prevent sellers from circumventing the Rule by presenting damaging information in a format that is not sufficiently prominent to be noticed or understood, or that is not readily accessible.[278] Failure to follow the form and language of the appropriate disclosure document would constitute a violation of Section 5 of the FTC Act.[279]

Section 437.3(a)(6) requires that a seller provide the potential purchaser with two copies of the disclosure document, one of which is for the prospective purchaser to sign, date, and return to the seller to maintain in accordance with § 437.7. Section 437.3(b) specifies that it is an unfair or deceptive practice and a violation of Section 5 of the FTC Act for a seller to fail to update the required disclosures at least quarterly to reflect changes in the five required categories of information, provided, however, that the list of references must be updated monthly, until the seller has 10 purchasers, after which quarterly updates are required.

The sections that follow discuss the evolution of the disclosure document's format and substance, the commentary received about the disclosure document, further revisions to the document recommended in Staff Report, and the Commission's analysis of the comments and recommendations.

[266] 71 FR at 19067.

[267] NG Franchise-Staff Report.

[268] *See also supra* note 261.

[269] Section 437.1(s) allows the disclosure document to be provided to purchasers electronically, such as by posting in on the Internet, sending it via email, *etc.* Providing the disclosure document through one of these alternative methods does not, however, relieve the seller of the obligation to obtain and maintain copies of signed and dated disclosure documents provided to purchasers.

[270] *See* 71 FR at 19067. When the Original Franchise Rule was amended, the time period was extended to 14 calendar days. The interim Business Opportunity Rule maintained the 10 business-day period. *See* 72 FR at 15468, 15570.

[271] *See* 71 FR at 19067.

[272] *Id.*

[273] *See* 73 FR at 16134.

[274] Planet Antares-RNPR at 13–14.

[275] *See* 16 CFR 436.2(a) (fourteen calendar days); § 437.2(g) of the interim Business Opportunity Rule (ten business days).

[276] *See, e.g., FTC* v. *Bus. Card Experts, Inc.,* No. 06–CV–4671 (PJS/RLE) (D. Minn. 2006) (representatives told consumers they must invest within one or two weeks in order to take advantage of special ''promotional'' rate).

[277] 71 FR at 19067.

[278] *See id.*

[279] *See* § 437.3(a).

1. The Format of the Disclosure Document

a. Background

As noted above, a major goal of this rulemaking has been to streamline the lengthy disclosure document that was appropriate in the sale of business format franchises, but ill-suited to the sale of traditional business opportunities. The interim Business Opportunity Rule, modeled on the Original Franchise Rule, required sellers to make more than 20 separate disclosures to potential purchasers.[280] Requiring sellers to make these extensive disclosures imposes significant compliance costs on covered businesses, and many of the disclosures, which are material in the context of franchise sales are not well-suited to business opportunity sales. The final Rule aims to strike the proper balance between prospective purchasers' need for pre-sale disclosure and the burden imposed on those selling business opportunities.[281]

Thus, the Commission proposed a single-page disclosure document both in the INPR and the RNPR. The Commission invited public comment about the form, including whether the overall presentation of information could be improved to make it more useful and understandable, and whether the substantive disclosure sections would capture the information that would most benefit potential purchasers.[282] The Commission received no comments in response to this request.

The Commission engaged a consultant with expertise in document design and comprehension to evaluate the proposed disclosure document to ensure that it adequately conveyed to consumers information material to the prospective business opportunity, and to determine whether the overall presentation of the information in the proposed document could be improved to make it more useful and understandable.[283] Following publication of the initial proposed disclosure document, the consultant conducted extensive consumer testing that resulted in the revised proposed disclosure document that the Commission concluded substantially improved both the layout and the wording of the form.[284]

Some of the changes suggested by the consultant included: Changing the title of the form from ''Business Opportunity Disclosures'' to ''Disclosure of Important Information about Business Opportunity''; revising the preamble of the disclosure to make it more readable; adding a description of the Federal Trade Commission for consumers who may not be familiar with the agency; clarifying that the information on the form relates specifically to the business opportunity the reader is being offered; reformatting the sections that address earnings, legal actions, and cancellation or refund policies, to make those sections easier to understand; and adding a note below the signature line stating that the FTC requires that the business opportunity seller give potential buyers at least seven calendar days before asking him or her to sign a purchase contract.[285] A copy of the revised proposed disclosure document, which incorporated the consultant's suggested revisions, was included in the Workshop Notice announcing that the FTC would hold a public workshop on June 1, 2009.[286]

b. Public Workshop

On June 1, 2009, the staff held a one-day public workshop in Washington, DC to get public input about the revised proposed disclosure document.[287] The Workshop Notice invited interested parties to submit a request to participate as a panelist.[288] Ultimately, the workshop featured five panelists who represented a range of interests in the proposed Rule, including a federal law enforcer,[289] a state law enforcer,[290] a consumer advocate,[291] the general counsel of a national multilevel-marketing company,[292] and a former director of the FTC's Bureau of Consumer Protection.[293]

Workshop panelists uniformly approved the revised proposed disclosure document, and applauded the Commission's goal of streamlining and simplifying the form.[294] All workshop panelists believed that the disclosure document generally accomplished the Commission's stated purposes of streamlining and simplifying the form to make it more useful to prospective business opportunity purchasers, although they did have some minor suggestions related both to the proposed disclosure document and some of the substantive disclosure requirements, which are discussed below.

2. Section 437.3(a): Disclosure Requirements

Section 437.3 requires that business opportunity sellers give prospective purchasers five items of material information, in a basic disclosure document.[295] Each required disclosure is intended to help prospective purchasers make informed investment decisions. First, sellers must state their name, business address, and telephone number, the name of the salesperson offering the opportunity, and the date when the disclosure document is furnished to the prospective purchaser. Second, sellers must disclose whether or not they make earnings claims and, if so, must state the claim or claims in a separate earnings claims statement attached to the basic disclosure

[280] These include but are not limited to information about the seller; the business background of its principals and their litigation and bankruptcy histories; the terms and conditions of the offer; statistical analyses of existing franchised and company-owned outlets; prior purchasers, including the names and addresses of at least 10 purchasers nearest the prospective buyer; and audited financial statements. Additional disclosure and substantiation provisions apply if the seller chooses to make any financial performance representations.

[281] 73 FR at 16130–32.

[282] *Id.* at 16132–33.

[283] *See generally* Macro Report.

[284] 74 FR at 18714–15.

[285] *See generally* Macro Report.

[286] 74 FR at 18714.

[287] *Id.* In response to the RNPR, three commenters (DRA, Planet Antares, and Johnson) had originally requested a hearing as permitted in the RNPR (*see* 73 FR at 16110), but later agreed that a public workshop would address their issues and concerns more efficiently.

[288] The staff received requests to serve as panelists from eight persons. It extended offers to serve as panelists to each of these individuals, three of whom declined.

[289] Kenneth Jost (''Jost''), DOJ, Office of Consumer Litigation.

[290] Dale Cantone (''Cantone''), Maryland Attorney General's Office.

[291] Jon Taylor (''Taylor''), Consumer Awareness Institute.

[292] Maureen Morrissey (''Morrissey''), Tupperware.

[293] William MacLeod (''MacLeod''). Although at the workshop Mr. MacLeod represented only his own views, he had previously filed comment to the INPR and RNPR on behalf of Planet Antares, which markets vending machine businesses.

[294] *See, e.g.,* Jost, June 09 Tr at 12–15 (noting that the simplicity of the form is the key to it being successful. ''Having a one page document that focuses on the key issues such as legal actions, earnings claims, and references will put the most important information in the hands of the prospective purchaser.''); MacLeod, June 09 Tr at 18 (same, and commending the staff for engaging a consumer research expert to copy test the disclosure document); Cantone, June 09 Tr at 20 (stating that the disclosure document captures the major components of business opportunity fraud, including fraudulent earnings claims and false refund offers); Taylor, June 09 Tr at 23 (noting that the disclosure document is ''easy to understand and short and accomplishes its purposes.'').

[295] Like the Franchise Rule and the interim Business Opportunity Rule, the final Rule specifies that only sellers of business opportunities have an obligation to prepare and furnish a basic disclosure document. Other persons involved in the sale of a business opportunity—such as brokers, locators, or suppliers—have no obligation to prepare basic disclosure documents or to furnish such documents. The ultimate responsibility to ensure that disclosures are accurately prepared and disseminated rests with the seller. *See* 71 FR at 19067.

document.[296] Third, sellers must disclose prior civil or criminal litigation involving claims of misrepresentation, fraud, securities law violations, or unfair or deceptive business practices that involve the business opportunity or its key personnel.[297] Fourth, sellers must disclose any cancellation or refund policy.[298] Finally, sellers must provide contact information for at least 10 of their purchasers nearest to the prospective purchaser's location.[299] A discussion of the record pertaining to each of the required substantive disclosures follows, along with changes made in the final Rule and consistent amendments made to the disclosure document.[300] The final disclosure document is Appendix A to this Notice. The Spanish translation of the disclosure document is Appendix B to this Notice.

a. Section 437.3(a)(1): Identifying Information

The first required disclosure under the final Rule is the seller's identifying information. Specifically, § 437.3(a)(1) requires that the seller disclose the name, business address, and telephone number of the seller, the name of the salesperson offering the opportunity, and the date when the disclosure document is furnished to the prospective purchaser.[301] The Commission has long recognized the materiality of a business opportunity seller's identifying information. For example, when the Original Franchise Rule was promulgated, the Commission concluded that:

> The failure to disclose such material information * * * may mislead the [prospect] as to the business experience of the parties with whom he or she is dealing and * * * could easily result in economic injury to the [prospect] because of the * * * dependence upon the business experience and expertise of the [business opportunity seller].[302]

This identifying information is material because it enables a prospective purchaser to contact the seller and any salesperson for additional information. This information also enables a prospective purchaser to perform additional, independent research on the seller and salesperson. At the same time, for law enforcement purposes, this disclosure provides a written record of who provided the required disclosures and when they did so.[303]

b. Section 437.3(a)(2): Earnings Claims

The final Rule permits sellers to make an earnings claim, provided there is a reasonable basis for the claim and that the seller can substantiate the claim at the time it is made.[304] If the seller makes no earnings claim, § 437.3(a)(2) directs the seller simply to check the ''no'' box on the disclosure document.[305] Moreover, § 437.3(1)(4) specifies items of information necessary to substantiate an earnings claim. If the seller does make an earnings claim, the Rule requires the seller to check the ''yes'' box and attach to the basic disclosure document a second document, the earnings claim statement. The disclosure document advises the prospective purchaser of this requirement: ''If the statement is yes, [the seller] must attach an Earnings Claim Statement to this form.'' [306]

At the June 1, 2009 workshop, the DOJ representative spoke approvingly of the form and language of this disclosure, noting that if a seller had checked the ''no'' box, but had, in fact, made an earnings claim, the misrepresentation would be in violation of Section 5 of the FTC Act, and the seller would be subject to civil penalties.[307] A couple of workshop panelists, however, found the language confusing and believed that a potential purchaser reading this disclosure might not know who should be completing this section of the form—the purchaser, or the seller.[308] Two of the panelists had some suggestions for improving the language of the disclosure.[309]

The Staff Report concluded that revisions to the language of the earnings disclosure were unnecessary. The Commission agrees. The initial proposed disclosure document, including the earnings disclosure, underwent substantial revision based upon consumer testing. Testing of the format and language of the earnings disclosure revealed that, contrary to the panelists' concerns, consumers did understand the meaning of the earnings disclosure, and realized that ''a check in the 'No' box would contradict any previous earnings claim that a salesperson had made.'' [310] Indeed, the ultimate test for the effectiveness of the disclosure document is whether, in practice, the written form helps consumers detect a contradictory oral statement made by the seller. On that point, the revised proposed disclosure document proved effective—9 out of 10 participants in the FTC study who heard a hypothetical oral sales presentation understood that it had included an earnings claim, and when they subsequently reviewed the disclosure document, correctly identified a written contradiction of the oral presentation.[311] Based on the results of the consumer testing, the Commission is not persuaded that the workshop panelists' suggestions would improve the comprehension of the earnings claim disclosure, and therefore has not adopted any changes to it.

c. Section 437.3(a)(3): Legal Actions

Section 437.3(a)(3) addresses deceptive practices in the sale of business opportunities by requiring sellers to disclose material information about certain prior legal actions. Specifically, § 437.3(a)(3)(i) requires business opportunity sellers to provide prospective purchasers with

[296] Section 437.3(a)(2).

[297] Section 437.3(a)(3). Key personnel include any of the business opportunity seller's principals, officers, directors, and sales managers, as well as any individual who occupies ''a position or performs a function similar to an officer, director, or sales manager of the seller.''

[298] Section 437.3(a)(4). The IPBOR would have required disclosure of the business opportunity seller's cancellation or refund request history. Some commenters argued that requiring disclosure of the seller's refund history would have had the wayward effect of discouraging legitimate businesses from offering refunds. Because companies with liberal refund policies were more likely to have refund requests than those offering no refunds, disclosure of refund requests could mislead consumers into thinking that a company offering liberal refunds is less reputable than the company offering no refunds. The Commission was persuaded by these commenters and omitted this required disclosure from the RPBOR. *See* 73 FR at 16126.

[299] Section 437.3(a)(5).

[300] In response to the Staff Report, one commenter suggested a myriad of additional changes to the disclosure document such as fields for the buyer's contact information and additional fields for information related to the salesperson. NG Franchise-Staff Report at 4–5. The Commission finds the suggested changes unnecessary.

[301] Other Commission trade regulation rules similarly require disclosure of identifying information. E.g., Wool Products Labeling Rule, 16 CFR 300.14; Fur Products Labeling Rule, 16 CFR 301.43.

[302] 43 FR at 59642.

[303] The Workshop panelists did not discuss this required disclosure.

[304] This is consistent with analogous provisions in the Amended Franchise Rule, 16 CFR 436.9, and the interim Business Opportunity Rule, 437.1(c).

[305] One workshop panelist commented that an earnings claim is the most important selling feature of any business opportunity, and for that reason, sellers should not be permitted to state they make no earnings claim. Taylor, June 09 Tr at 68. The Commission agrees that the earnings claim is important to purchasers' investment decisions, but recognizes that there is an important distinction between forcing sellers to make an earnings claims and requiring them to substantiate any claims they choose to make.

[306] Business opportunity sellers must also make the following prescribed cautionary statement in close proximity to the ''yes'' or ''no'' check boxes: ''Read this statement carefully. You may wish to show this information to an advisor or accountant.''

[307] Jost, June 09 Tr at 56.

[308] Cantone, June 09 Tr at 55; Taylor, June 09 Tr at 56.

[309] *E.g.,* Taylor, June 09 Tr at 57; Cantone, June 09 Tr at 57.

[310] Macro Report at 15.

[311] *Id.*

information about legal actions of or against the seller, the seller's affiliates or prior businesses, and certain key personnel that involve ''misrepresentation, fraud, securities law violations, or unfair or deceptive practices, including violations of any FTC rule.'' Key personnel include ''any of the seller's officers, directors, sales managers, or any individual who occupies a position or performs a function similar to an officer, director, or sales manager of the seller.'' [312] If the seller has such information to disclose, it must check the ''yes'' box on the disclosure document. If there are no actions to disclose, the seller must check the ''no'' box.

Comments on this section centered on two main issues.[313] First, some expressed concern that the legal action disclosure might unfairly tarnish the image of a seller who had meritless lawsuits filed against it. Second, the DOJ focused on enhancing the government's ability to prosecute violations of the Rule, and to that end, made recommendations to revise the form of the disclosure.[314] In addition, DOJ submitted a comment in response to the INPR advising the Commission to add to the title of the disclosure document a citation to the legal authority requiring the seller to provide the basic disclosure document.[315] The final Rule incorporates this suggestion.

(1) Legal Action Disclosure Permits a Brief Description

Section 437.3(a)(3)(ii) requires that if the seller has litigation to disclose pursuant to § 437.3(a)(3)(i), it must provide an attachment to the disclosure document with the full caption of each legal matter (names of the principal parties, case number, full name of court, and filing date). The RPBOR would have prohibited a seller from including any additional information about the legal action including truthful statements about the nature of the litigation or its ultimate outcome.[316] One commenter stated that in some instances, litigation may be meritless and disposed of by means of short of formal adjudication—for example through dismissal or settlement of nuisance lawsuits—and sellers should have the opportunity to provide an explanation of any disclosed legal actions.[317] A panelist at the workshop agreed and also noted that the FTC's expert report on the consumer testing of the disclosure document revealed that consumers had very negative reactions to the existence of legal actions against the seller.[318] The DOJ panelist, on the other hand, expressed concern that, if allowed to provide a description of disclosed legal actions, sellers might craft misleading descriptions.[319] He stated that he has seen such abuse in the context of the Franchise Rule,[320] although he did acknowledge that it might be unfair to prohibit sellers from providing an explanation when they have been sued.[321]

The Commission's initial decision not to allow inclusions of details regarding the nature of each legal action, as is provided in the Amended Franchise Rule, was prompted by an attempt to minimize compliance costs to sellers.[322] Furthermore, the Commission reasoned that if ''armed with the full caption, a prospective purchaser can seek additional information if he or she so chooses,'' as ''the public's ability to review complaints in legal proceedings has become significantly easier since the advent of the Internet * * * [because] [m]any legal documents are now routinely posted on court or related Web sites.'' [323] The Commission noted that since the disclosure document itself instructs potential purchasers that the legal actions disclosed pertain to misrepresentation, fraud, securities law violation, or unfair or deceptive practices, potential purchasers would have a basic understanding of the subject matter of the action.[324]

The existence of legal actions against the seller is not necessarily proof of fraud and that some legal actions may be without merit. The Commission concludes, however, that the existence of legal actions of the type enumerated—misrepresentation, fraud, securities law violations, or unfair or deceptive practices—against the business opportunity seller or its key personnel is critical to assessing the financial risk of the proposed investment.[325] This is highly material information. Indeed, discovering that a seller has a history of violating laws and regulations is perhaps the best indication that a particular business opportunity is a high-risk investment. In fact, in the Commission's law enforcement experience, business opportunity promoters routinely have hidden such material information from prospective purchasers, to the detriment of those purchasers.[326]

The Staff Report cautioned that if the Rule allowed sellers to provide a description of the legal action, it would provide an opportunity for dishonest sellers to misrepresent or mischaracterize such actions, including their ultimate outcomes.[327] Nevertheless, the Staff Report acknowledged that legitimate sellers potentially could be harmed if not afforded the opportunity to address in writing the legal action they are

[312] In the RNPR, the Commission solicited comment on whether this provision adequately captures the types of individuals whose litigation history should be disclosed. It received no comments responsive to that request. In addition, in the RNPR, the Commission determined that it would not be appropriate to require the disclosure of legal actions involving the seller's sales employees, which would have been required under the IPBOR. The Commission reasoned that the burden of collecting the litigation histories for every sales person was not outweighed by the corresponding benefit to prospective purchasers. 73 FR at 16126.

