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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1605 and 1653

Correction of Administrative Errors; Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts

AGENCY: Federal Retirement Thrift Investment Board

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) is issuing an interim final rule to amend its regulations governing back pay awards and retirement benefits court orders. This rule clarifies that the regulations governing a participant's options for electing makeup contributions when he or she receives a back pay award or other retroactive pay adjustment apply when the back pay award or other retroactive pay adjustment is for a period during which the participant was not appointed to a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized.

This rule also clarifies that an attorney is not a permissible payee for a retirement benefits court order or legal process affecting the Thrift Savings Plan and ensures that the date used to compute earnings on a court-ordered distribution amount is the same as the date used to compute the payee's entitlement.

DATES: This interim final rule is effective December 16, 2011. Comments should be received on or before January 17, 2012.

ADDRESSES: You may submit comments using one of the following methods:

- *Mail:* Office of General Counsel, Attn: Thomas Emswiler, Federal Retirement Thrift Investment Board, 1250 H Street NW., Washington, DC 20005.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at (202) 942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Back Pay Awards and Other Retroactive Pay Adjustments

Section 1605.13 of the Agency's regulations (5 CFR 1605.13) governs a participant's options for electing makeup contributions when he or she receives a back pay award or other retroactive pay adjustment. Paragraph (a) of section 1605.13 governs situations in which a participant was separated from Government service and subsequently reinstated. This interim final rule clarifies that paragraph (a) of section 1605.13 also governs situations in which an individual was not appointed to a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized and was subsequently appointed to such position.

This rule also changes each occurrence of the term ''Government employment'' in section 1605.13 to the term ''Government service.'' This revision is non-substantive. It is intended to make the terminology in section 1605.13 consistent with the terminology in section 1690.1 of the Agency's regulations.

Retirement Benefits Court Order Payments to Attorneys

Section 1653.5 of the Agency's regulations (5 CFR 1653.5) contains the Agency's procedures for making retirement benefits court order payments. Paragraph (g) of section 1653.5 provides that the TSP will honor an order that awards multiple payees. It further provides that if the order does not specify an order of precedence for the payments, the TSP will pay a current or former spouse first, a dependent second, and an attorney third.

However, in 2004 the Agency amended Part 1653 to remove language that permitted an attorney to receive a payment pursuant to a retirement benefits court order. *See* 69 FR 18294 (April 7, 2004). The Agency determined that ''the security of a participant's immediate family is better preserved by conforming the TSP to the private sector practice of limiting court order payees to the participant's immediate family members, not by making tax-deferred retirement savings available for the payment of legal fees.'' *Id.* Accordingly, this interim final rule removes the residual reference to attorneys in section 1653.5(g). It also amends an incorrect citation in paragraph (a) of section 1653.11.

Calculating Earnings on Court-Ordered Amounts

Section 1653.4 of the Agency's regulations (5 CFR 1653.4) provides that a payee's entitlement under a retirement benefits court order will be credited with TSP investment earnings only if the court order expressly provides for earnings. Paragraphs (b) and (c) of section 1653.4 provide the date on which a payee's court-ordered award amount is calculated. If the court order awards a percentage or fraction of an account as of a specific date, the payee's entitlement is calculated based on the account balance as of that date. 5 CFR 1653.4(b). If the court order awards a percentage or fraction of an account but does not contain a specific date as of which to apply that percentage or fraction, the payee's entitlement is calculated based on the account balance as of the effective date of the court order. 5 CFR 1653.4(c).

Subparagraph (f)(3) of section 1653.4 describes how the TSP credits a payee's entitlement with investment earnings

when a court order awards earnings. If the court order does not specify an annual percentage rate or a *per diem* dollar amount to be added to the payee's entitlement, the TSP must calculate the earnings amount to be awarded by: (i) Determining the payee's award amount (e.g., the percentage or fraction of the participant's account); (ii) Determining, based on the participant's investment allocation as of the effective date of the court order, the number and composition of shares that the court-ordered award amount would have purchased as of the effective date; and (iii) Multiplying the price per share as of the payment date by that number and composition of shares. 5 CFR 1653.4(f)(3).

Determining the number and composition of shares as of the effective date of the court order, and not a later date, protects the payee from investment decisions made by the participant after the effective date of the court order. However, it fails to protect the payee from investment decisions made by the participant when the date used to calculate the payee's entitlement under section 1653.4(b) is earlier than the effective date of the court order. When the date used to calculate the payee's entitlement under section 1653.4(b) is earlier than the effective date of the court order, the current regulatory language appears to permit the TSP record keeper to either (1) reject the court order because it purports to require the TSP to calculate earnings in a manner that is inconsistent with its regulations, or (2) calculate the payee's entitlement amount using the date specified in the court order and calculate the amount of any earnings on that entitlement using the later effective date of the court order. The latter approach would result in a period of time between the date specified in the court order and the effective date of the court order during which the payee's entitlement may be affected by investment decisions made by the participant. This interim final rule remedies this shortcoming by replacing the references in 5 CFR 1653.4(f)(3)(ii) to ''the effective date of the court order'' with ''the date used to calculate the entitlement.'' It also amends section 1653.2(b) to provide that a retirement benefits court order is not qualifying if it requires the TSP to calculate the payee's entitlement or earnings in a manner that is inconsistent with section 1653.4.

This interim final rule ensures that the date used to compute earnings on a court-ordered distribution amount will always be the same as the date used to compute the payee's entitlement. It also makes it clear that a court order that provides otherwise will be rejected as a non-qualifying court order.

Interim Final Rule and Request for Comments

Under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. The Agency has determined that the revisions to sections 1605.13, regarding back pay awards, and 1653.4, regarding payments to attorneys, do not require prior notice and public comment because they merely clarify currently existing rules.

The Agency receives many retirement benefits court orders that award earnings to the payee as of a specified date which is earlier than the effective date of the court order. Under the Agency's regulations as they are currently written, it is unclear to the public whether the Agency will reject those court orders because they are non-qualifying, process them pursuant to the language of the court order, or process them by calculating earnings as of the effective date of the court order. Immediate guidance on this matter is necessary to ensure that individuals who draft retirement benefits court orders can do so without uncertainty regarding the consequences of the court order's language.

The Agency encourages public comments on this interim final rule. The Agency will consider post-effective public comments, will modify the rule in light of those comments, and will then adopt a final rule.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency. It will also affect individuals who receive a back pay award or other retroactive pay adjustment in connection with a Federal agency's failure to appoint that individual to a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized. It will also affect spouses, former spouses, children, or dependents of TSP participants who become entitled to a portion of the participant's account pursuant to a qualifying retirement benefits court order.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register.** This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1653

Alimony, Child support, Claims, Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 1. Revise the authority citation for part 1605 to read as follows:

Authority: 5 U.S.C. 8351, 8432a, and 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104–106, 110 Stat. 186 and sec. 7202(m)(2) of Public Law 101–508, 104 Stat. 1388.