[313] In addition, discussion at the workshop focused on whether a seller's bankruptcy history should be considered a legal action and required to be disclosed. As noted in Section III.A.1, discussing the definition of ''action,'' the Commission has determined not to require the disclosure of bankruptcy actions.

[314] *See* 73 FR at 16125.

[315] *Id.*

[316] 73 FR at 16125–26.

[317] Gary Hailey (''Hailey''), Venable LLP, June 09 Tr at 122.

[318] MacLeod, June 09 Tr at 124. The panelist also argued that lawsuits are often overpled and that there may be instances where some claims (such as constitutional claims) are not really of particular materiality to a prospective purchaser.

[319] Jost, June 09 Tr at 125.

[320] The Amended Franchise Rule requires that legal actions against franchise sellers be disclosed to potential purchasers. 16 CFR 436.5(c)(3) requires that franchisors summarize, ''the legal and factual nature of each claim in the action, the relief sought or obtained, and any conclusion of law and fact,'' and provide information about damages or settlement terms, terms of injunctive orders, dates of any convictions or pleas, and the sentence or penalty imposed. The interim Business Opportunity Rule requires that sellers disclose only: the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of the settlement or the terms of the order; and the date, nature, and issuer of each such ruling. A seller may also include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement. Interim Business Opportunity Rule § 437.1(a)(4)(ii).

[321] Jost, June 09 Tr at 125.

[322] 71 FR at 19069.

[323] *Id.* at n.165.

[324] *Id.* at 19068.

[325] *See supra* Section III.A.1.

[326] *E.g., FTC* v. *Nat'l Vending Consultants, Inc.,* No. CV–S–05–0160–RCJ–PAL (D. Nev. 2005) (failure to disclose guilty plea for mail fraud of de facto corporate officer); *FTC* v. *Netfran Dev. Corp.,* No. 1:05–cv–22223–UU (S.D. Fla. 2005) (failure to disclose FTC injunction against principal); *FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–Civ–Martinez (S.D. Fla. 2004) (failure to disclose prior FTC injunction); *United States* v. *We The People Forms and Serv. Ctrs. USA, Inc.,* No. CV 04 10075 GHK FMOx (C.D. Cal. 2004) (failure to disclose prior lawsuits); *FTC* v. *Hayes,* No. Civ. 4:96CV02162SNL (E.D. Mo 1996) (failure to disclose prior state fines and injunctive actions); *FTC* v. *WhiteHead, Ltd,* Bus. Franchise Guide (CCH) ¶ 10062 (D. Conn. 1992) (failure to disclose fraud action); *FTC* v. *Inv. Dev. Inc.,* Bus. Franchise Guide (CCH) ¶ 9326 (E.D. La. 1989) (failure to disclose insurance fraud convictions).

[327] Staff Report at 75.

required to disclose.[328] The staff recommended, therefore, that § 437.3(a)(3)(ii) be revised to add the following sentence: ''For each action, the seller may also provide a brief accurate statement not to exceed 100 words that describes the action.'' No comments to the Staff Report addressed this revision.

Upon consideration of the record, the staff's recommendation, and the rationale for that recommendation, the Commission adopts § 437.3(a)(3)(ii) as recommended in the Staff Report. Non-compliance with the restriction of this provision (*i.e.,* statements that exceed the word limitation or that mischaracterize the action or its outcome) is a violation of the Rule.

(2) Amendment to the Disclosure Document

The DOJ panelist advocated for a small amendment to the ''Legal Actions'' section of the proposed disclosure document published prior to the Workshop. Specifically, the DOJ panelist recommended adding the phrase ''including violation of an FTC Rule'' after the phrase ''or unfair or deceptive act or practice * * *,'' to make clear to business opportunity sellers that a violation of an FTC Rule is an unfair or deceptive practice.[329]

The Staff Report agreed that this recommended addition to the ''Legal Actions'' section of the disclosure document would assist enforcement efforts by eliminating any significant question as to whether the defendant had actual or implied knowledge that violation of an FTC rule is an unfair and deceptive practice, and recommended that the disclosure document include this language.[330] No comments to the Staff Report addressed this addition.

Upon consideration of the record and the rationale for the recommendation, the Commission adopts the staff's recommendation. Accordingly, § 437.3(a)(3)(i) of the final Rule requires disclosure of any civil or criminal action for misrepresentation, fraud, securities law violations, or unfair or deceptive practices, ''including violations of any FTC Rule.'' The disclosure documents provided as Appendix A and Appendix B have also been revised to include this language.

d. Section 437.3(a)(4): Cancellation or Refund Policy

Section 437.3(a)(4) pertains to a common practice among fraudulent business opportunity sellers: offering prospective purchasers an illusory right to cancel or to seek a whole or partial refund.[331] The Rule does not require any seller to offer cancellation or a refund; however, if the seller does offer a refund or the right to cancel the purchase, it must ''state the material terms of the refund or cancellation policy in an attachment to the disclosure document.'' [332] The disclosure requirement is complemented by a prohibition, at § 437.6(l), against failing ''to provide a refund or cancellation when the purchaser has satisfied the terms and conditions pursuant to § 437.3(a)(4).'' The disclosure requirement is also complemented by prohibitions on other misrepresentations.[333]

As discussed below, the Commission adopts the staff's recommendation that sellers be required to state the ''material'' terms of the refund or cancellation policy, and the term ''material'' is now included in the final Rule provision. Under the final Rule, a seller that offers a cancellation or refund policy must check the ''yes'' box on the disclosure document and also must attach to the disclosure document a written description of its policy. To minimize compliance costs, the seller may comply with this requirement by attaching to the disclosure document a copy of a pre-existing document that details the seller's cancellation or refund policy. For example, a seller may detail its refund policy in a company brochure. If it does, the seller need only attach to the disclosure document the particular page setting forth the refund policy. As in the other examples, if no cancellation or refund is offered, then the seller need only check the ''no'' box.

Workshop panelists raised two issues related to the disclosure of refund and cancellation policies. First, panelists questioned whether information about the percentage of purchasers requesting and obtaining refunds should be part of the disclosure, and second, whether § 437.3(a)(4) should specify particular terms of a refund policy that must be disclosed to potential purchasers. The sections that follow address each of these concerns.

(1) Percentage of Purchasers Requesting and Obtaining Refunds

One panelist stated that information concerning the percentage of purchasers requesting and obtaining refunds would be relevant information to potential purchasers.[334] Another panelist disagreed, arguing that requiring disclosure of this information might have the unintended consequence of harming purchasers by discouraging sellers from offering refunds.[335] The Commission previously considered this issue. The IPBOR would have required a seller that had a cancellation or refund policy to disclose the number of purchasers who had asked to cancel or who had sought a refund in the two previous years.[336] In the INPR, the Commission specifically sought comment on the proposed disclosure of the seller's refund history, particularly on the likely effect this disclosure might have on the willingness of sellers to offer refunds.[337] Based upon arguments articulated in the comments to the INPR, the Commission concluded that this disclosure would not be useful to consumers, and that disclosure of refund history could be unduly prejudicial to business opportunities that offer and liberally provide refunds to prior purchasers.[338] Indeed, a prospective purchaser might compare the refund requests of a fraudulent seller with no refund policy against a legitimate seller with a liberal refund policy and inaccurately conclude that the legitimate seller offers a riskier business venture. The requirement, therefore, could create a perverse incentive to discontinue refund policies.[339] The Commission concluded that disclosure of refund history would not reliably remedy deception on this issue, and it was eliminated in the RPBOR.[340]

[328] As the Commission previously noted in the RNPR, however, nothing in the Rule would prevent the seller from speaking with the consumer to explain the nature or outcome of any legal action disclosed on the form. 73 FR at 16125.

[329] Jost, June 09 Tr at 36.

[330] The DOJ, upon request of the FTC, has the authority to seek civil penalties for violations of trade regulation rules issued pursuant to the FTC Act, but to obtain such penalties, the government must prove ''actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule.'' *See* 15 U.S.C. 56(a)(1); 45(m)(1)(A).

[331] *See, e.g., FTC* v. *AMP Publ'n., Inc.,* No. SACV–00–112–AHS–ANx (C.D. Cal. 2001); *FTC* v. *Home Professions, Inc.,* No. SACV 00–111 AHS (Eex) (C.D. Cal. 2001); *FTC* v. *Innovative Prods.,* No. 3:00–CV–0312–D (N.D. Tex. 2000); *FTC* v. *Encore Networking Servs.,* No. 00–1083 WJR (AIJx) (C.D. Cal. 2000); *FTC* v. *Mediworks, Inc.,* No. 00–01079 (C.D. Cal. 2000). Indeed, allegations that business opportunity sellers misrepresented their refund policies rank among the top 10 complaint allegations in Commission business opportunity cases brought under Section 5. *See* 71 FR 19069.

[332] The Commission adopted a similar approach in the TSR. 16 CFR 310.3(a)(1)(iii) (if a seller makes a representation about a refund policy, it must disclose ''a statement of all material terms and conditions of such policy'').

[333] *See* § 437.6.

[334] Taylor, June 09 Tr at 48. One commenter agreed. Brooks-Workshop comment.

[335] MacLeod, June 09 Tr at 50.

[336] 71 FR at 19088 (IPBOR § 437.3(a)(5)).

[337] *Id.* at 19070.

[338] 73 FR at 16126.

[339] *Id.* at 16115.

[340] *Id.* at 16126.

Panelists in favor of requiring the disclosure of seller's refund histories presented no arguments other than those previously considered by the Commission. Accordingly, the final Rule does not require this disclosure.

(2) Information To Be Disclosed About Refund and Cancellation Policies

Although workshop participants agreed that information about a seller's cancellation and refund policies is an important component of a potential purchaser's evaluation of a business opportunity, they were universally concerned that § 437.3(a)(4) did not contain enough specificity about what information must be disclosed to potential purchasers and suggested that additional guidance from the Commission was necessary.[341] The panelist from the Maryland Attorney General's Office thought the Rule should specify that all material terms of a refund policy must be disclosed, because in the context of business opportunity sales, it has been his experience that the requirements to obtain a refund are often so onerous that as a practical matter, no one is ever eligible.[342] Some panelists felt the Rule should identify specific information to be disclosed. For example, one commenter noted that the period of time a seller has to exercise a right to cancellation or refund, or any conditions on return of unsold goods are material and should be required to be disclosed to potential purchasers.[343] One panelist suggested that the DSA Code of Ethics' refund requirements might serve as a model to identify types of information that should be disclosed to potential purchasers.[344]

After considering these comments, the Staff Report recommended modifying § 437.3(a)(4) to track closely a similar disclosure requirement in the TSR.[345] The TSR requires that if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, it must provide the purchaser with a statement of all material terms and conditions of its policy.[346] Requiring the disclosure of all material terms of a refund or cancellation policy most effectively accomplishes the Commission's stated purpose of ensuring that potential purchasers are provided with information that would assist them in assessing the financial risk associated with the offer. Indeed, the commentary to the IPBOR indicates that the Commission, in fact, intended to require sellers to disclose all material terms of refund and repayment policies to prospective purchasers.[347]

Therefore, upon consideration of the record, the Commission adopts the staff's recommendation. Accordingly, the penultimate sentence of § 437.3(a)(4) of the final Rule has been clarified to read: ''If so, state all material terms and conditions of the refund or cancellation policy in an attachment to the disclosure document.'' As discussed in Section III.A.9., the final Rule includes a definition of ''material'' similar to the definition used in the TSR. Specifically, § 437.1(i) defines, in relevant part, ''material'' to mean ''likely to affect a person's choice of, or conduct regarding, goods or services.'' Examples of material terms and conditions may include, for example, the period of time the purchaser has to cancel a purchase or request a refund; the specific steps necessary to cancel a purchase or request a refund; any fees or penalties incurred for cancellation; and where unused inventory must be returned to and by what method. The Commission declines to enumerate in the final Rule what terms are material, as materiality may vary depending on the circumstances of the opportunity and the refund or cancellation policy.

e. Section 437.3(a)(5): References

(1) Background

The interim Business Opportunity Rule required the disclosure of prior purchasers' name, street address, city, state, and telephone number.[348] In the INPR, the Commission concluded that prospects could readily contact a prior purchaser if provided with the prior purchaser's name, city, state, and telephone number, and that this approach enables prospects to contact references while minimizing the intrusion into prior purchasers' privacy.[349] Accordingly, neither the IPBOR, nor the RPBOR would have required sellers of business opportunities to disclose prior purchasers' street address to potential purchasers.[350] As discussed below, the final Rule requires that sellers disclose only prior purchasers' name, state, and telephone number. Like the IPBOR and the RPBOR, the final Rule limits the disclosure of references to those who purchased the business opportunity within the three years prior to the date of the disclosure document. Moreover, the final Rule requires the seller to disclose this information by listing each prior purchaser (if fewer than 10), or listing at least the 10 prior purchasers nearest to the prospective purchaser's location. In order to minimize compliance costs, the final Rule also provides sellers with an alternative disclosure option—in lieu of a list of the 10 prior purchasers nearest the prospect, a seller may furnish a prospect with a national list of all purchasers.[351] In the INPR, the Commission noted that this option would allow the seller to maintain a master list of purchasers that could be updated periodically, which would allow the seller to avoid having to tailor the disclosure to each prospective purchaser.[352] A seller that chooses this option must insert into the reference section of the disclosure document the words ''See Attached List,'' and attach a list of the references to the disclosure document.[353]

Notwithstanding the fact that most of the information required by the reference disclosure is often available in the public domain, in crafting this section of the Rule, as discussed infra, the Commission considered potential privacy concerns raised by the use of prior purchaser information.[354] To address these concerns, § 437.3(a)(5)(ii) requires that the disclosure document state the following language clearly and in immediate conjunction with the list of references: ''If you buy a business opportunity from the seller, your

[341] *See* June 09 Tr at 39–53.

[342] Cantone, June 09 Tr at 47 (providing as an example a company offering a 100% buy-back for vending machines and noting the company's failure to disclose that the cost of sending back the vending machine would be borne by the purchaser, and would often exceed any refund due, thereby rendering any potential refund worthless).

[343] Taylor, June 09 Tr at 43.

[344] Morrissey, June 09 Tr at 45. The Commission has reviewed applicable provisions of the DSA Code of Ethics, but does not find them applicable. DSA dictates the specific terms of its members' refund policies. The RPBOR, by contrast, did not specify the requirements of a seller's refund or cancellation policy, or even whether the seller must have such policies. Instead, it attempted to ensure that if such policies existed, potential purchasers were aware of how they can exercise their rights under those policies.

[345] Specifically, in describing its approach regarding refund and cancellation policy disclosures, the Commission noted that it ''adopted the same approach in the TSR.'' 71 FR at 19069 n.166 (citing 16 CFR 310.3(a)(1)(iii) (if a seller makes a representation about a refund policy, it must disclose ''a statement of all material terms and conditions of such policy'')).

[346] 16 CFR 310.3(a)(1)(iii).

[347] *See* 71 FR 19069–70.

[348] 72 FR 15565.

[349] 71 FR at 19071 n.180.

[350] 71 FR at 19088; 73 FR at 16135.

[351] *See* § 437.3(5)(i).

[352] 71 FR at 19071. In the RNPR, the Commission solicited comment on whether giving sellers the ability to provide prospective purchasers with a national list was a viable option. It received no comments responsive to that request.

[353] Sellers that provide the disclosure document electronically would be permitted to attach the national list of references in electronic form as well.

[354] 71 FR at 19071.

contact information can be disclosed in the future to other buyers.''

(2) Privacy Concerns Raised in the Record

In response to the INPR, a number of commenters, primarily from the MLM industry, expressed concern that the reference disclosure requirement raised privacy and security concerns.[355] The Commission, however, was and is not persuaded that privacy concerns outweigh the benefits of this disclosure. The Commission finds that disclosure of prior purchasers is important to prevent fraud because it enables prospects to evaluate the seller's claims based on information from an independent source with relevant experience.[356] Furthermore, the required reference disclosures include no sensitive personal information whatsoever—no social security numbers, birth dates, financial account information, or even street addresses.[357]

Following publication of the RNPR, one commenter continued to argue that the disclosures enumerated in § 437.3(a)(5) would raise privacy and data security concerns.[358] The commenter articulated three main concerns: (1) That requiring the seller to ''store purchasers' personal information in a single location or document creates a target ripe for theft and improper disclosure;'' (2) that requiring disclosure of information of prior purchasers conflicts with the FTC's Privacy of Consumer Information Rule (''Privacy Rule'' or ''GLB Privacy Rule''),[359] promulgated under the Gramm-Leach-Bliley Act (''GLB'') [360] because it does not allow those prior purchasers of the business opportunity the right to opt out of having their contact information disclosed to potential purchasers;[361] and (3) that the mandatory disclosure of references violates privacy obligations under the California Constitution.[362]

The Commission is not persuaded by any of these contentions.[363]

First, the Commission rejects the argument that the disclosure of references creates an unnecessary risk of theft or improper disclosure. As an initial matter, the Commission notes that a similar reference disclosure has been required for business opportunities and business format franchises covered by the Original Franchise Rule for more than 25 years, and it is required under the interim Business Opportunity Rule as well.[364] Moreover, the information to be collected and stored is not sensitive (*e.g.,* no financial information, social security numbers, dates of birth, or street addresses). The commenter has not explained, nor does the Commission understand, why the information would be particularly attractive to thieves.

Second, the Commission is not persuaded that § 437.3(a)(5) creates potential conflicts with the GLB Privacy Rule, because the protections afforded by the Privacy Rule likely do not extend to the contact information of business opportunity purchasers. Congress enacted GLB to protect personal financial information of individual consumers, but excluded from the ambit of the law the protection of information pertaining to businesses. The Privacy Rule requires that a ''financial institution'' provide, under specified circumstances, notice to its consumers and customers of its privacy policies and practices,[365] including the consumers' right to opt out of having their personal information shared with third parties.[366] For purposes of the Privacy Rule, a consumer is an individual who obtains financial products or services for personal, family or household purposes.[367] The Commission need not consider the limited circumstances where a business opportunity seller might be considered a financial institution, because the Privacy Rule is aimed at protecting the non-public personal financial information of consumers, not businesses.[368]

The commenter argues that business opportunity operators should be considered consumers for purposes of the Privacy Rule, and thus should have the right to opt out of having their contact information disclosed to potential purchasers.[369] The commenter's interpretation is contrary to both prior Commission policy, and the plain meaning of the language of the Privacy Rule. As the Commission has previously stated, by investing in a business opportunity, purchasers are entering the world of commerce and embarking upon the establishment of a business.[370] Financing a business venture is not ''primarily for personal, family, or household purposes.'' [371] This interpretation is consistent with previous Commission guidance in an analogous situation,[372] and with the Commission's interpretation of ''consumer'' in the context of other rules it enforces.[373]

Similarly, the reference disclosure is not in conflict with the California Constitution. A cause of action for invasion of privacy under the California Constitution exists only when a person has a reasonable expectation of privacy, which cannot exist if the person has been expressly informed that his or her contact information will be shared with prospective purchasers.[374]

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[355] *See* 73 FR at 16126.

[356] *See id.*

[357] *See id.*

[358] Planet Antares-RNPR at 18–21.

[359] 16 CFR Part 313.

[360] 15 U.S.C. 6801 *et seq.*

[361] The Commission received a few comments in response to the INPR in support of allowing individual business opportunity purchasers to opt out of having their contact information disclosed. The comment submitted by the DOJ however, urged the Commission to reject any opt-out believing it would be an easy matter for sellers to talk purchasers into opting out, describing to them what a hassle it becomes for those who do not opt out because of all the demand that arises for their time and attention. The Commission agreed with DOJ and after analyzing all of the commentary to § 437.3(a)(5), declined to make any changes to that section. *See* 73 FR at 16126–27.

[362] Planet Antares-RNPR at 20.

[363] This same commenter argues that the required reference information constitutes trade secrets that should be afforded special protections, but offers no support for this contention. *Id.* at 14.

[364] 16 CFR 437.1(a)(16)(iii).

[365] 73 FR at 16127.

[366] 16 CFR 313.1(a)(3).

[367] 16 CFR 313.3(e). Similarly, a customer is a consumer with a continuing relationship with the financial institution. *See* 16 CFR 313.3(h).

[368] *See* 16 CFR 313.1(b) (expressly stating that the Privacy Rule ''does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes''). Indeed, federal law often focuses on privacy concerns affecting individuals, not businesses. *See, e.g.,* the Fair Credit Reporting Act (''FCRA'') 15 U.S.C. 1681(a)(4) (requiring various protections for consumer information, including provisions addressing identity theft). There is no comparable statute that protects business information.

[369] The commenter argues that the purchase of a business opportunity might be intended to ''provide a revenue stream'' to a purchaser and ''not necessarily a source of employment.'' Planet Antares-RNPR at 18–21. The Commission finds this distinction immaterial to the analysis.

[370] 73 FR at 16127 & n.210.

[371] The Commission has not issued guidance about the meaning of ''personal, family, or household purposes'' because the plain meaning of the language seems abundantly clear. Courts' interpretations of this phrase when used in other consumer protection laws are instructive. *See, e.g., In re Runski,* 102 F.3d 744, 747 (4th Cir. 1996) (noting in the bankruptcy context that courts have uniformly concluded that debt incurred for a business venture or with a profit motive does not fall into the category of debt incurred for ''personal, family, or household purposes'').

[372] *See* ''Frequently Asked Questions for the Privacy Regulation,'' Question B–2 (Dec. 2001), *http://www.ftc.gov/privacy/glbact/glb-faq.htm* (Privacy Rule does not apply when a financial institution makes a business loan to a sole proprietor; although an individual, a sole proprietor is not a ''consumer'' for purposes of the Privacy Rule where the financing is not for personal, family, or household purposes).

[373] *See, e.g.,* Preservation of Consumer's Claims and Defenses, 16 CFR 433.1(b); Credit Practices, 16 CFR 444.1(d).

[374] When personal information has been released *without* consent, a cause of action for invasion of privacy exists under the California Constitution only if: (1) the individual had a reasonable

Continued

Privacy concerns relating to the reference disclosure were also articulated at the June 1, 2009 workshop. A panelist representing a large MLM company stated that at least some of its representatives expressed concern that under the proposed Rule, their addresses and home telephone numbers could be provided to persons they did not know. The panelist noted that representatives often use their home telephone number as their business number, and that the same telephone number is also used by other family members, including children. The panelist wondered if additional safeguards to protect purchasers' privacy could be taken and suggested requiring potential purchasers to contact a seller's references through a centralized telephone number to be administered by the seller.[375] The DOJ panelist opposed this suggestion, arguing that communications with prior purchasers could be subject to manipulation by the seller.[376]

The Commission does not believe that requiring sellers to provide and administer a centralized phone number to screen references is necessary or advisable. The Commission agrees with DOJ's comment that such a system may invite manipulation. It would also create an unjustified financial and administrative burden for sellers. As noted above, the Commission does not view the disclosure of a purchaser's name, state, and telephone number as creating privacy or security concerns, as this information is often available in the public domain. The required disclosure does not include street address information, and therefore, does not provide a ''road map'' to a purchaser's residence, as the commenter suggests. Moreover, potential purchasers are notified in writing, prior to the time of purchase that their reference information will be available to subsequent purchasers. Purchasers who have privacy concerns, therefore, can take steps to minimize personal exposure, such as, for example, designating a separate phone number for business purposes.

Nonetheless, the Staff Report noted that the disclosure of information some may consider private must be weighed against the benefits of providing that information to potential purchasers. After considering the purpose of providing reference information, the Staff Report concluded that the disclosure of the city where the reference is located is not necessary. The staff recommended, therefore, that the city where previous purchasers reside be eliminated from § 437.3(a)(5)(i), and correspondingly, from the ''References'' section of the disclosure document.

No comments in response to the Staff Report addressed this recommended modification. The Commission agrees with the staff's recommendation. Accordingly, both § 437.3(a)(5)(i) of the final Rule and the related section of the disclosure document have been revised to eliminate references to the city where prior purchasers reside. The Commission reiterates, however, that this amendment is intended to alleviate privacy concerns, and it does not relieve a seller of its obligation to provide a list of the ten purchasers within the past three years that are nearest to the potential purchaser as an alternative to providing the full list of all prior purchasers.

f. Section 437.3(a)(6): Receipt

Section 437.3(a)(6) sets forth a receipt requirement for the disclosure document. This requirement is designed to document proper disclosure by the seller. Specifically, the seller must attach a duplicate copy of the disclosure document, which is to be signed and dated by the purchaser. A designation for the signature and date is included at the bottom of the disclosure document.[377] The Commission believes that the receipt requirement is especially important to prove proper disclosure with respect to electronic documents. A seller furnishing disclosures online, either through email or access to a Web site, has the burden of establishing that the prospect was actually able to access the electronic document.[378] Completion and submission of the receipt serves that purpose. The final Rule does not impose any particular method of transmitting the receipt. In order to minimize compliance costs, sellers should have flexibility to determine the best method to comply with this provision of the Rule.[379] Accordingly, § 437.3(a)(6) would permit the seller to inform the prospective purchaser how to return the signed receipts, for example, by sending the receipt to a street address, to an email address, or by facsimile.

As noted above, the Staff Report recommended adding a new definition of ''signature'' or ''signed'' to make clear that the term ''signature'' or ''signed'' includes not only a person's handwritten signature, but also an electronic or digital form of signature to the extent that such signature is recognized as a valid signature under applicable federal law or state contract law.[380] The receipt requirement received one comment. The commenter noted that the requirement that a purchaser be provided with a second copy of the disclosure document appears inconsistent with the Rule's recognition that the disclosure document can be provided to potential purchasers through electronic media.[381] The Commission disagrees with the commenter. Some sellers may post their disclosure document on their Web sites, and update it as needed. The requirement to provide a copy of the electronic disclosure ensures that the prospective purchaser will retain the document in a static format. This can be accomplished as easily through electronic means as it can through paper. In fact, allowing electronic distribution should greatly reduce sellers' compliance costs over the long run, especially costs associated with printing and distributing disclosure documents. Nevertheless, the final Rule enables sellers to determine for themselves whether it is most efficient and cost-effective to provide the disclosure document to prospective purchasers electronically or in printed form. Accordingly, the Commission adopts the receipt provision as recommended in the Staff Report, with one non-substantive modification: the reference to a ''disclosure page'' has

expectation that the information would be kept private, and (2) disclosure of the information is serious in nature, scope, and or potential impact to cause an ''egregious breach of social norms.'' *See Pioneer Elecs., Inc.* v. *Olmstead,* 40 Cal. 4th 360, 370–71 (2007). Even when these criteria are met, the individual's privacy interest must be weighed against legitimate and important competing interests. *Id.* When measured against this standard, disclosure of purchaser information pursuant to proposed § 437.3(a)(5) would not give rise to a privacy action. First, the disclosure document plainly notifies potential purchasers that their reference information will be provided to subsequent purchasers, thus they have no reasonable expectation that their information will be kept private. Second, the reference disclosure includes no sensitive personal information whatsoever, and the value to potential purchasers of information about prior purchasers outweighs any potential detriment to those prior purchasers.

[375] Morrissey, June 09 Tr at 87.

[376] Jost, June 09 Tr at 88.

[377] As noted previously, the Commission engaged a consultant with expertise in document design and comprehension to evaluate the initial proposed disclosure document. One of the changes suggested by the consultant included adding a note below the signature line of the disclosure document stating that the FTC requires that all business opportunity sellers give the prospective purchaser at least seven calendar days before asking him or her to sign a purchase contract. A copy of the revised proposed disclosure document, which incorporated this change, was attached as Appendix A to the **Federal Register** Notice announcing the June 1, 2009 workshop. *See* 74 FR at 18715.

[378] 71 FR at 19072.

[379] *Id.*

[380] *See* § 437.1(r).

[381] Quixtar-INPR at 27.

been changed to ''disclosure document'' to conform it to the title of § 437.3.

3. Section 437.3(b): Updating the Disclosure Document

To ensure that a seller's disclosures are current, § 437.3(b) requires sellers to update their disclosures at least quarterly. Modeled on the Original Franchise Rule and interim Business Opportunity Rule,[382] the provision states that it would be a violation of the Rule and Section 5 of the FTC Act for a seller to fail to update the disclosures to reflect any material changes in the information presented in the basic disclosure document on at least a quarterly basis. The Commission has concluded that quarterly updating strikes the right balance between the need for accurate disclosure and the costs and burdens more frequent updating would entail.[383]

Section 437.3(b) includes a proviso that would require more frequent updating in one respect: the list of references. Specifically, a seller is required to update the list of references monthly until such time that it is able to include the full list of 10 references. This is particularly necessary for start-up opportunities that may have few or no prior references when they commence business opportunity sales. The Commission has concluded that prospective purchasers' ability to contact at least 10 references in their due diligence investigations of business opportunity offers outweighs any costs of more frequent updating until the list of 10 is compiled.[384]

No comments were directed to the requirement of updating the disclosures, and the final Rule contains § 437.3(b) as recommended in the Staff Report.

D. Section 437.4: Earnings Claims

Section 437.4 of the final Rule addresses earnings claims, and is similar to the parallel sections of the Amended Franchise Rule and the interim Business Opportunity Rule.[385] Like both of those rules, the final Rule requires disclosure of earnings information only if a business opportunity seller chooses to make a claim about potential earnings to prospective purchasers.

Like the analogous provisions of the Amended Franchise Rule and the interim Business Opportunity Rule, § 437.4(a) requires a seller making an earnings claim to: (1) Have a reasonable basis for the claim at the time the claim is made; (2) have in its possession written materials that substantiate the claim at the time the claim is made; (3) make the written material available to the prospect and the Commission upon request; and (4) furnish the prospect with an earnings claim statement. Section 437.4(b) sets forth disclosure and other requirements for sellers making earnings claims in the general media. In § 437.4(c), the final Rule addresses the use of industry financial statistics or data to suggest or imply a likely level of earnings. Finally, § 437.4(d) requires that sellers notify prospects in writing of any changes in earnings information before the prospect enters into a contract or provides any consideration to the seller, directly or indirectly through a third party.[386] Each of these requirements is discussed in the following sections.

1. Section 437.4(a)(1)–(3): Substantiation for Earnings Claims

As noted throughout this proceeding, the making of false or unsubstantiated earnings claims is the most prevalent problem in the offering of business opportunities. To address this problem, § 437.4(a)(1) of the final Rule permits sellers to make an earnings claim provided there is a reasonable basis for the claim at the time the claim is made.[387] Further, § 437.4(a)(2) requires sellers that make earnings claims to have in their possession written substantiation for their earnings claims, and § 437.4(a)(3) requires sellers to make that written substantiation available to the prospective purchaser, or to the Commission, upon request. Requiring that a prospective purchaser can obtain and review, or have his or her own advisor review, substantiation for earnings claims increases the likelihood that sellers will make claims only for which they have a reasonable basis.

2. Section 437.4(a)(4): Earnings Claim Statement

Section 437.4(a)(4) prescribes the content of the earnings claim statement, which must be provided to a prospect if a seller elects to make a representation about potential earnings. To ensure ease of review, each earnings claim statement must be a single written document. The document must be titled ''EARNINGS CLAIM STATEMENT REQUIRED BY LAW'' in capital, bold type letters. This ensures that the prospective purchaser can readily determine from the face of the document the importance of its text. The title is followed by the name of the person making the claim, and the date of the claim. After the title and identifying information, the Rule requires the seller to state the specific earnings claim or claims. The final Rule does not specify any particular format or formula for an earnings claim. This is intended to allow flexibility in presenting earnings information in the manner that is appropriate for each opportunity, provided that any such claim has a reasonable basis and that there is written substantiation for the claim at the time it is made.[388]

The final Rule also requires a seller making an earnings claim to disclose the beginning and ending dates when the represented earnings were achieved.[389] This information is material because a prospective purchaser cannot begin to evaluate an earnings representation without knowing how recently the supporting data was collected. For example, a seller may have conducted a survey of purchasers of its business opportunity in 2009. The Rule would not necessarily prohibit the use of that survey information in 2010, but the prospect should be made aware of the applicable time period in order to assess the relevance of the claim to current market conditions. Similarly, a prospect may reasonably give greater weight to a survey of purchasers over an extended period of time (for example, over a three-year period), than a more limited survey (for example, over a three-month period).[390]

Further, this section of the Rule requires the disclosure of the number and percentage of all purchasers who purchased the business opportunity prior to the end of the represented time period who have achieved at least the claimed earnings during that period. This information is material because it enables the prospect to determine whether the claimed earnings of prior purchasers are typical.[391] For example, a seller may claim that purchasers have average earnings of $50,000 a year. Even if true, this statement may not reflect the experience of the typical purchaser because a few purchasers with unusually high earnings could skew the average. Thus, the number and

[382] 16 CFR 436.7(b) and interim Business Opportunity Rule § 437.1(a)(22).

[383] 71 FR at 19072.

[384] *Id.*

[385] *See* 16 CFR 436.9 and interim Business Opportunity Rule §§ 437.1(b), (c) and (e).

[386] The Amended Franchise Rule contains similar requirements. *See* 16 CFR 436.1(d)(2) and 436.1(e)(6) (each prospective franchisee to whom the representation is made shall be notified of any material change in the information contained in the earnings claims document).

[387] As discussed in the INPR, the Commission did not propose a ''geographic relevance'' requirement because that prerequisite is subsumed in the ''reasonable basis'' requirement. *See* 71 FR at 19072 n.185.

[388] 71 FR at 19072.

[389] Section 437.4(a)(4)(iv).

[390] 71 FR at 19072.

[391] *Id.*

percentage of purchasers earning $50,000 a year might actually be very low.[392]

In addition, this section of the final Rule requires a seller making an earnings claim to disclose any characteristics that distinguish purchasers who achieved at least the represented level of earnings from those characteristics of the prospective purchasers.[393] For example, a survey of ice cream vending route purchasers operating only in the South may not be readily applicable to other regions, such as the North. Similarly, a survey limited to large urban areas may not be applicable to smaller, rural areas. Distinguishing characteristics of purchasers who achieved a represented level of earnings is material information because it enables a prospect to assess the relevance of an earnings claim to his or her particular market.[394]

Finally, the Rule requires a seller making an earnings claim to disclose to the prospective purchaser that written substantiation for the claim will be made available upon request.[395] As noted above, requiring that a prospective purchaser can obtain and review, or have his or her own advisor review, substantiation for earnings claims increases the likelihood that sellers will make claims only for which they have a reasonable basis.[396] This requirement balances the prospective purchaser's need for material information with the necessity of minimizing the seller's compliance costs. Thus, a seller need only provide such substantiation upon request.

In the RNPR, the Commission solicited comment on various aspects of the earnings claim statement including: (1) Whether the requirement that sellers disclose the number and percentage of prior purchasers that achieved at least the stated level of earnings would create difficulties for sellers, or whether there were alternative approaches that could limit any such difficulties; and (2) whether the requirement that sellers disclose any materially different characteristics of prior purchasers that attained at least the stated level of earnings adequately covered the relevant earnings information that should be disclosed.[397]

No comments were received in response to the Commission's specific questions, nor were any comments directed to this provision. The Staff Report recommended that § 437.4(a) be adopted in the form proposed in the RPBOR, but sought additional comment on §§ 437.4(a)(4)(iv) and (v), which require any business opportunity seller that makes an earnings claim to identify the beginning and ending dates of the time period when those earnings were achieved (§ 437.4(a)(4)(iv)) and the number and percentage of all purchasers who purchased the opportunity before the ending date and who achieved those earnings in that time period (§ 437.4(a)(4)(v)).[398] Section 437.4(a)(4)(v) specifies that in calculating the number and percentage of purchasers who attained at least the represented level of earnings, the business opportunity seller must include all purchasers who purchased the opportunity prior to the ending date of the time period on which the representation is based. The Staff Report solicited comment on whether the results of such a calculation, which would include the experience of those who purchased the business opportunity toward the end of the stated time period, present consumers with a realistic picture of their likely earnings with the business opportunity. In addition, the Staff Report sought comment on whether this calculation would present prospective purchasers with information that would be useful in making an informed purchasing decision, and questioned whether there were alternative approaches that might be more useful.

Only one comment received in response to the Staff Report addressed these provisions. Specifically, DOJ agreed that any substantiation for earnings must be calculated using the number of all purchasers of the opportunity prior to the ending date of the time period for which the earnings representation is based, noting that:

> In reality, many business opportunities begin and end in a short period of time, constantly reinventing themselves to avoid association with previous failures. Requiring inclusion of all purchasers who purchased before the ending date in any statistics in an earning claims document is necessary to force the seller to have the document be at all representative of the business as a whole. Any wiggle room in this regard will be exploited to create a document based on non-representative sellers.[399]

The Commission agrees and the final Rule includes § 437.4(a)(4) as recommended in the Staff Report.