■ 2. Amend § 1605.13 by revising paragraphs (a) introductory text, (a)(1) and (2), (b) introductory text, and the first sentence of paragraph (d) to read as follows:

§ 1605.13 Back pay awards and other retroactive pay adjustments.

(a) *Participant not employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was separated from Government service or was not appointed to a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized:

(1) If the participant is reinstated or retroactively appointed to a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized, immediately upon reinstatement or retroactive appointment the employing agency must give the participant the opportunity to submit a contribution election to make current contributions. The contribution election will be effective as soon as administratively feasible, but no later than the first day of the first full pay period after it is received.

(2) The employing agency must give a reinstated or retroactively appointed participant the following options for electing makeup contributions:

(i) The reinstated or retroactively appointed participant may submit a new contribution election for purposes of makeup contributions if he or she would have been eligible to make such an election but for the erroneous separation or erroneous failure to appoint; or

(ii) If a reinstated participant had a contribution election on file when he or she separated, the contribution election the participant had on file when he or she separated may be reinstated for purposes of makeup contributions.

* * * * *

(b) *Participant employed.* The following rules apply to participants who receive a back pay award or other retroactive pay adjustment for a period during which the participant was employed in a position that is covered by FERS, CSRS, or an equivalent system under which TSP participation is authorized:

* * * * *

(d) *Prior withdrawal of TSP account.* If a participant has withdrawn his or her TSP account other than by purchasing an annuity, and the separation from Government service upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, the participant will have the option to restore the amount withdrawn to his or her TSP account.* * *

* * * * *

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 3. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5) and 8474(c)(1).

■ 4. Amend § 1653.2 by adding paragraph (b)(6) to read as follows:

§ 1653.2 Qualifying retirement benefits court orders.

* * * * *

(b) * * *

(6) An order that requires the TSP to calculate the payee's entitlement or earnings in a manner that is inconsistent with § 1653.4 of this part.

■ 5. Amend § 1653.4 by revising paragraph (f)(3)(ii) to read as follows:

§ 1653.4 Calculating entitlements.

* * * * *

(f) * * *

(3) * * *

(ii) Determining, based on the participant's investment allocation as of the date used to calculate the entitlement, the number and composition of shares that the payee's award amount would have purchased as of the date used to calculate the entitlement.

* * * * *

■ 6. Amend § 1653.5 by revising paragraph (g)(2) to read as follows:

§ 1653.5 Payment.

* * * * *

(g) * * *

(2) If the order does not specify an order of precedence for the payments, the TSP will pay a current or former spouse first and a dependent second.

* * * * *

■ 7. Amend 1653.11 by revising paragraph (a) to read as follows:

§ 1653.11 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1.

* * * * *

[FR Doc. 2011–32301 Filed 12–15–11; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 235 and 245

RIN 0584–AD54

[FNS–2007–0023]

Applying for Free and Reduced Price Meals in the National School Lunch Program and School Breakfast Program and for Benefits in the Special Milk Program, and Technical Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Department of Agriculture, Food and Nutrition Service published a final rule in the **Federal Register** on October 28, 2011 (76 FR 66849), concerning changes to eligibility determinations for free and reduced price school meals to implement nondiscretionary provisions of the Child Nutrition and WIC Reauthorization Act of 2004. It also finalized the changes set forth in the interim rule published on November 13, 2007 (72 CFR 63785). This document corrects an amendment to provide additional amendatory language for text that was set out in 7 CFR 245.6(c)(3)(ii). All other information remained unchanged.

DATES: *Effective Date:* This rule is effective December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service (FNS) at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

List of Subjects 7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, the final rule published at 76 FR 66849 on October 28, 2011 is corrected as follows:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

■ 1. The authority citation for Part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

■ 2. In § 245.6, redesignate paragraph (c)(3)(ii) as (c)(3)(iii) and add a new paragraph (c)(3)(ii) to read as follows:

§ 245.6 Application, eligibility and certification of children for free and reduced price meals and free milk.

* * * * *

(c) * * *

(3) * * *

(ii) Households must attest to changes in information as specified in § 245.6(a)(9). In addition, benefits cannot be reduced by information received through other sources without the written consent of the household, except for information received through verification.

* * * * *

Dated: December 8, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–32199 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–30–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AI84

[NRC–2010–0134]

U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to certify an amendment to the U.S. Advanced Boiling Water Reactor (U.S. ABWR) standard plant design to comply with the NRC's aircraft impact assessment (AIA) regulations. This action allows applicants or licensees intending to construct and operate a U.S. ABWR to comply with the NRC's AIA regulations by referencing the amended design certification rule (DCR). The applicant for certification of the amendment to the U.S. ABWR design is STP Nuclear Operating Company (STPNOC).

DATES: *Effective Date:* The effective date of this rule is January 17, 2012. The incorporation by reference of certain material specified in this regulation is approved by the Director of the Office of the Federal Register as of January 17, 2012.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email at *pdr.resource@nrc.gov*.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this final rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0134. Address questions about NRC dockets to Carol Gallagher at (301) 492–3668, or by email at *Carol.Gallagher@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. R. Frederick Schofer, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–5682, email: *Fred.Schofer@nrc.gov;* or Stacy Joseph, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–2849, email: *Stacy.Joseph@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary and Analysis of Public Comments on the Proposed Rule
III. Discussion
  A. Technical Evaluation of the STPNOC Amendment to U.S. ABWR Design
  B. Regulatory and Policy Issues
  C. Changes to Appendix A to 10 CFR Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor
IV. Section-by-Section Analysis
  A. Introduction (Section I)
  B. Definitions (Section II)
  C. Scope and Contents (Section III)
  D. Additional Requirements and Restrictions (Section IV)
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  G. Processes for Changes and Departures (Section VIII)
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V. Agreement State Compatibility
VI. Availability of Documents
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VIII. Finding of No Significant Environmental Impact: Availability
IX. Paperwork Reduction Act Statement
X. Regulatory Analysis
XI. Regulatory Flexibility Act Certification
XII. Backfitting
XIII. Congressional Review Act

I. Background

Title 10 of the *Code of Federal Regulations* (10 CFR), part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' Subpart B, presents the process for obtaining standard design certifications. Section 52.63, ''Finality of standard design certifications,'' provides criteria for determining when the Commission may amend the certification information for a previously certified standard design in response to a request for amendment from any person. On June 30, 2009, the STPNOC tendered its application with the NRC for amendment of the U.S. ABWR standard plant design certification to comply with the requirements of 10 CFR 50.150, ''Aircraft impact assessment'' (ADAMS Accession No. ML092040048). The STPNOC submitted this application in accordance with 10 CFR 52.63. The STPNOC proposed several changes to the certified U.S. ABWR design to comply with 10 CFR 50.150, including the addition of an alternate feedwater injection system, the addition and upgrading of fire barriers and doors, and the strengthening of certain structural barriers. The NRC formally accepted the application as a docketed application for amendment to the U.S. ABWR design certification (Docket No. 52–001) on December 1, 2009 (74 FR 62829).