3. Section 437.4(b): Earnings Claims in the General Media

Section 437.4(b) addresses the making of earnings claims in the general media, such as on television, radio, the Internet, in newspapers, *etc.* Specifically, a seller can make an earnings claim in the general media provided the seller: (1) Has a reasonable basis for the claim at the time the claim is made; (2) has written material that substantiates the claim at the time the claim is made; and (3) states in immediate conjunction with the claim the beginning and ending date when the represented earnings were achieved and the number and percentage of those who have achieved the represented earnings in the given time period. These requirements are necessary to prevent deceptive and misleading earnings representations in advertisements, as well as to enable a prospect to assess the typicality of any advertised earnings claim.[400]

The Commission received no comments about this provision. Based on the record as a whole and its enforcement experience, the Commission concludes that the requirements of § 437.4(b) are necessary to prevent misleading earnings representations, and the final Rule includes this provision as recommended in the Staff Report.

4. Section 437.4(c): Dissemination of Industry, Financial, Earnings, or Performance Information

Section 437.4(c) is intended to address a prevalent practice among business opportunity sellers—the use of real or purported industry statistics in the marketing of business opportunity ventures. The Commission's law enforcement experience reveals that it is common for vending machine business opportunity promoters, for example, to tout what are purported to be industry-wide vending sales statistics. A matrix of potential earnings based upon an industry-average sliding scale of ''vends per day'' is typical.[401] The use of such industry statistics in the promotion of a business opportunity creates the impression that the level of sales or earnings is typical in the industry, and

[392] *Id.*

[393] Section 437.4(a)(4)(vi).

[394] 71 FR at 17073.

[395] Section 437.4(a)(4)(vii).

[396] *See, e.g.,* 16 CFR 436.1(b)(2); 436.1(c)(2).

[397] 73 FR at 16133.

[398] Section 437.4(b)(3) requires similar disclosures, calculated in the same way, in conjunction with any earnings claim made in the general media.

[399] DOJ–Staff Report at 2.

[400] *E.g., FTC* v. *Inspired Ventures, Inc.,* No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *MegaKing, Inc.,* No. 00–00513–CIV–Lenard (S.D. Fla. 2000).

[401] *E.g., FTC* v. *Tashman,* 318 F.3d 1275 (11th Cir. 2003); *FTC* v. *Nat'l Vending Consultants, Inc.,* No. CV–S–05–0160–RCJ–PAL (D. Nev. 2005); *FTC* v. *Inspired Ventures, Inc.,* No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Inv. Dev. Inc.,* No. 89–0642 (E.D. La. 1989).

implies that the prospective purchaser will achieve similar results.[402]

To prevent deceptive use of such earnings claims, § 437.4(c), as proposed in the RNPR, prohibited the use of industry financial, earnings, or performance information ''unless the seller has written substantiation demonstrating that the information reflects the typical or ordinary financial, earnings, or performance experience of purchasers of the business opportunity being offered for sale.'' [403]

In response to the RNPR, one commenter noted that this provision would prohibit sellers from using industry statistics in ways that could assist potential purchasers in making informed decisions.[404] For example, hypothetically, the performance experience of prior purchasers of a business opportunity might contrast favorably against the industry average and, if so, that information might help a prospective purchaser assess the value of the investment against other proposed businesses.

The Staff Report noted that there may be a limited number of situations in which providing industry statistics may be beneficial to potential purchasers, but expressed concern that industry statistics can be, and have been, used to imply to potential purchasers that their likely earnings with the promoted business opportunity will match the industry averages.[405]

The Staff Report recommended a small change to Section 437.4(c) to state that it is an unfair or deceptive practice to ''disseminate industry financial, earnings, or performance information unless the seller has written substantiation demonstrating that such information reflects, *or does not exceed,* the typical or ordinary financial, earnings, or performance experience of purchasers of the business opportunity being offered for sale.'' The Commission received no comments on this provision.

The Commission concludes that the recommended change is warranted. Section 437.4(c) of the final Rule thus includes the staff's recommended language. Accordingly, under the final Rule, a seller can use industry information only if it is able to measure the performance of existing purchasers of that seller's offered business opportunity and document that those existing purchasers' typical performance equals or exceeds the average performance of purchasers of other business opportunities available in the industry. A start-up business opportunity with no or very limited prior sales, therefore, probably would not be able to use industry statistics because it would lack a sufficient basis to demonstrate that the industry statistics reflect the typical or ordinary experience of the start-up's prior purchasers.

5. Section 437.4(d): Material Changes in Earnings Claim Statement

Section 437.4(d) addresses post-disclosure changes in earnings information. It prohibits any seller making an earnings claim from failing to notify the prospective purchaser, before the prospect enters into a contract or pays any consideration, of any material change that has occurred and that calls into question the relevance or reliability of the information contained in its earnings claim statement. For example, ''[s]uch material changes include the issuance of a new survey or other facts that would lead the seller to conclude that a prior survey is no longer valid.'' [406] In crafting § 437.4(d), the Commission was cognizant of the high degree of materiality of earnings information for prospective purchasers, but attempted to minimize compliance costs during the time before the prospective purchaser enters into a contract or pays any consideration.[407] In the RNPR, the Commission explained that ''[t]he proposal would not require a seller, for example, to prepare a revised earnings claim statement immediately, but would simply require written notification of the change.'' [408] No comments in response to the RNPR or the Staff Report were directed at this provision. The Commission finds that § 437.4(d) strikes the right balance between accurate disclosure to prevent deception and the compliance costs that would result from a more frequent than quarterly updating requirement of the full earnings claim document. The final Rule includes this provision as recommended in the Staff Report.

E. Section 437.5: Sales Conducted in Spanish or Other Languages Besides English

On its own initiative, the staff recommended in the Staff Report adding a provision that would require sellers to provide the disclosure document and the disclosures required by the Rule to potential purchasers in the same language that the seller uses to market the business opportunity. This recommendation was based, in part, on a long-standing Commission enforcement policy, which advises that where a Commission order, rule, or guide requires the clear and conspicuous disclosure of certain information in an advertisement or sales material appearing in a non-English language publication, the disclosures should be made in the predominant language of the publication in which the advertisement or sales material appears.[409] This policy is the result of the Commission's recognition that ''with increasing intensity, advertisers are making special efforts to reach foreign language-speaking consumers.'' [410] Under the policy, failure to provide the required disclosures either in the predominant language of the publication or of the target audience could result in a civil penalty or other law enforcement proceeding for violating the terms of any applicable Commission order or rule.[411]

The staff's recommendation to address foreign-language sales also is based on its belief that when a business opportunity seller purposefully reaches out to a particular population by marketing in the foreign language spoken by members of that community, all of the disclosures required by the Rule should be accessible and comprehensible to each of those potential purchasers.[412] Accordingly, the Staff Report recommended that business opportunity sellers be required to provide the disclosure document to potential purchasers in the language the seller uses to conduct the offer for sale, sale, or promotion of the business opportunity.

The Staff Report sought public comment about whether this requirement adequately promotes the Commission's goal of ensuring that potential purchasers be provided with information necessary to make an informed purchasing decision. It also solicited comment on what alternatives, if any, the Commission should consider, and the costs and benefits of each alternative.

In response to the Staff Report, the Commission received one comment addressing the disclosure requirements for foreign-language sales. Specifically, DOJ agreed with the staff's

[402] 71 FR at 19073.

[403] 73 FR at 16135.

[404] Planet Antares-RNPR at 25.

[405] Staff Report at 99.

[406] *Id.* at 100.

[407] *Id.*

[408] 71 FR at 19073.

[409] FTC Enforcement Policy Statement Concerning Clear and Conspicuous Disclosures in Foreign Language Advertising and Sales Materials, 16 CFR 14.9(a). In the case of any other advertisement or sales material, the Commission policy states that the disclosures should appear in the language of the target audience.

[410] *Id.*

[411] *Id.*

[412] Staff Report at 101.

recommendation that the required disclosures should be made in the same language as the sale, noting that the disclosures should be ''as comprehensible to would-be buyers as is the [seller's] sales pitch.'' [413]

After consideration of the record, the Commission's long-standing policy, and the rationale behind the staff's recommendation, the Commission agrees that an English disclosure document for business opportunities marketed in Spanish and other foreign languages may have little utility for the targeted prospects. Accordingly, the final Rule contains disclosure requirements for sales conducted in Spanish or other languages besides English.

Because the Commission's law enforcement history demonstrates that fraudulent business opportunities have specifically targeted Spanish-speaking communities,[414] the Staff Report recommended that the Rule contain a Spanish translation of the basic disclosure document as Appendix B. In the Staff Report, the staff solicited comment on whether the Spanish translation of the disclosure document was adequate to convey to Spanish-speaking potential purchasers the meaning of the required disclosures, or whether different word choices would make the disclosures more meaningful. No comments addressed these issues. Based on its law enforcement experience with business opportunity sellers specifically targeting Spanish-speaking consumers, the Commission agrees that a Spanish translation of the disclosure document is appropriate. Accordingly, a Spanish version of the disclosure document is included as Appendix B to the final Rule.

Although business opportunities may be marketed in dozens of languages besides English and Spanish, the Commission's law enforcement experience does not suggest that there are other particular languages in which business opportunity sales are conducted. Moreover, the record is silent as to whether translations into other languages are necessary. Therefore, the Commission has determined not to provide translations of the disclosure document into other languages. Under § 437.5(b), should a business opportunity seller use a language other than English or Spanish, the seller would be responsible for obtaining an accurate translation of the disclosure document.

The Commission adopts the language proposed in the Staff Report, with one slight modification. Namely, § 437.5 of the final Rule makes clear that all earnings disclosures required by § 437.4—rather than those identified only in § 437.4(a)—must be made in the language in which the business opportunity sales are conducted. Section 437.5 of the final Rule, entitled ''Sales conducted in Spanish and other languages besides English'' requires:

(a) If the seller conducts the offer for sale, sale, or promotion of a business opportunity in Spanish, the seller must provide the disclosure document required by § 437.3(a) in the form and language set forth in Appendix B to this part, and the disclosures required by §§ 437.3(a) and 437.4 must be made in Spanish; and

(b) If the seller conducts the offer for sale, sale, or promotion of a business opportunity in a language other than English or Spanish, the seller must provide the disclosure document required by § 437.3(a) using the form and an accurate translation of the language set forth in Appendix A to this part, and the disclosures required by §§ 437.3(a) and 437.4 must be made in that language.

Section 437.3(a) has been revised to conform with this requirement.[415]

F. Section 437.6: Other Prohibited Practices

Section 437.6 of the final Rule prohibits sellers from engaging in a number of deceptive practices, whether directly or through a third party, that are common in the sale of fraudulent business opportunity ventures. Violation of any provision of this section would be a violation of the Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act. Each of these prohibitions is discussed below.

1. Section 437.6(a): Disclaiming Any Required Disclosure

Section 437.6(a) prohibits a business opportunity seller from disclaiming, or requiring ''a prospective purchaser to waive reliance on, any statement made in any document or attachment that is required or permitted to be disclosed under this Rule.'' [416] The purpose of this provision is to preserve the reliability and integrity of pre-sale disclosures. Otherwise, the Rule's very purpose would be undermined by signaling to prospects that they cannot trust or rely on the Rule's mandated disclosures.[417]

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule includes § 437.6(a) as recommended in the Staff Report.

2. Section 437.6(b): Making Inconsistent or Contradictory Claims

Section 437.6(b) prohibits sellers from making any representation, whether orally, visually, or in writing, that is inconsistent with or that contradicts any statement made in the basic disclosure document or in any earnings claim disclosures required by the Rule.[418] Without this prohibition, a seller, for example, would be free to show a prospect a graph with earnings information, even though the seller's disclosure document states that it does not make an earnings claim.[419] The Commission's law enforcement experience shows that this is a prevalent problem.[420] This provision, like the anti-disclaimer provision, is necessary to preserve the reliability and integrity of the required disclosures.

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule includes § 437.6(b) as recommended in the Staff Report.

3. Section 437.6(c): Including Extraneous Materials in Disclosure Document

Section 437.6(c) prohibits the inclusion of any additional information in the disclosure document that is not explicitly required or permitted by the Rule. This prohibition is intended to preserve the clarity, coherence, readability, and utility of the disclosures by ensuring that the seller does not

[413] DOJ-Staff Report at 2.

[414] *See supra* note 99 and accompanying text. DOJ also commented that in its experience, business opportunities have been pitched to the Spanish community. *See* DOJ-Staff Report at 2.

[415] Section 437.3 of the final Rule makes it an unfair or deceptive act or practice for any seller to fail to disclose to a prospective purchaser material information required by §§ 437.3 and 437.4 in a single written document in the form and using the language set forth in Appendix A to the Rule; or if the offer for sale, sale, or promotion of a business opportunity is conducted in Spanish, in the form and using the language set forth in Appendix B to the Rule; or if the offer for sale, sale, or promotion of a business opportunity is conducted in a language other than English or Spanish, using the form and an accurate translation of the language set forth in Appendix A to the Rule.

[416] This provision is parallel to the anti-disclaimer prohibition in the Amended Franchise Rule. *See* 16 CFR 436.9(h).

[417] 71 FR at 19073.

[418] This provision is similar to the Amended Franchise Rule's prohibition against making statements that contradict any required disclosure. *See* 16 CFR 436.9(a).

[419] 71 FR at 19074.

[420] *E.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *FTC* v. *Inspired Ventures, Inc.,* No. 02–21760–CIV–Jordan (S.D. Fla. 2002); *FTC* v. *Mortgage Serv. Assocs., Inc.,* No. 395–CV–1362 (AVC) (D. Conn. 1995); *FTC* v. *Tower Cleaning Sys., Inc.,* No. 965844 (E.D. Pa. 1996).

clutter the disclosure document with extraneous materials that may overwhelm purchasers, distracting them from the required disclosures.[421] To facilitate a prospective purchaser's ability to maneuver through an electronic version of the disclosure document, this provision expressly permits the use of common navigational tools, such as scroll bars and internal links that facilitate review of an electronic document. The provision prohibits, however, other electronic features—such as audio, video, animation, or pop-up screens—that may distract attention from the core disclosures.[422]

The prohibition on including extraneous materials extends to information required or permitted by state law. One important goal of revising and tailoring the disclosure requirements for business opportunity sellers is to simplify and streamline the disclosures into a single-page document. Accordingly, the Commission has concluded that allowing business opportunity sellers to mix federal and state disclosures into one document would be an invitation to sellers to present lengthy and confusing information to prospective purchasers.[423] Such a result would be contrary to the Commission's goal of providing a simple, clear, and concise disclosure document. State laws offering equal or greater protections are not preempted by the final Rule. The final Rule only prohibits any sellers from providing any disclosures required under state law together with the disclosures required under the final Rule. No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule includes § 437.6(c) as recommended in the Staff Report.

4. Section 437.6(d): Making False Earnings Claims

As previously noted, the making of deceptive earnings claims is the most prevalent problem in the offer and sale of business opportunities. Accordingly, § 437.6(d) prohibits sellers from misrepresenting the amount of sales, or gross or net income or profits a prospective purchaser may earn or that prior purchasers have earned. This prohibition complements the final Rule's earnings substantiation requirements in § 437.4. Thus, both unsubstantiated and false earnings claims are prohibited by the Rule.

No comments received in response to the RNPR or the Staff Report addressed this provision, and the final Rule includes § 437.6(d) as recommended in the Staff Report.

5. Section 437.6(e): Misrepresentations Regarding the Law as to Earnings Claims and the Identity of Other Business Opportunity Purchasers

Section 437.6(e) prohibits sellers from stating that any law or regulation prohibits seller from furnishing earnings information. This provision is intended to address a recurring problem identified in the rulemaking record—that sellers often misrepresent that federal law or the FTC prohibits the making of earnings claims.[424] In effect, prohibiting these types of misrepresentations ensures that prospective purchasers are not misled into believing that earnings information is unavailable to them as a matter of law.[425] In addition, the RPBOR added a second proposed prohibition to § 437.6(e) that would prevent sellers from misrepresenting that any law or regulation prohibits a seller from disclosing to prospective purchasers the identity of other purchasers of the business opportunity. The Commission proposed this change in response to a request from DOJ, which noted that in its experience, fraudulent business opportunity sellers frequently deflect potential purchasers' requests for the contact information of current distributors by falsely claiming that the law forbids disclosing those identities.[426] The Commission is convinced that the prohibition is appropriate because it will help consumers understand that if the seller supplies no references, it is because none exist, or because the seller chooses not to make such information available in contravention of the Rule.[427]

No comments received in response to the RNPR or the Staff Report addressed this provision, and the final Rule contains § 437.6(e) as recommended in the Staff Report.

6. Section 437.6(f): Failing To Provide Written Substantiation for Earnings Claims

Section 437.6(f) prohibits a seller who makes an earnings claim from failing to provide written substantiation to prospective purchasers, and to the Commission, upon request.[428] Rather than mandating that business opportunity sellers routinely include documentation for earnings claims—which could be voluminous—in the earnings claim statement itself, the final Rule's requirement is intended to reduce compliance costs by requiring only that such materials be provided when requested. Purchasers could then review the documentation if they so choose. Therefore, although substantiation for earnings claims must exist, in writing, at the time any such claims are made, that substantiation need be provided to potential purchasers (or to the Commission) only upon request.

No comments received in response to the RNPR or the Staff Report addressed this provision, and the final Rule contains § 437.6(f) as recommended in the Staff Report.

7. Section 437.6(g): Misrepresenting Commissions or Other Payments From the Seller

Section 437.6(g) prohibits sellers from misrepresenting how or when commissions, bonuses, incentives, premiums, or other payments from the seller to the purchaser will be calculated or distributed. The Commission's law enforcement experience shows that these kinds of misrepresentations underlie deceptive work-at-home opportunities, where prospective purchasers rely on the seller as the source of income, or where the seller manages the system's cash flow.[429] The

[421] Indeed, in response to the INPR, DOJ urged the Commission to exclude state disclosures from the proposed form. In DOJ's experience, ''[p]urveyors of fraudulent business opportunities will seek every opportunity to water down this document with extraneous information to hide any negative information it may contain.'' 73 FR at 16128. The Commission's experience supports DOJ's conclusions.

[422] This is the same approach used in the Amended Franchise Rule. *See* 16 CFR 436.6(d).

[423] *See* 73 FR at 16128.

[424] In the Amended Franchise Rule, the Commission addressed this problem in the context of sales of business format franchises through a new requirement that franchise sellers include a specific preamble in the financial performance section of their disclosures. Among other things, the preamble makes clear that franchisors can make financial performance information available, assuming they have a reasonable basis for their claims. *See* 16 CFR 436.5(s)(1). Although the same problem exists in the sale of business opportunities, the Commission, in an effort to streamline the business opportunity disclosure document and reduce compliance costs, proposed this different approach for the Business Opportunity Rule, believing it sufficient to address deceptive business opportunity sales. The Commission noted that ''whereas the Franchise Rule seeks to encourage franchisors to make earnings claims, no such encouragement is needed in the business opportunity field, where such claims are all too common.'' 71 FR at 19075 n.211.

[425] 71 FR at 19075.

[426] 73 FR at 16127.

[427] *Id.*

[428] The Amended Franchise Rule and the interim Business Opportunity Rule have similar requirements. *See* 16 CFR 436.5(r)(3)(v); 437.1(b)(2); and 437.1(c)(2).

[429] *E.g., FTC* v. *Indep. Mktg. Exch., Inc.,* No. 10–CV–00568–NLH–KMW (D.N.J. 2010); *FTC* v. *Preferred Platinum Servs. Network, Inc.,* No.10–CV–00538–MLC–LHG (D.N.J. 2010); *FTC* v. *Sun Ray Traders, Inc.,* No. 05–20402–CIV-Seitz/Bandstra (S.D. Fla. 2005); *FTC* v. *Castle Publ'g,* No. A03CA

Continued

Commission concluded that absent this prohibition, the Rule would not address false promises about the compensation sellers will provide post-sale.[430]

No comments received in response to the RNPR or the Staff Report addressed this provision, and the final Rule contains § 437.6(g) as recommended in the Staff Report.

8. Section 437.6(h): Misrepresenting Costs, Performance, Efficacy or Material Characteristics of Business Opportunity

A common complaint of victims of business opportunity fraud arises from misrepresentations about the costs or the performance, efficacy, nature, or central characteristics of a business opportunity offered to a prospective purchaser, or the goods or services needed to operate the business opportunity. For example, a seller may misrepresent the total costs involved in purchasing or operating a business opportunity.[431] In other instances, a seller may misrepresent the quality of goods offered by the business opportunity seller, either for use in operating the business (*e.g.,* vending machines) or for ultimate resale to consumers (*e.g.,* novelty items).[432] Section 437.6(h) makes such deception actionable as a violation of the final Rule.

No comments received in response to the RNPR or the Staff Report addressed this provision, and the final Rule contains § 437.6(h) as recommended in the Staff Report.

9. Section 437.6(i): Misrepresenting Post-Sale Assistance

Section 437.6(i) prohibits business opportunity sellers from misrepresenting any material aspect of assistance it represents it will provide to purchasers.[433] The Commission's enforcement experience shows that misrepresentation of post-sale assistance offered to a prospective purchaser is an element common to many business opportunity frauds targeted in Commission cases.[434] Also, consumer complaints about misrepresentations concerning the type and amount of assistance promised but not received are among the top categories of reported deceptive business opportunity practices.[435] The Commission has concluded that the best way to address this deceptive practice is through a direct prohibition.[436]

No comments received in response to the RNPR or the Staff Report addressed this provision, and the final Rule contains § 437.6(i) as recommended in the Staff Report.

10. Section 437.6(j): Misrepresenting Locations, Outlets, Accounts, or Customers

Section 437.6(j) prohibits sellers from misrepresenting ''the likelihood that a seller, locator, or lead generator will find locations, outlets, accounts, or customers for the purchaser.'' Fraudulent business opportunity sellers often promise that the seller or some other third party will find locations or outlets for purchasers' equipment, or accounts or customers for the purchasers' services.[437] Such representations include claims that a particular locator is successful in finding locations, as well as representations that the seller or other third party has already found and entered into contracts with location owners or customers.[438] The Commission has found that these types of representations are material to a prospective purchaser, because they foster the expectation that a profitable market exists for the goods or services the purchaser will sell.[439]

No comments received in response to the RNPR or the Staff Report addressed this provision, and the final Rule contains § 437.6(j) as recommended in the Staff Report.

11. Section 437.6(k): Misrepresenting Cancellation or Refund Policy

Section 437.6(k) prohibits a seller from misrepresenting, directly or through a third party, the terms and conditions of any cancellation or refund policy. This prohibition does not compel any seller to offer a cancellation or a refund, nor does it dictate the terms and conditions under which a seller may offer such relief. Rather, it simply ensures that any cancellation or refund offer a seller makes before the sale is truthful and accurate. The Commission's law enforcement experience demonstrates that, in many instances, business opportunity sellers falsely claim that they permit a purchaser to cancel the purchase, guarantee a 100% refund, or promise to buy back some or all of the products sold to a purchaser.[440] These representations have lured prospective purchasers into believing that the investment is either low-risk or even risk-free.[441]

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(k) as recommended in the Staff Report.

12. Section 437.6(l): Failing To Provide a Refund or Cancellation

Section 437.6(l) prohibits a seller from failing to cancel a purchase or make a refund when the purchaser has qualified for such relief under the seller's

905 SS (W.D. Tex. 2003); *FTC* v. *Trek Alliance, Inc.,* No. 02–9270 SJL (AJWx) (C.D. Cal. 2002); *FTC* v. *Terrance Maurice Howard,* No. SA02CA0344 (W.D. Tex. 2002); *FTC* v. *Am.'s Shopping Network, Inc.,* No. 02–80540–CIV-Hurley (S.D. Fla. 2002).

[430] 71 FR at 19075.

[431] *E.g., FTC* v. *World Traders Ass'n, Inc.,* No. CV05 0591 AHM (CTx) (C.D. Cal. 2005); *FTC* v. *Castle Publ'g,* No. A03CA 905 SS (W.D. Tex. 2003); *FTC* v. *End70 Corp.,* No. 3 03CV–0940N (N.D. Tex. 2003); *FTC* v. *Darrell Richmond,* No. 3:02–3972–22 (D.S.C. 2003); *FTC* v. *Carousel of Toys USA, Inc.,* No. 97–8587 CIV–Ungaro-Benages (S.D. Fla. 1997); *FTC* v. *Parade of Toys, Inc.,* No. 97–2367–GTV (D. Kan. 1997); *FTC* v. *Telecomm. of Am., Inc.,* No. 95–693–CIV–ORL–22 (M.D. Fla. 1995). Pre-sale disclosure of cost information is a remedial approach taken in many Commission trade regulation rules. *E.g.,* 900 Number Rule, 16 CFR 308.3(b); TSR, 16 CFR 310.3; Funeral Rule, 16 CFR 453.2.

[432] *E.g., FTC* v. *Kitco of Nev.,* 612 F. Supp. 1282 (D. Minn. 1985); *FTC* v. *Associated Record Distribs., Inc.,* No. 02–21754–CIV–Graham/Garber (S.D. Fla. 2002); *FTC* v. *Home Professions, Inc.,* No. 00–111 (C.D. Cal. 2000); *FTC* v. *Worldwide Mktg. & Distrib. Co.,* No. 95–8422–CIV–Roettger (S.D. Fla. 1995); *see also FTC* v. *Med. Billers Network,* No. 05 CV 2014 (RJH) (S.D.N.Y. 2005).

[433] 71 FR at 19075 n.216.

[434] The Commission has recognized that promises of assistance made to induce prospects to purchase a franchise are material, especially to those prospects with ''little or no experience at running a business.'' 43 FR at 59676–77; *see, e.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *FTC* v. *USS Elder Enter., Inc.,* No. SA CV–04–1039 AHS (ANx) (C.D. Cal. 2004); *FTC* v. *Kitco of Nev.,* 612 F. Supp. 1282 (D. Minn. 1985); *FTC* v. *Leading Edge Processing, Inc.,* No. 6:02–CV–681–ORL–19 DAB (M.D. Fla. 2003); *FTC* v. *Darrell Richmond,* No. 3:02–3972–22 (D.S.C. 2003); *FTC* v. *Elec. Med. Billing, Inc.,* No. SA02–368 AHS (ANX) (C.D. Cal. 2003); *FTC* v. *Transworld Enters., Inc.,* No. 00 8126–CIV–Graham (S.D. Fla. 2000); *FTC* v. *Advanced Pub. Commc'ns Corp.,* No. 00–00515–CIV–Ungaro-Benages (S.D. Fla. 2000); *FTC* v. *Hi Tech Mint Sys., Inc.,* No. 98 CIV 5881 (JES) (S.D.N.Y. 1998); *United States* v. *QX Int'l, Inc.,* No. 398–CV–0453–D (N.D. Tex. 1998).

[435] 71 FR at 19075 n.218.

[436] 71 FR at 19075.

[437] *E.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *FTC* v. *Int'l Trader,* No. CV–02–02701 AHM (JTLx) (C.D. Cal. 2002); *FTC* v. *Elec. Processing Servs., Inc.,* No. CV–S–02–0500–L.H.–R.S. (D. Nev. 2002); *FTC* v. *Home Professions, Inc.,* No. SACV 00–111 AHS (Eex) (C.D. Cal. 2001); *FTC* v. *Encore Networking Servs.,* No. 00–1083 WJR (AIJx) (C.D. Cal. 2000); *FTC* v. *AMP Publ'n, Inc.,* No. SACV–00–112–AHS–ANx (C.D. Cal. 2001); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996).

[438] *E.g., FTC* v. *Hart Mktg. Enters. Ltd.,* No. 98–222–CIV–T–23 E (M.D. Fla. 1998); *FTC* v. *Vendors Fin. Servs., Inc.,* No. 98–1832 (D. Colo. 1998); *FTC* v. *Hi Tech Mint Sys., Inc.,* No. 98 CIV 5881 (S.D.N.Y. 1998); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996).

[439] 71 FR at 19076.

[440] *E.g., FTC* v. *Med. Billers Network,* No. 05 CV 2014 (RJH) (S.D.N.Y. 2005); *FTC* v. *Castle Publ'g,* No. A03CA 905 SS (W.D. Tex. 2003); *FTC* v. *Am.'s Shopping Network, Inc.,* No. 02–80540–CIV–Hurley (S.D. Fla. 2002); *FTC* v. *Home Professions, Inc.,* No. SACV 00–111 AHS (Eex) (C.D. Cal. 2001); *FTC* v. *Encore Networking Servs.,* No. 00–1083 WJR (AIJx) (C.D. Cal. 2000).

[441] 71 FR at 19076.

cancellation or refund policy.[442] As noted above, § 437.6(k) prohibits a seller from misrepresenting, pre-sale, the seller's cancellation or refund policy. Section 437.6(l) complements that section and is intended to address sellers' post-sale conduct, prohibiting the seller from failing to honor cancellation or refund requests when purchasers have satisfied all the terms and conditions disclosed in the seller's disclosure document for obtaining such relief.[443] In the Commission's experience, the failure of business opportunity sellers to make promised refunds or to honor cancellation policies ranks high among issues raised by business opportunity purchasers.[444]

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(l) as recommended in the Staff Report.

13. Section 437.6(m): Misrepresenting Business Opportunity as an Employment Opportunity

Section 437.6(m) prohibits business opportunity sellers from misrepresenting a business opportunity as an employment opportunity. The Commission's law enforcement experience demonstrates that some business opportunity sellers lure unsuspecting consumers by falsely representing that they are offering employment when, in fact, they are offering vending, work-at-home, or other business opportunities. For example, in some instances consumers have responded to advertisements seeking sales executives, only to discover that the ''position'' requires them to purchase equipment or products from the seller and, in turn, to sell those products.[445] The Commission concludes that this prohibition is necessary to protect consumers against false representations of employment opportunities.

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(m) as recommended in the Staff Report.

14. Section 437.6(n): Misrepresenting the Exclusivity of Territories

Section 437.6(n) prohibits misrepresentations about the terms of any territorial exclusivity or limited territorial protection offered to a prospective purchaser.[446] In the Commission's experience, false or misleading promises about territories are a common deceptive practice reported by business opportunity purchasers.[447] The Commission has stated that representations about territorial exclusivity or more limited territorial protections are material because they often induce a prospective purchaser into believing that he or she will not be competing for customers with the seller or other purchasers, thereby increasing the purchaser's likelihood of success.[448]

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(n) as recommended in the Staff Report.

15. Section 437.6(o): Assigning a Purported Exclusive Territory to Another Purchaser

Section 437.6(o) prohibits a seller from assigning a single ''exclusive'' territory to more than one purchaser. This prohibition complements § 437.6(n), which prohibit sellers from misrepresenting territories. It is intended to address sellers' post-sale conduct, and prohibits the seller from failing to honor its promises regarding exclusive or protected territories. Consumer complaints indicate, and the Commission's law enforcement experience confirms, that fraudulent business opportunity sellers often sell the same purportedly exclusive territory to several unsuspecting purchasers.[449] In these circumstances, purchasers who have been lured to invest in an opportunity on the basis of promises of an exclusive territorial lock on their market find that their chances of success are materially reduced by competition from the other purchasers.

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(o) as recommended in the Staff Report.

16. Section 437.6(p): Misrepresenting Third Party Endorsements or Other Affiliation

Section 437.6(p) prohibits business opportunity sellers from misrepresenting that ''any person, trademark or service mark holder, or governmental entity, directly or indirectly benefits from, sponsors, participates in, endorses, approves, authorizes, or is otherwise associated with the sale of the business opportunity or the goods or services sold through the business opportunity.'' [450] The Commission's enforcement experience indicates that business opportunity frauds often lure consumers by misrepresenting that their opportunities have been approved or endorsed by a government agency or well-known third party.[451] In other instances, business opportunity sellers falsely claim that their opportunities are sponsored by or associated with a charity, or that a charity will benefit from a percentage of sales.[452] The Commission has concluded that such claims are material to a purchaser because an alleged endorsement or shared-profit arrangement may create the impression that the opportunity is legitimate or that the affiliation will enhance sales and profits.[453]

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(p) as recommended in the Staff Report.

17. Section 437.6(q): Misrepresenting References (the Use of ''Shills'')

Section 437.6(q) addresses one of the most pernicious practices common in fraudulent business opportunity sales—

[442] This is consistent with the interim Business Opportunity Rule approach. *See* 16 CFR 437.1(h).

[443] *E.g., FTC* v. *AMP Publ'ns, Inc.,* No. SACV–00–112–AHS–ANx (C.D. Cal. 2001) (failure to honor 90-day money back guarantee); *FTC* v. *Star Publ'g Group, Inc.,* No. 00–023 (D. Wyo. 2000) (failure to honor 90-day refund policy).

[444] 73 FR at 19076.

[445] *See, e.g., FTC* v. *Trek Alliance, Inc.,* No. 02–9270 SJL (AJWx) (C.D. Cal. 2002) (defendants placed ads in ''Help Wanted'' sections of newspaper offering salaried position); *FTC* v. *Leading Edge Processing, Inc.,* No. 6:02–CV–681–ORL–19 DAB (M.D. Fla. 2003) (defendants sent emails to job seekers who posted their resumes on job Web sites, falsely representing the availability of jobs and guaranteeing a steady stream of work); *FTC* v. *David Martinelli, Jr.,* No. 3:99 CV 1272 (D. Conn. 2000) (defendants sent unsolicited emails falsely offering a $13.50 per hour position processing applications for credit, loans, or employment).

[446] 71 FR at 19076. In some instances, a business opportunity seller may offer a prospect an exclusive territory, in which no other person has the right to compete within the territory. In other instances, a seller may offer a more limited protection. For example, the seller may prohibit other purchasers from operating in the territory, but reserve to itself the ability to conduct telemarking or Internet sales in the territory. Regardless of the scope of the territorial protection, § 437.6(n) prohibits business opportunity sellers from misrepresenting the nature of the territory.

[447] *Id.* at 19065.

[448] *Id.* at 19075.

[449] *E.g., FTC* v. *Am. Safe Mktg.,* No. 1:89–CV–462–RLV (N.D. Ga. 1989).

[450] *Cf.* TSR, 16 CFR 310.3(a)(vii) (prohibiting misrepresentations concerning ''affiliation with, or endorsement or sponsorship by, any person or government entity'').

[451] *E.g., FTC* v. *Streamline Int'l,* No. 01–6885–CIV–Ferguson (S.D. Fla. 2001) (misrepresented FDA approval); *FTC* v. *Star Publ'g Group, Inc.,* No. 00–023 (D. Wyo. 2000) (misrepresented HUD approval); *FTC* v. *Bus. Opportunity Ctr., Inc.,* No. 95 8429–CIV–Zloch (S.D. Fla. 1995) (misrepresented FDA approval); *see also FTC* v. *Hawthorne Commc'ns,* No. 93–7002 AAH (JGX) (C.D. Cal. 1993) (order restricting use of testimonials and endorsements in the sale of business opportunities).

[452] *E.g., FTC* v. *Global Assistance Network for Charities,* No. 96–2494 PHX RCB (D. Ariz. 1996).

[453] 71 FR at 19077.

the use of ''shill'' references to lure unsuspecting consumers to invest in a business opportunity.[454] The Commission has brought many actions against business opportunity sellers who provided prospects with the names of individuals they falsely claimed were independent prior purchasers or independent third parties, but who, in fact, were paid by the seller to give favorable false reports confirming the seller's claims, especially their earnings claims.[455] The use of paid shills to give false reports induces prospective purchasers into believing that the opportunity is a safe and lucrative investment.

To address this deceptive practice, § 437.6(q) contains two related prohibitions. First, it prohibits any seller from misrepresenting that any person ''has purchased a business opportunity from the seller.'' This prevents a seller, for example, from claiming that a company employee, locator, or other third party is a prior purchaser of the opportunity, when that is not the case. Second, the provision prohibits a seller from misrepresenting that any person—such as a locator, broker, or organization that purports to be an independent trade association—''can provide an independent or reliable report about the business opportunity or the experiences of any current or former purchaser.'' Providing a prospect with a list of brokers who are paid to give favorable reports, for example, would violate this provision because any statement a person on such a list makes would not be independent and reliable.[456]

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.6(q) as recommended in the Staff Report.

18. Section 437.6(r): Failing To Disclose Consideration Paid to or Prior Relationship With Prior Purchaser

Section 437.6(r) is intended to complement the prohibition in § 437.6(q) regarding the use of ''shills.'' Section 437.6(r) prohibits a seller from failing to disclose payments to individuals identified as references, as well as any personal relationships the seller has with such individuals. Such prohibitions are necessary because an individual with a personal relationship with the seller, or who has been paid for his or her assessment of an opportunity, is likely to be biased, and any story of success or high earnings from any such person is suspect.[457] The final Rule clarifies that the term ''consideration'' is to be interpreted broadly to include not only direct cash payments, but indirect financial benefits, such as forgiveness of debt, as well as other tangible benefits such as equipment, services, and discounts.[458]

The RPBOR modified slightly the language of this provision to make clear that the information that must be disclosed to a potential purchaser is not only the payment of any consideration to the reference by the seller, but also the existence of any relationship between the seller and the reference.[459] Therefore, the RPBOR added clarifying language to the opening clause of § 437.6(r) so that it prohibits a failure to disclose any consideration paid, any personal relationship, or other past or current business relationship other than as the purchaser of the business opportunity being offered.