On June 12, 2009 (74 FR 28112), the NRC amended its regulations to require applicants for new nuclear power reactor designs to perform a design-specific assessment of the effects of the impact of a large commercial aircraft (the AIA rule). These new provisions in 10 CFR 50.150 require applicants to use realistic analyses to identify and incorporate design features and functional capabilities to ensure, with reduced use of operator actions, that (1) the reactor core remains cooled or the containment remains intact, and (2) spent fuel cooling or spent fuel pool integrity is maintained. When it issued the AIA rule, the Commission stated that the requirements in existence at that time, in conjunction with the March 2009 revisions to 10 CFR 50.54 to address loss of large areas of the plant due to explosions or fires, would continue to provide adequate protection of the public health and safety and the common defense and security. Nevertheless, the Commission decided to also require applicants for new nuclear power reactors to incorporate into their design additional features to show that the facility can withstand the effects of an aircraft impact. The Commission stated that the AIA rule to address the capability of new nuclear

power reactors relative to an aircraft impact is based both on enhanced public health and safety and enhanced common defense and security, but is not necessary for adequate protection. Rather, the AIA rule's goal is to enhance the facility's inherent robustness at the design stage.

The AIA rule requirements apply to various categories of applicants, including applicants for combined licenses (COLs) that reference a standard design certification issued before the effective date of the AIA rule, which has not been amended to comply with the rule. These COL applicants have two methods by which they can comply with 10 CFR 50.150. They can request an amendment to the certified design or they can address the requirements of 10 CFR 50.150 directly in their COL application. The STPNOC submitted an application for a COL on September 20, 2007. The STPNOC has requested this amendment to the U.S. ABWR-certified design to address the requirements of the AIA rule.

II. Summary and Analysis of Public Comments on the Proposed Rule

The NRC published the U.S. ABWR Aircraft Impact Design Certification Amendment proposed rule in the **Federal Register** on January 20, 2011 (76 FR 3540). The public comment period for the proposed rule closed on April 5, 2011. The NRC received three comment letters on the proposed rule. Of those comments, one commenter, Nuclear Innovation North America, LLC (NINA), was in favor of the proposed amendment to the U.S. ABWR; one commenter, GE Hitachi Nuclear Energy (GEH), was against the proposed amendment to the U.S. ABWR, and one commenter, Thomas Shadis, addressed issues unrelated to the proposed amendment to the U.S. ABWR. The comments and responses are summarized in the following paragraphs.

NRC Use of ''Branches'' and ''Options''

Comment: The NRC should suspend the STPNOC amendment and review the proposed changes to the ABWR design certification as departures in the STP Units 3 and 4 combined license application, as is allowed by the AIA Rule, 10 CFR 50.150(a)(3)(v)(B) and the associated provision in 10 CFR 52.79(a)(47). The proposed rulemaking uses a regulatory approach solely for the purpose of supporting the combined license application for the STP Units 3 and 4. (GEH–1)

NRC Response: The NRC disagrees with the commenter's understanding that the ''options'' approach is being used in this proposed amendment of the U.S. ABWR DCR solely to support the COL application for the South Texas Project (STP) Units 3 and 4. On the contrary, as stated in the statements of consideration (SOC) for the proposed U.S. ABWR amendment, the NRC is proposing to use the ''options'' approach after a comprehensive review of a set of considerations. To reiterate the NRC's bases (as stated in the SOC for the proposed U.S. ABWR amendment), there is no statute or NRC regulation prohibiting the use of the ''branches'' approach, nor are there any statutory or NRC regulatory provisions which prohibit the use of the ''options'' approach. All of the NRC's safety and regulatory objectives are met under the ''options'' approach. The STPNOC is providing sufficient information to determine its technical qualifications to supply the STPNOC-sponsored amendments addressing the AIA rule to third party users (*i.e.,* users other than the STPNOC itself).

In addition, the NRC believes that there are no insurmountable issues in requiring the user (in most cases, the COL applicant referencing the U.S. ABWR and the STPNOC option) to prepare a single Design Control Document (DCD) integrating information from both the DCD developed by GE Nuclear Energy (GE) and the DCD developed by the STPNOC. The ''options'' approach avoids or addresses all of the STPNOC's concerns with the use of the ''branches'' alternative for its request to amend the U.S. ABWR. There would be a limited period in which the STPNOC option could be referenced by a future COL applicant, that is, until the renewal of the U.S. ABWR design certification. Finally, the ''options'' approach fully protects the legitimate proprietary and commercial interests of GE in the original U.S. ABWR design certification. Upon consideration of the information presented by the STPNOC in light of the NRC's technical and regulatory concerns, the NRC developed the ''options'' approach to address the STPNOC amendment. As was stated in the SOC, if the NRC receives other limited-scope design certification amendments (similar in scope to the STPNOC amendment request), it will consider whether the ''branches'' approach or the ''options'' approach offers the most effective and efficient regulatory option at that time based on the scope of the amendment and the specific circumstances associated with the particular application.

Inasmuch as the basis for the commenter's proposal is incorrect, the NRC declines to adopt the commenter's proposed course of action. No change was made to the final rule as a result of this comment.

Comment: The NRC should suspend the STPNOC amendment and review the proposed changes to the ABWR design certification as departures in the STP Units 3 and 4 combined license application, as is allowed by the AIA Rule, 10 CFR 50.150(a)(3)(v)(B) and the associated provision in 10 CFR 52.79(a)(47). The ''options'' and ''branches'' approaches introduce complexity and do not encourage standardization within a single design. (GEH–2)

NRC Response: The NRC agrees with the commenter that the adoption of both the ''option'' and ''branches'' approaches to amendment (and renewal) of a DCR will introduce complexity to the regulatory scheme. However, the commenter did not explain why the NRC's proposal to use the ''options'' approach was not the best alternative to address the circumstances raised by the STPNOC amendment, as discussed in the SOC of the proposed rule.

Moreover, the solution proposed by the commenter, viz., to process the amendment as a plant-specific departure for the STPNOC plants, ignores the following considerations. First, the ''departure'' concept itself may be regarded as movement away from standardization. The GEH did not present any argument why ''departures'' are preferable to ''options'' when considering the effect on standardization. Second, a departure, by its nature, represents a plant-specific dispensation from compliance with the standardized provisions of a design certification. A departure from the same design provision of a design certification could be different among different plants. By contrast, the option represents a single alternative to a provision of a design certification that would be used by every applicant/licensee referencing that option and is more in keeping with the standardization goal envisioned by the NRC under the design certification rulemaking process. Thus, the use of the ''option'' approach embodies the standardization concept more closely than the commenter's proposed use of departures. Third, the STPNOC wishes to be a supplier of the U.S. ABWR-certified design as is permitted by the current regulation. Processing the STPNOC amendment request as a ''departure'' would be inconsistent with the applicant's goals, and there appeared to be no significant issues or considerations which, considered individually or together, precluded the

use of the ''options'' approach as an acceptable approach for accommodating the STPNOC objectives. Finally, the ''options'' approach is limited in its ''lifetime.'' As discussed earlier, the STPNOC design changes, which are the subject of this U.S. ABWR amendment, are embodied in the proposed U.S. ABWR design certification renewal currently being pursued by the Toshiba Corporation. Upon renewal of the U.S. ABWR with the design changes requested by Toshiba Corporation in its renewal application, the STPNOC option cannot be referenced by any other applicant. These considerations were addressed in the SOC for the proposed U.S. ABWR rule, and the comment did not contain a critique of these considerations.