No comments, either in response to the RNPR or the Staff Report, addressed this provision. Because the Commission finds that the small clarification to § 437.6(r) more accurately identifies the information that must be disclosed to a potential purchaser, the Commission adopts § 437.6(r) in the final Rule in the form recommended in the Staff Report.

G. Section 437.7: Record Retention

Section 437.7 establishes the minimal record retention requirements necessary to document compliance and permit effective Rule enforcement. This section applies to both the business opportunity seller and its principals, to ensure that records required by the Rule are not destroyed if the seller goes out of business or otherwise ceases operations.[460] As detailed below, sellers and their principals must keep, and make available to the Commission, the following five types of records for a period of three years:

(1) Section 437.7(a): Each materially different version of all documents required by the Rule;

(2) Section 437.7(b): Each purchaser's disclosure receipt;

(3) Section 437.7(c): Each executed written contract with a purchaser;

(4) Section 437.7(d): Each oral or written cancellation or refund request received from a purchaser; and

(5) Section 437.7(e): All substantiation upon which the seller relies from the time an earnings claim is made.

The Commission finds that these limited recordkeeping requirements strike the right balance, requiring no more than necessary for effective law enforcement, while minimizing compliance costs.[461] Moreover, records can be retained electronically, helping to further minimize compliance costs.

No comments received in response to the RNPR or the Staff Report were directed to this provision, and the final Rule contains § 437.7 as recommended in the Staff Report.

H. Section 437.8: Franchise Exemption

Section 437.8 is designed to eliminate potential overlap between the final Rule's scope of coverage and that of the Amended Franchise Rule, so that no business would face duplicative compliance burdens.[462] Accordingly, § 437.8 exempts from the final Rule's coverage those business opportunities that: (1) Satisfy the definitional elements of the term ''franchise'' under the Amended Franchise Rule; (2) entail a written contract between the seller and the business opportunity buyer; and (3) require the buyer to make a payment that meets the Amended Franchise Rule's minimum payment requirement. These criteria were designed to accomplish two ends: to ensure that certain categories of businesses ''carved out'' from the Amended Franchise Rule are not inappropriately subjected to coverage by the Business Opportunity Rule;[463] and, simultaneously, to obviate

[454] *See id.* at n.236 (''After earnings claims, false testimonials and shill references are the most common Section 5 allegations in Commission business opportunities cases.'')

[455] *E.g., FTC* v. *Am. Entm't Distribs., Inc.,* No. 04–22431–CIV–Martinez (S.D. Fla. 2004); *United States* v. *Vaughn,* No. 01–20077–01–KHV (D. Kan. 2001); *FTC* v. *Hart Mktg. Enters. Ltd.,* No. 98–222–CIV–T–23 E (M.D. Fla. 1998); *FTC* v. *Inetintl.com,* No. 98–2140 (C.D. Cal. 1998); *FTC* v. *Infinity Multimedia, Inc.,* No. 96–6671–CIV–Gonzalez (S.D. Fla. 1996); *FTC* v. *Allstate Bus. Consultants Group, Inc.,* No. 95–6634–CIV–Ryskamp (S.D. Fla. 1995).

[456] *E.g., FTC* v. *Affiliated Vendors Ass'n, Inc.,* No. 02–CV–0679–D (N.D. Tex. 2002); *FTC* v. *Raymond Urso,* No. 97–2680–CIV–Ungaro-Benages (S.D. Fla. 1997); *see also* 71 FR at 19077 n. 238.

[457] Indeed, the Commission has long held that the failure to disclose compensation paid to an endorser is a deceptive practice in violation of Section 5. *See* 71 FR at 19077; *see also* Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR 255 (Oct. 15, 2009).

[458] 71 FR at 19078.

[459] 73 FR at 16128, 16136.

[460] 71 FR at 19078.

[461] *Id.*

[462] *Id.; see also* 15 U.S.C. 57a(g) (authorizing the Commission to exempt persons or classes from all or part of rule coverage).

[463] For example, businesses exempt from Amended Franchise Rule coverage pursuant to the exemption for fractional franchises would not be subject to coverage by the Business Opportunity Rule because such businesses would meet the criteria of § 437.8. This is an appropriate result because the same rationale underlying exemption of these types of businesses from the Amended Franchise Rule would also dictate that they not be covered by the Business Opportunity Rule—*i.e.,* the franchisor is not likely to deceive the prospective franchisee or to subject the prospective franchisee to significant investment risk. Therefore, imposing the requirements of either the Amended Franchise

any loophole that could be exploited by certain other types of business opportunities that are exempt from the Amended Franchise Rule but that should be regulated by the Business Opportunity Rule.

On the other hand, certain businesses carved out of Amended Franchise Rule coverage should not escape regulation by the final Rule—specifically, those exempt from the Amended Franchise Rule's coverage due to the minimum payment exemption [464] or the oral agreement exemption.[465] The Commission has concluded that while these two exemptions are warranted in the franchise context to ensure that the significant disclosure costs imposed by the Amended Franchise Rule are cost-justified, they do not apply to the final Rule, with its significantly lighter disclosure burden.[466]

In the RNPR, the Commission solicited comment on whether the exemption was overly broad or overly narrow.[467] In response to the RNPR, some commenters, primarily from the MLM industry, suggested limitations on the Rule by granting a safe harbor to exempt firms that require very low registration fees; [468] firms that offer refunds on inventory purchases; [469] firms that are publicly-traded; [470] firms that have a high net worth; [471] or firms that are members of a self-regulatory body, such as the DSA.[472] These are not novel suggestions; each also was made in response to the INPR.[473] In the RNPR, the Commission concluded that none of these factors is determinative of whether a company is, in fact, a pyramid scheme or otherwise engaged in deceptive conduct. Furthermore, the Commission noted that the effort to craft a workable rule using these criteria could undermine law enforcement efforts, as it would, at least in the case of minimum payment thresholds, provide scam operators with a means to circumvent the Rule.[474] The Staff Report recommended that the Commission not expand the exemptions beyond those identified in the RPBOR. The Commission adopts § 437.8 as recommended in the Staff Report.

I. Section 437.9: Outstanding Orders; Preemption

1. Section 437.9(a): Effect on Prior Commission Orders

Section 437.9(a) addresses the effect the Rule may have on outstanding Commission orders. The Commission recognizes that the final Rule significantly changes the disclosure obligations for those sellers who are now under order in prior Commission actions. To enable business opportunity sellers to take advantage of the final Rule's reduced disclosure obligations, as well as to reduce any potential conflicts between existing orders and the final Rule, § 437.9(a) permits persons under order to petition the Commission for relief consistent with the provisions of the new Rule. Under the RPBOR, business opportunities required by FTC or court order to follow the Franchise Rule, 16 CFR Part 436, would have been permitted to petition the Commission to amend the order so that the business opportunity could follow the provisions of the Business Opportunity Rule instead.[475]

Although no comments received in response to the RNPR addressed this provision, the Staff Report noted that while the Commission could modify an FTC administrative order, it would not have the authority to modify any order entered by a court.[476] In the case of a court order, the Commission could, however, stipulate to an amendment of the order by the court to allow the business opportunity to follow the provisions of the Business Opportunity Rule. The Staff Report recommended, therefore, that § 437.9(a) be revised to add the phrase ''or to stipulate to an amendment of the court order'' as follows: ''A business opportunity required by prior FTC or court order to follow the Franchise Rule, 16 CFR part 436, may petition the Commission to amend the order or to stipulate to an amendment of the court order so that the business opportunity may follow the provisions of this part.''

In addition, the Staff Report noted that the first sentence of § 437.9(a) proposed in the RPBOR was superfluous, and recommended deleting it. No comments in response to the Staff Report were directed at this provision. Upon consideration of the staff's recommendation and the rationale for that recommendation, the Commission has decided to modify the text of this provision in the manner recommended in the Staff Report. As the Commission has stated previously, all determinations under this provision regarding the amendment of orders will be made on a case-by-case basis.

2. Section 437.9(b): Preemption

Section 437.9(b) adopts a preemption policy similar to that embodied in the Amended Franchise Rule.[477] It provides that the Commission does not intend to preempt state or local business opportunity laws, except to the extent of any conflict with the Rule. Further, a law does not conflict if it affords prospective purchasers equal or greater protection, such as a requirement for registration of disclosure documents or more extensive disclosures.[478]

One commenter suggested that the FTC should preempt conflicting state business opportunity rules, noting its belief that ''enforcement of a nationwide standard by the FTC is preferable to a patchwork series of laws and regulations.'' [479] The Staff Report noted that the commenter is suggesting that all state laws and regulations that do not mirror exactly the Business Opportunity Rule would be in conflict with the Rule, and should therefore be preempted. The Commission has long recognized that state laws and regulations that afford equal or greater protections than do FTC trade regulations are not subject to preemption,[480] and therefore declines to follow this commenter's recommendation.

J. Section 437.10: Severability

Finally, § 437.10 adopts the severability provision recommended by the Staff Report with one non-substantive change: The Commission removed the superfluous phrase, ''it is the Commission's intention that'' from the provision. This provision makes clear that, if any part of the Rule is held

Rule or the Business Opportunity Rule would not be justified. *See* 71 FR at 19078.

[464] 16 CFR 436.2(a)(3)(iii).

[465] 16 CFR 436.2(a)(3)(iv).

[466] 71 FR at 19078.

[467] 73 FR at 16133.

[468] *See, e.g.,* Babener–RNPR; Pre-Paid Legal–RNPR.

[469] *See, e.g.,* Pre-Paid Legal–RNPR; Tupperware–RNPR; IBA–RNPR.

[470] *Id.*

[471] *See, e.g.,* IBA–RNPR.

[472] *See, e.g.,* DSA–RNPR.

[473] 73 FR at 16119–20. Moreover, none of the commenters offered any new rationale for expanding the proposed categories of exemption that had not previously been considered by the Commission.

[474] *Id.* at 16120.

[475] *Id.* at 16136 (RPBOR § 437.8(a)).

[476] Staff Report at 127.

[477] 16 CFR 436.10. This approach is consistent with other Commission trade regulation rules. *See, e.g.,* Appliance Labeling Rule, 16 CFR 305.17; Cooling-Off Rule, 16 CFR 429.2; Mail Order Rule, 16 CFR 435.3(b)(2).

[478] Although state laws offering equal or greater protections are not preempted, § 437.6(c) of the final Rule prohibits providing state and federal disclosures together in one document.

[479] Tupperware–RNPR (5/28/2008). No other comments were received. At the June 2009 Workshop, however, the panelist from the Maryland Attorney General's Office expressed appreciation that states were not preempted from requiring that business opportunity sellers provide information in addition to that required by the proposed Rule. Cantone, June 2009 Tr at 20.

[480] *See, e.g.,* Mail Order Rule, 16 CFR 435.3(b)(2) (rule does not preempt state or local laws that afford equal or greater protections).

invalid by a court, the remainder will still be in effect.[481] No comments received in response to the RNPR or the Staff Report were directed to this provision.

IV. Paperwork Reduction Act

The Commission is submitting the final Rule and a Supplemental Supporting Statement to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–21. The final Rule amends a trade regulation rule governing business opportunity sales. The final Rule covers those business opportunities currently covered by the interim Business Opportunity Rule (and formerly covered by the Original Franchise Rule, as explained above), as well as certain others not covered by the interim Business Opportunity Rule, such as sellers of work-at-home programs. The final Rule requires business opportunity sellers to disclose specified information and to maintain certain records relating to business opportunity sales transactions. The currently approved estimate for the disclosure and recordkeeping burden under the interim Business Opportunity Rule is 16,750 hours for business opportunity sellers. That estimate was based on an estimated 2,500 business opportunity sellers. As discussed below, the final Rule reduces the existing burden on business opportunity sellers by streamlining disclosure requirements to minimize compliance costs.

In the RNPR, Commission staff estimated there were approximately 3,050 business opportunity sellers covered by the RPBOR. This figure consisted of an estimated 2,500 vending machine, rack display, and other opportunity sellers currently covered by the interim Business Opportunity Rule, and an estimated 550 work-at-home opportunity sellers, which would be newly covered entities under the final Rule. Because the final Rule is no different than the RPBOR regarding the types of entities to which it applies, and the Commission received no information suggesting the need to update these prior estimates, the Commission retains them for the final Rule. Additionally, Commission staff estimates that approximately 174 of those sellers market business opportunities in Spanish and that approximately 79 of the 3,050 business opportunity sellers market in languages other than English or Spanish.[482]

A. Disclosure Requirements

As discussed below, the final Rule is designed to streamline and substantially reduce the quantity of information business opportunity sellers are required to disclose under the interim Business Opportunity Rule. The final Rule impacts sellers differently, depending upon whether they are currently covered by the interim Business Opportunity Rule and what language they use to market the business opportunities.

1. Mandatory Disclosures

For the 2,500 vending machine, rack display, and other business opportunity sellers currently covered by the interim Business Opportunity Rule, the final Rule substantially reduces the disclosures from more than 20 categories of information to five—the seller's identifying information, earnings claims, lawsuits, refund and cancellation policies, and prior purchasers. This streamlining also will minimize compliance costs for the 550 business opportunity sellers that will be newly subject to the Rule. Business opportunity sellers must disclose whether or not they make earnings claims. The decision to make an earnings claim, however, is optional. While the disclosures of references and earnings claims retain, for the most part, the interim Business Opportunity Rule requirements, the required disclosure of lawsuits is reduced from the interim Business Opportunity Rule.[483]

The final Rule imposes one additional requirement that was not present in either the interim Business Opportunity Rule or the RPBOR, which was introduced in the Staff Report. For business opportunities marketed in Spanish, § 437.5 of the final Rule requires that sellers provide potential purchasers with the Spanish version of the disclosure document (Appendix B to the Rule) and provide all other required disclosures in Spanish. For sales conducted in a language other than English or Spanish, the final Rule requires that sellers make the required disclosures in the same language as the sale, using the form and an accurate translation of the language set forth in Appendix A, as well as any additional required disclosures. As discussed in the Statement of Basis and Purpose, this translation requirement is supported by long-standing Commission policy, the Commission's law enforcement experience, the rulemaking record, and the rationale supporting staff's recommendation.

2. Incorporation of Existing Materials

The final Rule reduces collection and dissemination costs from those imposed by the interim Business Opportunity Rule, by permitting sellers to reference in their disclosure documents materials already in their possession. For example, a seller need not repeat its refund policy in the text of the disclosure document, but may incorporate its contract or brochures, or other materials that already provide the necessary details.

3. Use of Electronic Dissemination of Information

The final Rule defines the term ''written'' to include electronic media. Accordingly, all business opportunities covered by the final Rule are permitted to use the Internet and other electronic media to furnish disclosure documents. Allowing this distribution method should greatly reduce sellers' compliance costs over the long run, especially costs associated with printing and distributing disclosure documents. As a result of this proposal, the Commission expects sellers' compliance costs will decrease substantially over time.

4. Use of Computerized Data Collection Technology

Finally, because of advances in computerized data collection technology, the Commission anticipates that the costs of collecting information and recordkeeping requirements imposed by the final Rule will be minimal. For example, a seller can easily maintain a spreadsheet of its purchasers, which can be sorted by location. This would enable a seller to easily comply with the reference disclosure requirement (at least 10 prior purchasers in the last three years who are located nearest to the prospective

[481] This provision is comparable to the severability provision in the Amended Franchise Rule, 16 CFR 436.11, as well as the severability provisions in other Commission rules. *See, e.g.,* TSR, 16 CFR 310.9.

[482] To estimate how many of the 3,050 sellers market business opportunities in languages other than English, staff relied upon 2009 United States Census Bureau (''Census'') data. Calculations based upon a recent Census survey reveal that approximately 5.7% of the U.S. population speaks Spanish or Spanish Creole at home and speak English less than ''very well.'' Calculations based upon that same survey reveal that approximately 2.6% of the U.S. population speaks a language other than Spanish, Spanish Creole, or English at home and speak English less than ''very well.'' Staff therefore projected that 5.7% of all entities selling business opportunities market in Spanish or Spanish Creole and 2.6% of all entities selling business opportunities market in languages other than English, Spanish and Spanish Creole. *http://factfinder.census.gov/servlet/STTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2009_1YR_G00_S1601&-ds_name=ACS_2009_1YR_G00_&-_lang=en&-redoLog=false.*

[483] *See supra* Section III.C.2.

purchaser, or, if there are not 10 prior purchasers, then all prior purchasers). In the alternative, the final Rule permits a seller to maintain a national list of purchasers.

B. Recordkeeping Requirements

Section 437.7 of the final Rule prescribes recordkeeping requirements necessary for effective enforcement of the Rule. Specifically, sellers of a covered business opportunity, and their principals, must retain for at least three years the following types of documents: (1) Each materially different version of all documents required by the Rule; (2) each purchaser's disclosure receipt; (3) each executed written contract with a purchaser; and (4) all substantiation upon which the seller relies for each earnings claim made. The final Rule requires that these records be made available for the Commission's inspection, but does not otherwise require their production. As previously noted, because of advances in computerized data collection technology, the Commission anticipates that the costs of collecting information and recordkeeping requirements imposed by the final Rule will be minimal.

C. Estimated Hours Burden and Labor Cost

For the RNPR, the Commission submitted the RPBOR and associated documentation under the PRA for OMB review.[484] The Commission did not receive any public comments regarding staff's PRA burden estimates. The instant burden estimates differ from those previously submitted in the RNPR in two respects: (1) They account for the final Rule's requirement that sellers must provide the disclosure document and other required disclosures to potential purchasers in the same language the seller uses to market the business opportunity;[485] and (2) they incorporate the one hour recordkeeping burden estimate included in the currently approved interim Business Opportunity Rule's burden estimates under the PRA.

Through the Staff Report, the Commission sought comment on the new foreign language disclosure requirement, including the usefulness and sufficiency of the added foreign language disclosure requirement. The Staff Report, however, did not address the associated PRA burden.[486] The Commission received just one comment on the new disclosure translation requirement.[487]

1. Estimated Hours Burden: 10,533

The estimated 2,500 vending machine, rack display, and related opportunity sellers currently covered by the interim Business Opportunity Rule (and, previously, the Original Franchise Rule) will have a disclosure document that needs merely streamlining and updating to comply with the final Rule. Thus, FTC staff estimates that these businesses likely will require no more than 3 hours to complete those tasks. Conversely, staff estimates that for existing businesses that were not covered by the interim Business Opportunity Rule but will be covered by the final Rule, *e.g.,* work-at-home opportunities, approximately 5 hours will be required to prepare a new disclosure document. Staff further estimates that the total hours required in the first year to develop a disclosure document will be 10,250 [(2,500 entities × 3 hours per entity) + (550 entities × 5 hours per entity)]. In addition, all these businesses likely will require approximately one hour per year to file and store records, for a total of 3,050 hours [3,050 entities × 1 hour per entity]. Accordingly, the estimated total hours burden for the first year of implementation of these amendments would be 13,300 hours [10,250 hours + 3,050 hours]. Commission staff estimates that in subsequent years, the 3,050 existing businesses will require no more than approximately two hours to update the disclosure document [6,100 total hours] and approximately one hour to file and store records [3,050 total hours], for a total of 9,150 hours [6,100 hours + 3,050 hours] per year to meet the final Rule requirements.