For these reasons, the NRC declines to adopt the commenter's proposed course of action. No change was made to the final rule as the result of this comment.

Comment: The ''options'' approach, as well as the ''branches'' approach, undermines the protection afforded by the Commission in its decision to use rulemaking to certify standard designs. (GEH–3)

NRC Response: The NRC disagrees with the comment. The commenter provided no basis for the assertion that the ''branches'' approach undermines the protection afforded by the design certification rulemaking concept. The comment included no analysis of the discussion in the SOC for the proposed U.S. ABWR amendment, which explains the NRC's bases for its view that protection of the original design certification applicant's legitimate commercial interests is afforded by the ''branches'' approach. No change was made to the final rule as the result of this comment.

Comment: If the NRC proceeds with the ABWR amendment, then the NRC should remove the SOC discussion regarding renewal of a design certification rule. The STPNOC is not an applicant for renewal, and the NRC need not make a decision at this time regarding how it will later treat multiple renewal applications for a single design certification. (GEH–4)

NRC Response: The NRC disagrees with the comment. The NRC believes that the most effective regulatory approach for addressing the multiple supplier issue is to consider all relevant technical, regulatory, and legal issues associated with multiple suppliers of a design the first time that the multiple supplier issue must actually be resolved by the NRC. The NRC regards such early consideration, with the view of establishing (to the extent that it is practical) a consistent regulatory approach on multiple suppliers at both amendment and renewal, to be desirable. Stakeholders will have the benefit of the NRC's position and may conduct their business accordingly. By focusing on the multiple supplier issue at one time, the NRC believes that its determination of the issue will integrate all known issues and considerations, and be accomplished in the most resource-efficient manner. Public understanding of the NRC's regulatory consideration and determination ensures public confidence in the NRC's approach. In short, NRC resolution in a comprehensive fashion of the multiple supplier issue is intended to provide regulatory stability, predictability, transparency, and public confidence.

The NRC concedes that the NRC is not *legally* required to make a decision, in the context of a DCR amendment raising the issue of multiple suppliers, to also address multiple suppliers at design certification renewal. However, the commenter did not assert that the NRC is legally *prohibited* from addressing the multiple supplier issues in a comprehensive fashion as part of the STPNOC amendment, and the NRC is not aware of any such prohibition.

For these reasons, the NRC declines to adopt the course of action proposed in the comment. No change was made to either the SOCs for the final STPNOC amendment or the final rule language as the result of this comment.

Comment: The NRC should remove all discussion regarding commercial value of a design certification, as the NRC has no direct knowledge regarding how potential customers would value a design certification. (GEH–5)

NRC Response: The NRC notes that the commenter did not cite specific portions of the SOC for the proposed rule which are objectionable nor did it cite specific portions of the SOC that should be removed. The NRC does not believe that the SOC actually attempts to characterize or place a ''commercial value'' of a design certification. The NRC also agrees with the commenter's implicit assertion that the character and magnitude of any ''commercial value'' to any particular design certification has no relevance to the NRC's resolution of the multiple suppliers' issue.

Thus, the NRC interprets this comment as requesting that the NRC remove references in the SOC with respect to the Commission's determination that the ''branches'' approach protects, *inter alia,* the ''legitimate *commercial interests* [emphasis added]'' of the original design certification applicant. This discussion is set forth in the proposed rule's SOC. The NRC disagrees with the comment as understood. As discussed in the SOC, industry stakeholders in the original 10 CFR part 52 rulemaking opposed the use of rulemaking to approve (certify) designs because they felt that their legitimate commercial interests (including, but not limited to, protection of trade secrets and other proprietary information) would not be protected in rulemaking. Industry stakeholders repeated and amplified these concerns in the development of the U.S. ABWR and the System 80+, the first two DCRs. The NRC's response to industry stakeholder concerns were reflected in the regulatory approach adopted for the U.S. ABWR and System 80+, as discussed in the SOC for this amendment of the U.S. ABWR DCR. Hence, the NRC believes that it must address the protection of the (legitimate) commercial interests of the original design certification applicant where an entity intending to supply the certified design that is not the original applicant seeks either the amendment or the renewal of a DCR. Such NRC discussion simply recognizes the potential existence of the commercial interests of the original design certification applicant, as a reference for assuring that the proposed rulemaking does not significantly diminish or eliminate entirely those commercial interests *without determining their actual existence or magnitude.*

For these reasons, the NRC declines to adopt the commenter's suggestion. No change was made to either the SOCs for the final STPNOC amendment or the final rule language as the result of this comment.

Comment: Regardless of NRC regulatory provisions regarding use of an alternative vendor [a ''supplier'' under the NRC's proposed terminology] in a combined license proceeding, the NRC should treat an alternate entity's application as a new design certification under the provisions of 10 CFR 52.59(c). (GEH–6)

NRC Response: The NRC disagrees with the comment. The NRC did not intend, when it adopted 10 CFR 52.59(c) as part of the 2007 revision of 10 CFR part 52, for this provision to address the circumstance where multiple entities wish to supply the same certified design. Section 52.59 was intended to address a different issue: At what point would the changes requested by the design certification renewal applicant be ''so extensive that the NRC concludes that an essentially new standard design is being proposed,'' 72 FR 49352, 49444 (second column), August 28, 2007. Thus, the NRC does not regard § 52.59(c) as constituting the NRC's established approach for dealing with

multiple suppliers of the same certified design.

The NRC acknowledges that it may be possible to interpret § 52.59(c) in the manner suggested by the commenter. However, the commenter's proposed approach was considered and rejected by the NRC during the development of the proposed STPNOC design certification amendment rulemaking. The reasons for the NRC's rejection of a separate rulemaking were set forth in the SOC for the proposed rule. No comments on the proposed rule have caused the NRC to reconsider its favored approach to address multiple suppliers, as described in the proposed rule. The NRC notes that such re-interpretation may require additional notice and comment. The NRC declines to seek additional public comment on the commenter's proposed rulemaking approach because that approach was considered and rejected by the NRC in the development of the proposed U.S. ABWR rule amendment and the comment presented no new information that would cause the NRC to seek additional public comment.