Thus, cumulative average annual burden for affected sellers, based on a prospective three-year OMB clearance is 10,533 hours [((13,300 hours) + 18,300 hours (2 years × 9,150 hours per year)) ÷ 3].

2. Estimated Labor Cost: $2,633,333

Labor costs are determined by applying applicable wage rates to associated burden hours. Commission staff assumes that an attorney likely would prepare or update the disclosure document at an estimated hourly rate of $250. As noted above, Commission staff estimates that 13,300 hours will be needed to prepare, file, and store the disclosure document and required records in the first year, for a total cost of $3,325,000 [13,300 hours × $250 per hour].

As noted above, Commission staff expects that there will be a reduction in the annual hours burden after the first year to approximately 9,150 hours. Accordingly, staff estimates that the labor cost burden for subsequent years will be reduced to $2,287,500 [9,150 hours x $250 per hour]. Thus, the average annual cost is approximately $2,633,333 [(($3,325,000) + ($2,287,500 × 2)) ÷ 3], when averaged over a prospective three-year OMB clearance. Should disclosure or recordkeeping obligations be performed by clerical staff, the total labor costs would be significantly less.

3. Estimated Capital and Other Non-Labor Costs: $3,068,838

Business opportunity sellers must also incur costs to print and distribute the single-page disclosure document, plus any attachments. These costs vary based upon the length of the attachments and the number of copies produced to meet the expected demand. Commission staff estimates that 3,050 business opportunity sellers will print and mail approximately 1,000 disclosure documents per year at a cost of $1.00 per document, for a total cost of $3,050,000. This is a conservative estimate because Commission staff anticipates that these costs will be reduced by many business opportunity sellers electing to furnish disclosures electronically, *e.g.,* via email or the Internet.

For sales conducted in a language other than English and Spanish, the final Rule requires that sellers use the form appearing in Appendix A and accurately translate it into the language used for sale. Thus, sellers marketing in languages other than English or Spanish will incur costs to translate the disclosure document, and these sellers may also need to translate the other required disclosures that may be attached to the disclosure document. Commission staff estimates that sellers marketing business opportunities in languages other than English and Spanish will incur a cost of

[484] 73 FR at 16129.

[485] As discussed within the Statement of Basis and Purpose, this requirement was not present in the RNPR. Rather, it was recommended in the Staff Report, and ultimately adopted in the final Rule.

[486] *See* Bureau of Consumer Protection, *Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule (16 CFR Part 437)* (Nov. 2010) (''Staff Report''), *available at http://www.ftc.gov/os/fedreg/2010/october/101028businessopportunitiesstaffreport.pdf.* In November, the Commission published a notice in the **Federal Register** announcing the availability of, and seeking comment on, the Staff Report. *See* 75 FR 68559 (Nov. 8, 2010).

[487] DOJ Staff Report at 2. The comment, from the Office of Consumer Litigation, U.S. Department of Justice, registered strong support for the requirement.

approximately $6,705 to translate the disclosure document in the first year. This figure is based upon Commission staff's estimate that it will cost approximately 17.5 cents to translate each word into the language the sellers use to market the opportunities.[488] There are 485 words in Appendix A. Therefore, the total cost burden to translate the disclosure document is approximately $6,705 [79 sellers × (17.5 cents per word × 485 words)]. In subsequent years, the existing business opportunities sellers will not incur additional costs to translate the Appendix A as it will already have been translated during the first year. The 174 sellers marketing business opportunities in Spanish will not incur any additional costs to translate Appendix A, as a Spanish version of that document is provided for them, as Appendix B to the final Rule.

Commission staff estimates that in the first year, sellers marketing business opportunities in languages other than English will incur a total cost burden of approximately $27,672 [(79 sellers + 174 sellers) × (17.5 cents per word × 625 words)] to translate their responses to the five mandatory disclosures required in the disclosure document. This estimate is based upon assumptions that all sellers marketing business opportunities in languages other than English: (1) Are marketing in both English and another language; (2) are not incorporating any existing materials into their disclosure document; (3) have been the subject of civil or criminal legal actions; (4) are making earnings claims; (5) have a refund or cancellation policy; and (6) because of all of the above assumptions, require approximately 625 words (approximately 2.5 standard, double-spaced pages) to provide the required information. In reality, because it is unlikely that all such assumptions will apply to every seller marketing business opportunities in languages other than English, the cost burden will likely be much lower. In subsequent years, due to the final Rule's requirement that sellers must update their disclosures, Commission staff estimates that sellers may incur an additional cost burden of $11,069 [253 sellers × (17.5 cents per word × 250 words—approximately one standard, double-spaced page)] to translate the updates.

Therefore, cumulative average cost for affected sellers, based on a prospective three-year OMB clearance, to print and distribute the disclosure document and any attachments and to translate both the disclosure document and the additional required disclosures would be $3,068,838 [(($3,050,000 × 3) + $6,705 + $27,672 + ($11,069 × 2)) ÷ 3].

V. Regulatory Analysis and Regulatory Flexibility Act

Under Section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a regulatory analysis for a proceeding to amend a rule only when it: (1) Estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has determined that the final Rule will not have such an annual effect on the national economy, on the cost or prices of goods or services sold through business opportunities, or on covered businesses or consumers. As noted in the Paperwork Reduction Act discussion above, the Commission staff estimates each business affected by the Rule will likely incur only minimal compliance costs.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[489]

The FTC does not expect that the final Rule will have a significant economic impact on a substantial number of small entities and this document serves as notice to the Small Business Administration of the agency's certification of no significant impact. The abbreviated disclosure and recordkeeping requirements of the final Rule are the minimum necessary to give consumers the information they need to protect themselves and permit effective enforcement of the Rule. Companies previously covered by the interim Business Opportunity Rule will experience a reduction in their compliance burden, while companies not previously covered will have minimal new disclosure obligations. As such, the economic impact of the final Rule will be minimal. In any event, the burdens imposed on small entities are likely to be relatively small.

In the RNPR, the Commission provided notice to the Small Business Administration of the agency's certification of no significant impact. Nonetheless, the Commission determined that it was appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Based on the IRFA set forth in the Commission's earlier notice of proposed rulemaking, a review of the public comments submitted in response to that notice and additional information and analysis by Commission staff, the Commission submits this FRFA.

A. Need for and Objectives of the Final Rule

The Commission's law enforcement experience provides ample evidence that fraud is pervasive in the sale of many business opportunities marketed to consumers. Yet, the Commission believes that the current requirements of the interim Business Opportunity Rule are more extensive than necessary to protect prospective purchasers of business opportunities from deception. The pre-sale disclosures provided by the final Rule will give consumers the information they need to protect themselves from fraudulent sales claims, while minimizing the compliance costs and burdens on sellers.

The objective of the final Rule is to provide consumers considering the purchase of a business opportunity with material information they need to investigate the offering thoroughly so they can protect themselves from fraudulent claims, while minimizing the compliance burdens on sellers. The legal basis for the final Rule is Section 18 of the FTC Act, 15 U.S.C. 57a, which authorizes the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices in or affecting commerce that are unfair or deceptive within the meaning of Section (5)(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

B. Significant Issues Raised by Public Comments, Summary of Agency's Assessment of These Issues, and Changes, if Any, Made in Response

In crafting the final Rule, the Commission has carefully considered the comments received throughout the Rule amendment proceeding. Section III of this document provides a more detailed discussion of the comments received by the Commission and the Commission's response to those comments.

In sum, in response to INRP, the Commission received more than 17,000 comments, the overwhelming majority

[488] 17.5 cents is staff's estimate of the current market translation rate per word.

[489] *See* 5 U.S.C. 603–605.

of which came from the MLM industry. The MLM industry urged the Commission to exclude MLM plans from the scope of IPBOR due to the burdens imposed on them through the IPBOR and the IPBOR's failure to differentiate between unlawful pyramid schemes and legitimate companies using an MLM model. In consideration of the comments received in response to the INPR, and a reassessment of the Commission's law enforcement history, the Commission subsequently issued a RNPR, in which the Commission decided to narrow the scope of the IPBOR to avoid broadly sweeping in all sellers of MLM plans. In addition, the Commission proposed a more narrowed definition of ''business opportunity'' and also eliminated two required disclosures—information about legal actions pertaining to a business opportunity seller's sales personnel, and the number of cancellation or refund requests the seller received. The Commission received fewer than 125 comments and rebuttal comments in response to RNPR addressing these changes. The Commission received written comment from six individuals and entities following the public workshop held by the Commission. Finally, the Commission received 27 comments in response to the Staff Report. Many of those comments opposed the Commission's decision to narrow the scope of the Rule to avoid broadly sweeping in the MLMs.

C. Description and an Estimate of the Number of Small Entities to Which the Final Rule Will Apply, or Explanation Why No Estimate Is Available

The final Rule primarily applies to ''sellers'' of business opportunities, including vending, rack display, medical billing, and work-at-home (*e.g.,* craft assembly, envelope stuffing) opportunities. The Commission believes that many of these sellers fall into the category of small entities. Determining the precise number of small entities affected by the final Rule, however, is difficult due to the wide range of businesses engaged in business opportunity sales. The staff estimates that there are approximately 3,050 business opportunity sellers, including some 2,500 vending machine, rack display, and related opportunity sellers and 550 work-at-home opportunity sellers. Most established and some start-up business opportunities would likely be considered small businesses according to the applicable Small Business Administration (''SBA'') size standards.[490] The FTC staff estimates that as many as 70% of business opportunities, as defined by the Rule, are small businesses.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements, and the Type of Professional Skills That Will Be Necessary To Comply

As discussed in the Paperwork Reduction Act analysis of this notice (Section IV), the final Rule will impose compliance requirements (*e.g.,* disclosure) and minor recordkeeping requirements on those entities covered by the final Rule. Specifically, the final Rule imposes disclosure and recordkeeping requirements, within the meaning of the Paperwork Reduction Act, on the ''sellers'' of business opportunities and their principals.

The disclosure and recordkeeping requirements are fewer in number and lesser in extent than requirements currently applicable to such entities now covered by the interim Business Opportunity Rule and formerly covered by the Original Franchise Rule. Section 437.2 of the final Rule requires ''sellers'' of covered business opportunities to provide potential purchasers with a one-page disclosure document, as specified by § 437.3 and Appendix A and if applicable, Appendix B, at least seven calendar days before they sign a contract or pay any money toward a purchase. For business opportunities marketed in Spanish, § 437.5 of the final Rule requires that sellers provide potential purchasers with the Spanish version of the disclosure document (Appendix B to the Rule) and provide any required disclosures in Spanish. For sales conducted in a language other than English or Spanish, the final Rule requires that sellers use the form and an accurate translation of the language set forth in Appendix A.

Section 437.7 of the final Rule prescribes recordkeeping requirements necessary for effective enforcement of the Rule. Specifically, sellers of a covered business opportunity, and their principals, must retain for at least three years the following types of documents: (1) Each materially different version of all documents required by the Rule; (2) each purchaser's disclosure receipt; (3) each executed written contract with a purchaser; and (4) all substantiation upon which the seller relies for each earnings claim made. The final Rule requires that these records be made available for inspection by the Commission, but does not otherwise require production of the records.

Commission staff assumes that sellers will hire an attorney to complete, update, file, and store the disclosure documents. If applicable, sellers may require translation services to comply with the disclosure requirements.

E. Steps the Agency Has Taken in the Final Rule To Minimize Any Significant Economic Impact of the Final Rule on Small Entities, Consistent With Applicable Statutory Objectives, Including the Factual and Legal Basis for the Alternatives Adopted and Those Rejected

As discussed throughout this document, the Commission has attempted to reduce compliance costs wherever possible. Compliance with the final Rule's disclosure requirements is significantly less burdensome than with the interim Business Opportunity Rule. The final Rule's disclosure and recordkeeping requirements are designed to impose the minimum burden on all affected business opportunity sellers, regardless of size. In formulating the final Rule, the Commission has taken a number of significant steps to minimize the burdens it would impose on large and small businesses. These include: (1) Limiting the required pre-sale disclosure to a one-page document, with check boxes provided to simplify disclosure responses; (2) allowing the disclosure to refer to information in other existing documents to avoid needless duplication; (3) permitting the disclosure document itself to be furnished in electronic form to minimize printing and distribution costs; and (4) employing specific prohibitions in place of affirmative disclosures whenever possible. Moreover, because the majority of sellers covered by the final Rule are already required to comply with the Commission's interim Business Opportunity Rule and the business opportunity laws in 22 states, FTC staff anticipates that the final Rule will drastically reduce their current compliance costs, while imposing exceedingly modest ongoing compliance costs on all covered sellers. Consequently, the Commission believes that the final Rule will not have a

[490] Since October 2000, SBA size standards have been based on the North American Industry Classification System (''NAICS''), in place of the Standard Industrial Classification (''SIC'') system. In general, a company in a non-manufacturing industry is a small business if its average annual receipts are $7 million or less. *See http://www.sba.gov/content/summary-size-standards-industry.*

significant economic impact upon small businesses.

The final Rule requires business opportunity sellers to provide only five affirmative disclosures in a one-page disclosure document. This is a significant reduction from the more than 20 disclosures now required by the Commission's interim Business Opportunity Rule, with which many business opportunity sellers are now obligated to comply.

VI. Final Rule Language

List of Subjects in 16 CFR Part 437

Reporting and recordkeeping requirements, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, Code of Federal Regulations, by revising part 437 to read as follows:

PART 437—BUSINESS OPPORTUNITY RULE

Sec.

Authority: 15 U.S.C. 41–58.

§ 437.1 Definitions.

The following definitions shall apply throughout this part:

(a) *Action* means a criminal information, indictment, or proceeding; a civil complaint, cross claim, counterclaim, or third party complaint in a judicial action or proceeding; arbitration; or any governmental administrative proceeding, including, but not limited to, an action to obtain or issue a cease and desist order, an assurance of voluntary compliance, and an assurance of discontinuance.

(b) *Affiliate* means an entity controlled by, controlling, or under common control with a business opportunity seller.

(c) *Business opportunity* means a commercial arrangement in which:

(1) A seller solicits a prospective purchaser to enter into a new business; and

(2) The prospective purchaser makes a required payment; and

(3) The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will:

(i) Provide locations for the use or operation of equipment, displays, vending machines, or similar devices, owned, leased, controlled, or paid for by the purchaser; or

(ii) Provide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services; or

(iii) Buy back any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including but not limited to providing payment for such services as, for example, stuffing envelopes from the purchaser's home.

(d) *Designated person* means any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business.

(e) *Disclose* or *state* means to give information in writing that is clear and conspicuous, accurate, concise, and legible.

(f) *Earnings claim* means any oral, written, or visual representation to a prospective purchaser that conveys, expressly or by implication, a specific level or range of actual or potential sales, or gross or net income or profits. Earnings claims include, but are not limited to:

(1) Any chart, table, or mathematical calculation that demonstrates possible results based upon a combination of variables; and

(2) Any statements from which a prospective purchaser can reasonably infer that he or she will earn a minimum level of income (*e.g.,* ''earn enough to buy a Porsche,'' ''earn a six-figure income,'' or ''earn your investment back within one year'').

(g) *Exclusive territory* means a specified geographic or other actual or implied marketing area in which the seller promises not to locate additional purchasers or offer the same or similar goods or services as the purchaser through alternative channels of distribution.

(h) *General media* means any instrumentality through which a person may communicate with the public, including, but not limited to, television, radio, print, Internet, billboard, Web site, commercial bulk email, and mobile communications.

(i) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services.

(j) *New business* means a business in which the prospective purchaser is not currently engaged, or a new line or type of business.

(k) *Person* means an individual, group, association, limited or general partnership, corporation, or any other business entity.

(l) *Prior business* means:

(1) A business from which the seller acquired, directly or indirectly, the major portion of the business' assets; or

(2) Any business previously owned or operated by the seller, in whole or in part.

(m) *Providing locations, outlets, accounts, or customers* means furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers, *provided, however,* that advertising and general advice about business development and training shall not be considered as ''providing locations, outlets, accounts, or customers.''

(n) *Purchaser* means a person who buys a business opportunity.

(o) *Quarterly* means as of January 1, April 1, July 1, and October 1.

(p) *Required payment* means all consideration that the purchaser must pay to the seller or an affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the business opportunity. Such payment may be made directly or indirectly through a third party. A required payment does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

(q) *Seller* means a person who offers for sale or sells a business opportunity.

(r) *Signature* or *signed* means a person's affirmative steps to authenticate his or her identity.

It includes a person's handwritten signature, as well as an electronic or digital form of signature to the extent that such signature is recognized as a valid signature under applicable federal law or state contract law.

(s) *Written* or *in writing* means any document or information in printed form or in any form capable of being downloaded, printed, or otherwise

preserved in tangible form and read. It includes: type-set, word processed, or handwritten documents; information on computer disk or CD–ROM; information sent via email; or information posted on the Internet. It does not include mere oral statements.

§ 437.2 The obligation to furnish written documents.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act (''FTC Act'') for any seller to fail to furnish a prospective purchaser with the material information required by §§ 437.3(a) and 437.4(a) of this part in writing at least seven calendar days before the earlier of the time that the prospective purchaser:

(a) Signs any contract in connection with the business opportunity sale; or

(b) Makes a payment or provides other consideration to the seller, directly or indirectly through a third party.

§ 437.3 The disclosure document.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act, for any seller to:

(a) Fail to disclose to a prospective purchaser the following material information in a single written document in the form and using the language set forth in appendix A to this part; or if the offer for sale, sale, or promotion of a business opportunity is conducted in Spanish, in the form and using the language set forth in appendix B to this part; or if the offer for sale, sale, or promotion of a business opportunity is conducted in a language other than English or Spanish, using the form and an accurate translation of the language set forth in appendix A to this part:

(1) *Identifying information.* State the name, business address, and telephone number of the seller, the name of the salesperson offering the opportunity, and the date when the disclosure document is furnished to the prospective purchaser.

(2) *Earnings claims.* If the seller makes an earnings claim, check the ''yes'' box and attach the earnings statement required by § 437.4. If not, check the ''no'' box.

(3) *Legal actions.* (i) If any of the following persons has been the subject of any civil or criminal action for misrepresentation, fraud, securities law violations, or unfair or deceptive practices, including violations of any FTC Rule, within the 10 years immediately preceding the date that the business opportunity is offered, check the ''yes'' box:

(A) The seller;

(B) Any affiliate or prior business of the seller; or

(C) Any of the seller's officers, directors, sales managers, or any individual who occupies a position or performs a function similar to an officer, director, or sales manager of the seller.