For the reasons set forth above, the NRC declines to adopt the commenter's proposed course of action. No change was made to either the SOCs for the final STPNOC amendment or the final rule language as the result of this comment.

Comment: The notice of proposed rulemaking discusses policy issues that arise from having multiple suppliers for a single certified design, concludes that the ''branches'' alternative should be adopted, provides the rationale for concluding that this alternative meets all of the NRC's regulatory objectives, and explains the factors which support approval of the options approach for the STPNOC amendment. For the reasons set forth in the notice, the options approach is the only feasible rulemaking approach that would support application of the proposed amendment to STP 3&4 without jeopardizing the schedule for COL issuance, and is consistent with the NRC regulations and meets all of the NRC's safety and regulatory objectives. Consequently, application of the options approach to the proposed STPNOC amendment is fully justified. (NINA–6)

NRC Response: The NRC agrees with the comment. No change was made to the SOC or the language of the final rule as the result of this comment.

Comments in Support of the Proposed Amendment to the U.S. ABWR

Comment: Amendment of the certified ABWR design would have the advantage of constituting final NRC approval of the AIA matters, which then can be referenced by other COL applications. This would be a significant benefit to NINA if it decides to develop other ABWRs, in addition to STP 3&4. (NINA–1)

NRC Response: The NRC agrees with this comment. Other COL applications referencing the amended U.S. ABWR and the STPNOC option would benefit from issue resolution with respect to AIA rule (10 CFR 50.150) compliance, in accordance with paragraph VI of the U.S. ABWR DCR, 10 CFR part 52, Appendix A, and 10 CFR 52.83. No change was made to the SOC or the language of the final rule as the result of this comment.

Comment: The STP 3&4 COLA references the application for amendment of the certified ABWR design. Without NRC adoption of the proposed rule, the STP 3 & 4 COLA would not meet the requirements of the AIA rule. Consequently, adoption of the proposed rule is of vital importance to the success of STP 3&4. (NINA–2)

NRC Response: The NRC agrees with the comment that without NRC adoption of the proposed rule, the STP Units 3 and 4 COL applications, as currently submitted, do not contain any direct information on compliance with the AIA rule. However, the STP Units 3 and 4 COL applicant may also comply with the AIA rule by submitting its plant-specific information for complying with the AIA rule, as is required under 10 CFR 50.150(a)(3)(v). The NRC expresses no opinion on whether the adoption of the STPNOC option is of ''vital importance to the success of STP 3&4.'' No change was made to the SOC or the language of the final rule as the result of this comment.

Comment: Adoption of the proposed rule also would be consistent with the standardization objective that underlies 10 CFR part 52. Its adoption obviously would increase standardization if other COL applicants that reference the certified ABWR design also reference the STPNOC amendment. (NINA–3)

NRC Response: The NRC agrees with the comment. Standardization with respect to design features and functional capabilities for complying with the AIA rule would be increased if COL applications referencing the U.S. ABWR also reference the STPNOC option. No change was made to the SOC or the language of the final rule as the result of this comment.

Comment: COL applicants referencing the ABWR design certification rule would have the option of addressing the AIA rule in their COL applications, and would not be required to reference the STPNOC amendment. Providing this option does not further standardization, but it does provide assurance that adoption of the amendment will not disadvantage any supplier of the certified design. In fact, adoption of the proposed rule as an option will be a benefit to every potential supplier of the certified ABWR design because it will demonstrate to entities that may be considering selection of the certified ABWR design for a new facility that it is feasible to modify that design to meet the requirements of the AIA rule. (NINA–4)

NRC Response: The NRC agrees with the commenter's assertion that COL applicants referencing the U.S. ABWR may elect to address the requirements of the AIA rule in their COL application, as opposed to referencing the STPNOC option. This is inherent in the existing U.S. ABWR design certification, which currently does not address the AIA rule's requirements.

The NRC also agrees with the commenter's observation that the proposed amendment does not disadvantage any supplier of the U.S. ABWR-certified design (including the original design certification applicant).

However, the NRC disagrees with the comment to the extent that affording the option does not further standardization. It is not unreasonable for the NRC to conclude that COL applicants may favor a design certification that the NRC has determined meets the requirements of the AIA rule. Thus, by approving the option meeting the AIA rule, the NRC believes that, as a practical matter, standardization will be enhanced. The NRC takes no position on the assertion that the adoption of the proposed rule will be a benefit to other potential suppliers, because it demonstrates to entities that it is feasible to modify the design to meet the AIA rule. Thus, the NRC does not rely upon such an assertion as the basis for adopting the STPNOC amendment to the U.S. ABWR DCR. No change was made to the SOC or the language of the final rule as the result of this comment.

Comment: Adoption of the proposed rule also would be consistent with the NRC's desire to provide the vendor whose design is certified with some assurance against ''arbitrary amendment'' of the certification rule. See 54 FR at 15375 (Apr. 18, 1989). In adopting the AIA rule, the NRC decided to require that certified designs be amended to comply with the AIA rule, either through rulemaking or departure from the certified design in any COL application that references that design. Thus, the proposed amendment would not be arbitrary, and since it would only provide an optional design alternative,

it would not impose a mandatory design change (amendment) to the overall certified design. (NINA–5)

NRC Response: The NRC agrees with the comment. This rationale is included in the SOC for the final rule.

Comments on Specific Proposed Rule Provisions

Comment: The proposed revision to Paragraph I. ''Introduction,'' and in the 10th line of proposed revision to Paragraph III.A.2, should be revised by changing ''the South Texas Project Nuclear Operating Company'' to ''STP Nuclear Operating Company.'' The STP Nuclear Operating Company is the full official name of STPNOC, the applicant for the amendment. (NINA–7)

NRC Response: The NRC agrees with the comment. This change is included in the SOC and rule language for the final rule.

Comment: Proposed new paragraph III.E should be deleted. This proposed new provision is unnecessary, and is not clear. It is unnecessary because, even without any such new provision, existing paragraph III.B will continue to state that the applicant is required to comply with the GE DCD, except to the limited extent otherwise provided in Appendix A to part 52. As a result, the only changes to the GE DCD that will be authorized by the proposed amendment are the changes described in the STPNOC DCD.

The notice indicates that the purpose of proposed new III.E is to address the situation in which an applicant discovers unintended consequences or unaddressed issues resulting from STPNOC's amendment, and that in such a situation the applicant would be expected to notify the NRC if the situation is not reportable under 10 CFR 21 or sections 52.6, 50.72 or 50.73. 76 FR at 3551, 3rd column. The notice does not explain, however, why there would be a regulatory need for the NRC to receive notice of information that does not meet any of these broad reporting requirements (*e.g.,* 10 CFR 52.6 requires notice to the NRC of information that has ''a significant implication for public health and safety or common defense and security'').

Proposed new paragraph III.E is not clear because it uses the undefined term ''a design matter which implements the STPNOC certified design option but is not specifically described in the STPNOC DCD.'' In particular, NINA is not aware of any definition of ''design matter'' or of any common understanding of this term. In addition, it is not clear how the proposed paragraph III.E could be interpreted as imposing the reporting requirement that the rulemaking notice describes as its purpose, when it does not even mention notice to the NRC. The purpose of the STPNOC DCD is to identify the necessary changes to the GE DCD to meet 10 CFR 50.150(a). Each such change represents a conflict between the GE DCD and the STPNOC DCD. Uncertainties about the meaning of ''design matter'' and the level of detail required for an item to be ''described specifically'' have the potential to lead to compliance issues that are not reasonably related to safety. (NINA–8)

NRC Response: The NRC agrees with the comment that the proposed paragraph III.E is unnecessary. The NRC's intent in proposing the reporting requirement was to ensure that the NRC is made aware of conflicts between the GE DCD and the STPNOC DCD, which may be identified by a referencing COL applicant or holder. Upon consideration of the comment, the NRC agrees that any material conflict identified by the COL applicant or holder would ultimately be brought to the attention of the NRC by virtue of the legally-binding need to comply with both DCDs. If there is a conflict, the referencing COL applicant or holder would seek resolution of the conflict, through: i) either taking or submitting a request for a departure (including a request for exemption as necessary); or ii) submitting a 10 CFR part 2, Subpart H rulemaking petition to amend the DCR in order to resolve the apparent conflict. In addition, reporting may also be required under 10 CFR 50.55(e), 10 CFR 50.72, 10 CFR 50.73, or 10 CFR part 21.

In addition, the NRC agrees with the commenter's discussion of the reporting obligation of the design certification applicants (both the original applicant, as well as the applicant for an amendment which leads to establishment of an option or ''branch''). Thus, proposed paragraph III.E does not appear to be needed to ensure necessary reporting of such conflicts identified by either the original applicant or the applicant for an amendment, which leads to establishment of an option or ''branch.'' For these reasons, the proposed paragraph III.E is not included in the final rule.

Comment: Proposed new Paragraph IV.A.4 should be deleted. The proposed new paragraph would require an application to include information that already is required by 10 CFR § 52.73(a), and does not appear to be necessary for NRC approval of STPNOC's proposed amendment. (NINA–9)

NRC Response: The NRC disagrees with the comment. Section 52.73(a) does not clearly apply to the circumstance of a supplier of an ''option'' to a design certification. In addition, the ''generic'' provision of § 52.73(a) does not make clear, in the context of this specific design certification option, that both the STPNOC and Toshiba America Nuclear Energy (TANE) Corporation together are technically qualified to supply the STPNOC option addressing the AIA rule. Hence, the NRC believes that paragraph IV.A.4 is necessary for clarity and to ensure that there is no uncertainty with respect to the scope of the NRC's technical qualification finding with respect to the STPNOC option. For these reasons, the NRC declines to adopt the comment, and no change was made to the final rule.

Comment: Paragraph VI.A. should be revised to read (proposed language in bold):

> The Commission has determined that the structures, systems, components, and design features of the U.S. ABWR design as contained **in the GE DCD** comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V.**A.1** of this appendix; and therefore, provide adequate protection to the health and safety of the public. **The Commission has determined that the U.S. ABWR design as contained in the STPNOC DCD comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V.A.2 of this appendix; and therefore, provide adequate protection to the health and safety of the public and achieve the Commission's objectives of enhanced public health and safety and enhanced common defense and security through improvement of the facility's inherent robustness at the design stage.** A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design **or the STPNOC design option.**

Existing paragraph VI.A contains a reference to Section V that is not consistent with the proposed revision of Section V, which would renumber paragraph V.A to V.A.1, and add a new paragraph V.A.2. New paragraph V.A.2 refers to the NRC regulations as they will exist on the date of adoption of the proposed amendment. Those regulations will apply to the STPNOC DCD, but not to the GE DCD. The regulations that apply to the GE DCD are those that existed on May 2, 1997. Additionally, since the findings stated in paragraph VI.A form the basis for the resolution of issues in paragraph VI.B, paragraph VI.A should include findings sufficient to form the basis for the proposed provision in paragraph VI.B related to the STPNOC design option. (NINA–10)

NRC Response: The NRC agrees with the commenter's observation that paragraph VI.A does not accurately reflect the scope of the issue resolution accorded the STPNOC option and also does not properly reference the ''applicable regulations'' under paragraph V. However, the NRC does not agree with the commenter's proposed resolution of the matter. The NRC believes that a more appropriate approach is to define, in separate paragraphs, the scope of issue resolution accorded the original GE DCD, the scope of issue resolution accorded the STPNOC option, and the scope of issue resolution accorded the combination of the GE DCD and the STPNOC option. Accordingly, the final rule includes new paragraphs VI.A.1, VI.A.2, and VI.A.3, which describe the issue finality provided for nuclear safety issues for the GE DCD, for the STPNOC DCD, and for the combination of the GE DCD and the STPNOC DCD.

Comment: Paragraph VI.B.1, as proposed to be revised, should be further revised to delete ''other'' and insert a comma after ''requirements,'' so that these revised lines would read,

> nuclear safety issues, except for operational requirements, associated with the

The reason to delete ''other'' is that it has no antecedent in the revised sentence, and appears to have been inadvertently retained during drafting. The relevant portion of existing paragraph VI.B.1 is: ''nuclear safety issues, except for the generic technical specifications and other operational requirements, associated.'' There, ''the generic technical specifications'' is the antecedent of ''other.'' Since there is no mention of the generic technical specifications in the proposed provision concerning the AIA amendment, there is nothing for the operational requirements to be ''other than.''

The comma should be inserted after ''requirements,'' to indicate the end of the description of the exception. Without the comma, it would appear that the exception encompasses the information in the AIA FSER, Tier 1 or Tier 2. Inserting the comma will make it clearer that the matters that the Commission considers to be resolved include all nuclear safety issues, except for operational requirements, addressed in the AIA FSER and the other records mentioned in the revised paragraph. (NINA–11)

NRC Response: The NRC agrees with the change proposed by the commenter, for the reasons stated in the comment. The final rule has been revised, consistent with the comment.

Comment: Proposed new paragraph VIII.B.5.d should be revised to read as follows:

> An applicant or licensee may depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR [final safety analysis report] for the standard design certification only if the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1).