(ii) If the ''yes'' box is checked, disclose all such actions in an attachment to the disclosure document. State the full caption of each action (names of the principal parties, case number, full name of court, and filing date). For each action, the seller may also provide a brief accurate statement not to exceed 100 words that describes the action.

(iii) If there are no actions to disclose, check the ''no'' box.

(4) *Cancellation or refund policy.* If the seller offers a refund or the right to cancel the purchase, check the ''yes'' box. If so, state all material terms and conditions of the refund or cancellation policy in an attachment to the disclosure document. If no refund or cancellation is offered, check the ''no'' box.

(5) *References.* (i) State the name, state, and telephone number of all purchasers who purchased the business opportunity within the last three years. If more than 10 purchasers purchased the business opportunity within the last three years, the seller may limit the disclosure by stating the name, state, and telephone number of at least the 10 purchasers within the past three years who are located nearest to the prospective purchaser's location. Alternatively, a seller may furnish a prospective buyer with a list disclosing all purchasers nationwide within the last three years. If choosing this option, insert the words ''See Attached List'' without removing the list headings or the numbers 1 through 10, and attach a list of the references to the disclosure document.

(ii) Clearly and conspicuously, and in immediate conjunction with the list of references, state the following: ''If you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers.''

(6) *Receipt.* Attach a duplicate copy of the disclosure document to be signed and dated by the purchaser. The seller may inform the prospective purchaser how to return the signed receipt (for example, by sending to a street address, email address, or facsimile telephone number).

(b) Fail to update the disclosures required by paragraph (a) of this section at least quarterly to reflect any changes in the required information, including, but not limited to, any changes in the seller's refund or cancellation policy, or the list of references; *provided, however,* that until a seller has 10 purchasers, the list of references must be updated monthly.

§ 437.4 Earnings claims.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this Rule and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act, for the seller to:

(a) Make any earnings claim to a prospective purchaser, unless the seller:

(1) Has a reasonable basis for its claim at the time the claim is made;

(2) Has in its possession written materials that substantiate its claim at the time the claim is made;

(3) Makes the written substantiation available upon request to the prospective purchaser and to the Commission; and

(4) Furnishes to the prospective purchaser an earnings claim statement. The earnings claim statement shall be a single written document and shall state the following information:

(i) The title ''EARNINGS CLAIM STATEMENT REQUIRED BY LAW'' in capital, bold type letters;

(ii) The name of the person making the earnings claim and the date of the earnings claim;

(iii) The earnings claim;

(iv) The beginning and ending dates when the represented earnings were achieved;

(v) The number and percentage of all persons who purchased the business opportunity prior to the ending date in paragraph (a)(4)(iv) of this section who achieved at least the stated level of earnings;

(vi) Any characteristics of the purchasers who achieved at least the represented level of earnings, such as their location, that may differ materially from the characteristics of the prospective purchasers being offered the business opportunity; and

(vii) A statement that written substantiation for the earnings claim will be made available to the prospective purchaser upon request.

(b) Make any earnings claim in the general media, unless the seller:

(1) Has a reasonable basis for its claim at the time the claim is made;

(2) Has in its possession written material that substantiates its claim at the time the claim is made;

(3) States in immediate conjunction with the claim:

(i) The beginning and ending dates when the represented earnings were achieved; and

(ii) The number and percentage of all persons who purchased the business opportunity prior to the ending date in paragraph (b)(3)(i) of this section who achieved at least the stated level of earnings.

(c) Disseminate industry financial, earnings, or performance information unless the seller has written substantiation demonstrating that the information reflects, or does not exceed, the typical or ordinary financial, earnings, or performance experience of purchasers of the business opportunity being offered for sale.

(d) Fail to notify any prospective purchaser in writing of any material changes affecting the relevance or reliability of the information contained in an earnings claim statement before the prospective purchaser signs any contract or makes a payment or provides other consideration to the seller, directly or indirectly, through a third party.

§ 437.5 Sales conducted in Spanish or other languages besides English.

(a) If the seller conducts the offer for sale, sale, or promotion of a business opportunity in Spanish, the seller must provide the disclosure document required by § 437.3(a) in the form and language set forth in appendix B to this part, and the disclosures required by §§ 437.3(a) and 437.4 must be made in Spanish.

(b) If the seller conducts the offer for sale, sale, or promotion of a business opportunity in a language other than English or Spanish, the seller must provide the disclosure document required by § 437.3(a) using the form and an accurate translation of the language set forth in appendix A to this part, and the disclosures required by §§ 437.3(a) and 437.4 must be made in that language.

§ 437.6 Other prohibited practices.

In connection with the offer for sale, sale, or promotion of a business opportunity, it is a violation of this part and an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for any seller, directly or indirectly through a third party, to:

(a) Disclaim, or require a prospective purchaser to waive reliance on, any statement made in any document or attachment that is required or permitted to be disclosed under this Rule;

(b) Make any claim or representation, orally, visually, or in writing, that is inconsistent with or contradicts the information required to be disclosed by §§ 437.3 (basic disclosure document) and 437.4 (earnings claims document) of this Rule;

(c) Include in any disclosure document or earnings claim statement any materials or information other than what is explicitly required or permitted by this Rule. For the sole purpose of enhancing the prospective purchaser's ability to maneuver through an electronic version of a disclosure document or earnings statement, the seller may include scroll bars and internal links. All other features (*e.g.,* multimedia tools such as audio, video, animation, or pop-up screens) are prohibited;

(d) Misrepresent the amount of sales, or gross or net income or profits a prospective purchaser may earn or that prior purchasers have earned;

(e) Misrepresent that any governmental entity, law, or regulation prohibits a seller from:

(1) Furnishing earnings information to a prospective purchaser; or

(2) Disclosing to prospective purchasers the identity of other purchasers of the business opportunity;

(f) Fail to make available to prospective purchasers, and to the Commission upon request, written substantiation for the seller's earnings claims;

(g) Misrepresent how or when commissions, bonuses, incentives, premiums, or other payments from the seller to the purchaser will be calculated or distributed;

(h) Misrepresent the cost, or the performance, efficacy, nature, or central characteristics of the business opportunity or the goods or services offered to a prospective purchaser;

(i) Misrepresent any material aspect of any assistance offered to a prospective purchaser;

(j) Misrepresent the likelihood that a seller, locator, or lead generator will find locations, outlets, accounts, or customers for the purchaser;

(k) Misrepresent any term or condition of the seller's refund or cancellation policies;

(l) Fail to provide a refund or cancellation when the purchaser has satisfied the terms and conditions disclosed pursuant to § 437.3(a)(4);

(m) Misrepresent a business opportunity as an employment opportunity;

(n) Misrepresent the terms of any territorial exclusivity or territorial protection offered to a prospective purchaser;

(o) Assign to any purchaser a purported exclusive territory that, in fact, encompasses the same or overlapping areas already assigned to another purchaser;

(p) Misrepresent that any person, trademark or service mark holder, or governmental entity, directly or indirectly benefits from, sponsors, participates in, endorses, approves, authorizes, or is otherwise associated with the sale of the business opportunity or the goods or services sold through the business opportunity;

(q) Misrepresent that any person:

(1) Has purchased a business opportunity from the seller or has operated a business opportunity of the type offered by the seller; or

(2) Can provide an independent or reliable report about the business opportunity or the experiences of any current or former purchaser.

(r) Fail to disclose, with respect to any person identified as a purchaser or operator of a business opportunity offered by the seller:

(1) Any consideration promised or paid to such person. Consideration includes, but is not limited to, any payment, forgiveness of debt, or provision of equipment, services, or discounts to the person or to a third party on the person's behalf; or

(2) Any personal relationship or any past or present business relationship other than as the purchaser or operator of the business opportunity being offered by the seller.

§ 437.7 Record retention.

To prevent the unfair and deceptive acts or practices specified in this Rule, business opportunity sellers and their principals must prepare, retain, and make available for inspection by Commission officials copies of the following documents for a period of three years:

(a) Each materially different version of all documents required by this Rule;

(b) Each purchaser's disclosure receipt;

(c) Each executed written contract with a purchaser; and

(d) All substantiation upon which the seller relies for each earnings claim from the time each such claim is made.

§ 437.8 Franchise exemption.

The provisions of this Rule shall not apply to any business opportunity that constitutes a ''franchise,'' as defined in the Franchise Rule, 16 CFR part 436; *provided, however,* that the provisions of this Rule shall apply to any such franchise if it is exempted from the provisions of part 436 because, either:

(a) Under § 436.8(a)(1), the total of the required payments or commitments to make a required payment, to the franchisor or an affiliate that are made

any time from before to within six months after commencing operation of the franchisee's business is less than $500, or

(b) Under § 436.8(a)(7), there is no written document describing any material term or aspect of the relationship or arrangement.

§ 437.9 Outstanding orders; preemption.

(a) A business opportunity required by prior FTC or court order to follow the Franchise Rule, 16 CFR part 436, may petition the Commission to amend the order or to stipulate to an amendment of the court order so that the business opportunity may follow the provisions of this part.

(b) The FTC does not intend to preempt the business opportunity sales practices laws of any state or local government, except to the extent of any conflict with this part. A law is not in conflict with this Rule if it affords prospective purchasers equal or greater protection, such as registration of disclosure documents or more extensive disclosures. All such disclosures, however, must be made in a separate state disclosure document.

§ 437.10 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

BILLING CODE 6750–01–P

APPENDIX A to PART 437

DISCLOSURE OF IMPORTANT INFORMATION ABOUT BUSINESS OPPORTUNITY

Required by the Federal Trade Commission, Rule 16 C.F.R. Part 437

Name of Seller: Address:

Phone: Salesperson: Date:

[Name of Seller] has completed this form, which provides important information about the business opportunity it is offering you. The Federal Trade Commission, an agency of the federal government, requires that [Name of Seller] complete this form and give it to you. However, the Federal Trade Commission has not seen this completed form or checked that the information is true. **Make sure that this information is the same as what the salesperson told you about this opportunity.**

LEGAL ACTIONS: Has [Name of Seller] or any of its key personnel been the subject of a civil or criminal action involving misrepresentation, fraud, securities law violation, or unfair or deceptive practices, including violations of any FTC Rule, within the past 10 years?

☐ **YES** → *If the answer is yes,* [Name of Seller] *must attach a list of all such legal actions to this form.*

☐ **NO**

CANCELLATION OR REFUND POLICY: Does [Name of Seller] offer a cancellation or refund policy?

☐ **YES** → *If the answer is yes,* [Name of Seller] *must attach a statement describing this policy to this form.*

☐ **NO**

EARNINGS: Has [Name of Seller] or its salesperson discussed how much money purchasers of this business opportunity can earn or have earned? In other words, have they stated or implied that purchasers can earn a specific level of sales, income, or profit?

☐ **YES** → *If the answer is yes,* [Name of Seller] *must attach an Earnings Claims Statement to this form. Read this statement carefully. You may wish to show this information to an advisor or accountant.*

☐ **NO**

REFERENCES: In the section below, [Name of Seller] must provide you with contact information for at least 10 people who have purchased a business opportunity from them. If fewer than 10 are listed, this is the total list of all purchasers. **You may wish to contact the people below to compare their experiences with what** [Name of Seller] **told you about the business opportunity**.

Note: If you purchase a business opportunity from [Name of Seller], your contact information can be disclosed in the future to other potential buyers.

	Name	State	Telephone Number		Name	State	Telephone Number
1.				6.			
2.				7.			
3.				8.			
4.				9.			
5.				10			

Signature: _____ Date: _____

By signing above, you are acknowledging that you have received this form. This is not a purchase contract. To give you enough time to research this opportunity, the Federal Trade Commission requires that after you receive this form, [Name of Seller] must wait at least seven calendar days before asking you to sign a purchase contract or make any payments.

For more information about business opportunities in general: Visit the FTC's website at www.ftc.gov/bizopps or call 1-877-FTC-HELP (877-382-4357). You can also contact your state's Attorney General.

APPENDIX B to PART 437

DIVULGACIÓN DE INFORMACIÓN IMPORTANTE SOBRE OPORTUNIDAD DE NEGOCIO

Formulario requerido por la Comisión Federal de Comercio (FTC)
Regla 16 de la Parte 437 del Código de Regulaciones Federales

Nombre del Vendedor: Domicilio:
Teléfono: Representante de Ventas: Fecha:

[Nombre del Vendedor] completó el presente formulario y en el mismo le suministra información importante sobre la oportunidad de negocio que le está ofreciendo. La Comisión Federal de Comercio (*Federal Trade Commission*, FTC), una agencia del gobierno federal, le requiere a la compañía [Nombre del Vendedor] que complete el presente formulario y que se lo entregue a usted. Pero la FTC no ha visto este formulario completado por la compañía ni ha verificado que la información indicada sea veraz. **Asegúrese de que la información contenida en el presente formulario coincida con lo que le dijo el representante de ventas respecto de esta oportunidad.**

ACCIONES LEGALES: ¿La compañía [Nombre del Vendedor] o alguno de los principales miembros de su personal ha sido sujeto de una acción civil o penal, que involucre falsedad, fraude, infracción de las leyes de títulos y valores, o prácticas desleales o engañosas, incluyendo infracciones de las Reglas o Normas de la FTC, dentro de los 10 últimos años?

☐ **SI** → *Si la respuesta es afirmativa,* [Nombre del Vendedor] *debe adjuntar al formulario una lista completa de dichas acciones legales.*

☐ **NO**

POLÍTICA DE CANCELACIÓN O REINTEGRO: ¿Ofrece [Nombre del Vendedor] una política de cancelación o reintegro?

☐ **SÍ** → *Si la respuesta es afirmativa,* [Nombre del Vendedor] *debe adjuntar al formulario una declaración con la descripción de dicha política.*

☐ **NO**

INGRESOS: ¿La compañía [Nombre del Vendedor] o alguno de sus representantes de ventas ha manifestado la cantidad de dinero que pueden ganar o que han ganado los compradores de esta oportunidad de negocio? ¿Dicho en otras palabras, han expresado de manera explícita o implícita que los compradores pueden alcanzar un nivel específico de ventas, o ganar un nivel específico de ingresos?

☐ **SÍ** → *Si la respuesta es afirmativa,* [Nombre del Vendedor] *debe adjuntar a este formulario una Declaración de los Ingresos Proclamados. Lea esta declaración atentamente. Puede que desee analizar esta información con un asesor o contador.*

☐ **NO**

REFERENCIAS: En esta sección del formulario, [Nombre del Vendedor] debe listar la información de contacto de por lo menos 10 personas que le hayan comprado una oportunidad de negocio. Si le suministran los datos de menos de 10 personas, es porque ésa es la lista completa de todos los compradores. **Puede que desee comunicarse con las personas listadas a continuación para comparar sus respectivas experiencias con lo que le dijo** [Nombre del Vendedor] **sobre la oportunidad de negocio que le está ofreciendo.**

Nota: Si usted compra una oportunidad de negocio de [Nombre del Vendedor], podrá divulgarse su información de contacto a otros posibles compradores.

	Nombre	Estado	Número de Teléfono		Nombre	Estado	Número de Teléfono
1.				6.			
2.				7.			
3.				8.			
4.				9.			
5.				10.			

Firma: _____ Fecha: _____

Por medio de su firma, usted acusa recibo del presente formulario. Esto no es un contrato de compra. La Comisión Federal de Comercio (FTC) establece que con el fin de concederle el tiempo necesario para que usted investigue esta oportunidad, [Nombre del Vendedor] debe esperar un mínimo de siete días naturales o corridos a partir de la fecha en que le entregue este formulario antes de pedirle que firme un contrato de compra o que efectúe un pago.

Para más información sobre oportunidades de negocio en general: Visite el sitio Web de la FTC www.ftc.gov/bizopps o llame al 1-877-FTC-HELP (877-382-4357). Usted también puede establecer contacto con el Fiscal General de su estado de residencia.

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FEDERAL REGISTER

Vol. 76 Thursday,
No. 236 December 8, 2011

Part III

The President

Federal Register
Vol. 76, No. 236
Thursday, December 8, 2011

Presidential Documents

Title 3—

The President

Memorandum of July 19, 2011

Delegation of Certain Function and Authority Conferred Upon the President by Section 1535(c)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you, in coordination with the Secretary of Defense, the function and authority conferred upon the President by section 1535(c)(1) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111–383, to make the specified report to the Committees on Armed Services, Foreign Relations, and Appropriations of the Senate and the Committees on Armed Services, Foreign Affairs, and Appropriations of the House of Representatives.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, July 19, 2011

[FR Doc. 2011–31740
Filed 12–7–11; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Proclamation 8764 of December 6, 2011

National Pearl Harbor Remembrance Day, 2011

By the President of the United States of America

A Proclamation

On a serene Sunday morning 70 years ago, the skies above Pearl Harbor were darkened by the bombs of Japanese forces in a surprise attack that tested the resilience of our Armed Forces and the will of our Nation. As explosions sounded and battleships burned, brave service members fought back fiercely with everything they could find. Unbeknownst to these selfless individuals, the sacrifices endured on that infamous day would galvanize America and come to symbolize the mettle of a generation.

In the wake of the bombing of our harbor and the crippling of our Pacific Fleet, there were those who declared the United States had been reduced to a third-class power. But rather than break the spirit of our Nation, the attack brought Americans together and fortified our resolve. Patriots across our country answered the call to defend our way of life at home and abroad. They crossed oceans and stormed beaches, freeing millions from the grip of tyranny and proving that our military is the greatest force for liberty and security the world has ever known. On the home front, dedicated civilians supported the war effort by repairing wrecked battleships, working in factories, and joining civilian defense organizations to help with salvage programs and plant Victory gardens. At this time of great strife, we reminded the world there is no challenge we cannot meet; there is no challenge we cannot overcome.

On National Pearl Harbor Remembrance Day, we honor the more than 3,500 Americans killed or wounded during that deadly attack and pay tribute to the heroes whose courage ensured our Nation would recover from this vicious blow. Their tenacity helped define the Greatest Generation and their valor fortified all who served during World War II. As a Nation, we look to December 7, 1941, to draw strength from the example set by these patriots and to honor all who have sacrificed for our freedoms.

The Congress, by Public Law 103–308, as amended, has designated December 7 of each year as ''National Pearl Harbor Remembrance Day.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim December 7, 2011, as National Pearl Harbor Remembrance Day. I encourage all Americans to observe this solemn day of remembrance and to honor our military, past and present, with appropriate ceremonies and activities. I urge all Federal agencies and interested organizations, groups, and individuals to fly the flag of the United States at half-staff this December 7 in honor of those American patriots who died as a result of their service at Pearl Harbor.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

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