These changes would delete the references to the requirements to consider the effect of the departures and to document how the modified design would continue to meet the relevant regulation. Eliminating these references would make Section VIII.B.5.d more consistent with Sections VIII.B.5.b and c, which specify the standards for determining whether a departure requires a license amendment, but do not explicitly impose a requirement for an evaluation or for documentation of its results. Since existing Section X.A.3 already requires an applicant or licensee to prepare and maintain written evaluations which provide the bases for determinations required by Section VIII, there is no need to duplicate these requirements in new Section VIII.B.5.d. Eliminating this duplication will prevent inconsistent interpretations of the requirements for evaluation and documentation associated with new Section VIII.B.5.d. (NINA–12)

NRC Response: The NRC disagrees with the comment. Making the change suggested by the commenter would conflict with the Commission's position on how departures from AIA design features and functional capabilities should be addressed in DCRs, as set forth in the SOC accompanying the AIA final rule (74 FR 28112, June 12, 2009, at 28122):

> Paragraph (c)(4)(ii) of 10 CFR 50.150 governs combined license applicants or holders which are not subject to 10 CFR 50.150(a) and states that proposed departures from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the referenced standard design certification are governed by the change control requirements in the applicable design certification rule. The NRC expects to add a new change control provision to future design certification rules subject to 10 CFR 50.150 (including amendments to any of the four existing design certifications) to govern combined license applicants and holders referencing the design certification that request a departure from the design features or functional capabilities in the referenced design certification. The new change control provision will require that, if the applicant or licensee changes the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also describe in a change to the FSAR (*i.e.,* a plant-specific departure from the generic design control document), how the modified design features and functional capabilities continue to meet the assessment requirements in the aircraft impact rule. An applicant or licensee's submittal of this updated information to the NRC will be governed by the reporting requirements in the applicable design certification rule.

Further, making the changes suggested by the commenter would effectively eliminate the requirement for the COL applicant or holder to consider the effect of proposed changes to AIA design features or functional capabilities on the original assessment required by 10 CFR 50.150(a). It would also eliminate the requirement to document how the modified design continues to meet the AIA rule. Because the changes proposed by the commenter are in direct conflict with the Commission's policy on implementation of the AIA rule for design certifications and because the commenter did not provide any compelling reasons why the Commission should consider changing its policy, the NRC declines to adopt the proposed changes. No change was made to the SOC or the language of the final rule as the result of this comment.

Comment: The proposed deletion of the current language of paragraph VIII.B.5.d and the substitution of language in the proposed rule should not be adopted. The deletion of the current language in paragraph VIII.B.5.d does not seem appropriate given the context of Paragraph VIII.B. Instead, the new language may be added as proposed, but existing paragraphs VIII.B.5.d and e should be redesignated as paragraphs VIII.B.5.e and f. (GEH–7)

NRC Response: The commenter has misinterpreted the proposed changes to paragraph VIII.B.5 in the proposed rule. The NRC is not proposing to delete the rule text in current paragraph VIII.B.5.d. As stated in the amendatory language for Appendix A to 10 CFR part 52 (76 FR 3559, second column), section VIII, paragraph B.5.b is revised, paragraphs B.5.d. e, and f are redesignated as paragraphs B.5.e, f, and g, respectively, and new paragraph B.5.d is added. As this is what the commenter suggested, no further changes were made to the final rule as a result of this comment.

Comment Related to Recent Events in Japan

Comment: In light of the recent events in Japan and the level of water repeatedly exposing the nuclear rods—isn't there a simpler solution to relying on pumps to supply the cooling water? If the plant was mandated to have a

reservoir of water that could gravity feed water via manual valves to keep the rods covered—diesel backups and battery backups would be a non issue. (Shadis-1)

NRC Response: The NRC staff interprets this comment to be in reference to the certified U.S. ABWR design, which is being amended in the rulemaking. Changes to the U.S. ABWR design that are not directly related to compliance with the NRC's AIA rule, which is the subject of this amendment, are outside of the scope of this rulemaking. With regard to the recent events at the Fukushima Daiichi Nuclear Plant in Japan, the NRC continues to believe that its regulatory framework and requirements provide for a rigorous and comprehensive license review process that examines the full extent of siting, system design, and operation of nuclear power plants. The recommendations of the NRC's task force that was established to examine lessons learned from the events in Japan will certainly be taken into account in the performance of the NRC's ongoing and future reviews of applications, as appropriate. Further, the NRC has the necessary regulatory tools to require changes to existing licenses or applications for certification should the NRC determine that changes are necessary. For example, any new requirements that may result from the task force's recommendations could be implemented in accordance with existing NRC policies that may involve rulemaking or backfitting. If the commenter believes that changes should be made to the U.S. ABWR-certified design, the proper vehicle for proposing such changes is to submit a petition for rulemaking under 10 CFR 2.802, ''Petition for rulemaking.'' No change was made to the final rule as a result of this comment.

III. Discussion

A. Technical Evaluation of the STPNOC Amendment to U.S. ABWR Design

STPNOC requested changes to the U.S. ABWR design in order to comply with the AIA rule, 10 CFR 50.150. This amendment takes credit for the design features and their functional capability(ies) to maintain core cooling and spent fuel integrity following a strike of a large commercial aircraft. These design features and their functional capability(ies) are summarized below:

- The primary containment structure protects the safety systems inside from impact.
- The location and design of the control building structure protects the north wall of the reactor building from impact.
- The location and design of the turbine building structure protects the north wall of the control building and reactor building from impact.
- The location and design of the reactor building structure protects the south wall of the control building and primary containment from impact.
- The location and design of the spent fuel pool and its supporting structure protect the spent fuel pool from impact.
- The physical separation of the Class 1E emergency diesel generators and an independent power supply prevent the loss of all electrical power to core cooling systems.
- The location and design of 3-hour fire barriers, including fire doors and watertight doors inside the reactor building and control building protect credited core cooling equipment from fire damage.
- The physical separation and design of the emergency core cooling system ensure core cooling.
- The design of the alternate feedwater injection system ensures core cooling.
- The design of the containment overpressure protection system ensures core cooling.

The acceptance criteria in 10 CFR 50.150(a)(1) are (1) The reactor core will remain cooled or the containment will remain intact, and (2) spent fuel pool cooling or spent fuel pool integrity is maintained. The applicant states that it has met 10 CFR 50.150(a)(1) by maintaining both core cooling and spent fuel pool integrity.

The applicant proposes to maintain core cooling using the safety-related and non-safety-related systems, which are specifically designed to ensure that the reactor can be shutdown and decay heat can be removed adequately from the reactor core. Some of this equipment is located (1) inside of the primary containment, (2) inside the reactor building, and (3) well away from the power block. Locations inside the primary containment are protected from structural, shock and fire damage by the design of the primary containment structure as well as the reactor building structure that limits the penetration of a large, commercial aircraft so that the primary containment is not perforated. Equipment inside the reactor building is protected by structural design features of the reactor building itself and by structures adjacent to the reactor building, including the turbine building and the control building. In addition, fire barriers are designed and located in the reactor building and control building to limit the spread of fire inside the buildings.

The applicant proposes to satisfy the spent fuel pool integrity acceptance criterion in 10 CFR 50.150(a)(1) due to the location and design of the spent fuel pool and its support structure. These key design features protect the structure from impact by a large commercial aircraft.

The NRC's review of the applicant's proposed amendment to the U.S. ABWR design certification confirmed that the applicant has complied with 10 CFR 50.150. Specifically, the NRC confirmed that the applicant adequately described key AIA design features and functional capabilities in accordance with the AIA rule and conducted an assessment reasonably formulated to identify design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. In addition, the NRC determined that there will be no adverse impacts from complying with the requirements for consideration of aircraft impacts on conclusions reached by the NRC in its review of the original U.S. ABWR design certification. Finally, the NRC determined that the STPNOC and its contractors are technically qualified to perform the design work associated with the amended portion of the U.S. ABWR design represented by the STPNOC's application and to supply the amended portion of the U.S. ABWR design.

The STPNOC's amendment to the U.S. ABWR design has achieved the Commission's objectives of enhanced public health and safety and enhanced common defense and security through improvement of the facility's inherent robustness at the design stage.

B. Regulatory and Policy Issues

Multiple Suppliers for a Single Certified Design

In the 1989 10 CFR part 52 rulemaking, the Commission decided to approve standard reactor designs by rulemaking, as opposed to licensing, and stated that a DCR ''does not, strictly speaking, belong to the designer'' (54 FR 15327; April 18, 1989, at 15375, third column). Nonetheless, the Commission implicitly recognized the need to protect the commercial and proprietary interests of the original applicant who intends to supply the certified design, should there be another entity who intends to use the design in some fashion without approval or compensation to the original design certification applicant. *Id.* The protection was provided, in part, through the decision of the Commission

to protect ''proprietary information'' [1] developed by the original design certification applicant, as well as by several other regulatory provisions in both 10 CFR part 52 and 10 CFR part 170.

Based upon the licensing experience with operating nuclear power plants, the Commission understood that portions of proposed design certifications, primarily in the area of fuel design, would likely be regarded as proprietary information (trade secrets) by future design certification applicants. To ensure that design certification applicants would not be adversely affected in their capability to protect this proprietary information as a result of the NRC's decision to approve designs by rulemaking rather than licensing, the Commission adopted 10 CFR 52.51(c), which stated, in relevant part, that notwithstanding anything in 10 CFR 2.390 to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for licenses, provided that the design certification shall be published in Chapter I of title 10. Reference: 10 CFR 52.51(c) (1990, as originally promulgated in the 1989 10 CFR part 52 rulemaking, *see* 54 FR 15372, April 18, 1989, at 15390).[2]

Having protected proprietary information developed by the design certification applicant, the Commission then adopted several additional rulemaking provisions in 10 CFR part 52 providing additional regulatory protection to the original design certification applicant against unfair use of the design certification by other suppliers. The Commission required the (original) design certification applicant, as well as the applicant for renewal of the design certification, to include in the application a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. The information submitted for a design certification must include performance requirements and design information sufficiently detailed to permit the preparation of acceptance and inspection requirements by the NRC, and procurement specifications and construction and installation specifications by an applicant. Reference: 10 CFR 52.47(a)(2) (1990, as originally promulgated in the 1989 10 CFR part 52 rulemaking, *see* 54 FR 15372; April 18, 1989; at 15390); [3] 10 CFR 52.57(a).

The Commission also adopted 10 CFR 52.63(c), requiring the applicant referencing the design certification to provide the information required to be developed by 10 CFR 52.47(a)(2) or its equivalent. It stated that the Commission will require, before granting a construction permit, combined license, operating license, or manufacturing license which references a design certification rule, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information. This information may be acquired by appropriate arrangements with the design certification applicant. Reference: 10 CFR 52.63(c) (1990). By requiring a level of detailed information supporting the certified design to be developed and available for NRC audit at renewal and when the design was referenced for use, the Commission ensured (among other things) that entities who were not the original design certification applicant would not have an inordinate financial advantage when either supplying the certified design to a referencing user, or referencing the certified design in an application.

In adopting 10 CFR 52.73, the Commission also relied on its statutory authority under Section 182 of the Atomic Energy Act of 1954 (AEA), as amended, to make a technical qualifications finding. Section 52.73 effectively prohibits a COL applicant from referencing a certified design unless the entity that actually supplies the design to the referencing applicant is technically qualified to supply the certified design. It stated that in the absence of a demonstration that an entity other than the one originally sponsoring and obtaining a design certification is qualified to supply such design, the Commission will entertain an application for a combined license which references a standard design certification issued under Subpart B only if the entity that sponsored and obtained the certification supplies the certified design for the applicant's use. Reference: 10 CFR 52.73 (1990, as originally promulgated in the 1989 10 CFR part 52 rulemaking, *see* 54 FR 15372; April 18, 1989, at 15393).[4]

Apart from the provisions discussed previously, the Commission also indicated in the SOC for the 1989 10 CFR part 52 rulemaking that the finality provisions in 10 CFR 52.63 provided some protection against arbitrary amendment or rescission of the design certification. Any proposed rescission or amendment of the design certification must be accomplished under notice and comment rulemaking procedures, as required by 10 CFR 52.63(a)(1). The original applicant would, accordingly, have the opportunity to comment on any proposed change to the design, including those changes initiated by other entities.

Finally, the Commission adopted, as part of the 1989 rulemaking, conforming amendments to 10 CFR 170.12(d) and (e). Under these provisions, entities other than the original design certification applicant who provide either the renewed or original certified design to a referencing applicant for a construction permit, operating license or COL must pay the applicable installment of the deferred NRC fee [5] for review of the original or renewed design certification.

After the 1989 rulemaking, in each of the four existing DCRs in 10 CFR part 52, appendices A through D, the Commission adopted an additional provision serving to protect the proprietary information and safeguards information (SGI) developed by the original design certification applicant. Paragraph IV.A.3 of each rule required an applicant referencing the DCR to

[1] The term, ''proprietary information,'' means trade secrets or commercial or financial information that are privileged or confidential, as those terms are used under the Freedom of Information Act and the NRC's implementing regulation at 10 CFR part 9.

[2] As originally adopted in 1989, 10 CFR 52.51(c) consisted of two sentences. The first sentence limited the bases for a decision in a hearing on a design certification to information on which all parties had an opportunity to comment. The second sentence is the language of the current regulation. The first sentence was removed in 2004 as a conforming change when the Commission removed the hearing requirements for design certification (69 FR 2182; January 14, 2004).

[3] This language was moved to the introductory paragraph of the current 10 CFR 52.47 in the 2007 revision of 10 CFR part 52.

[4] This provision was slightly reworded in the 2007 rulemaking amending 10 CFR part 52 in a newly-designed paragraph (b) to 10 CFR 52.73 (72 FR 49352; August 28, 2007).

[5] In the 1989 final 10 CFR part 52 rulemaking, the Commission decided that the payment of the fee imposed upon the design certification applicant to recover the NRC's costs for review and approval of the certified design via rulemaking, and renewal of the DCR, should be deferred and recovered in equal increments the first five times the DCR was referenced in an application. See 10 CFR 107.12(d)(2) (renewal of DCR); 10 CFR 170.12(e)(2)(i) (initial certification) (1990), as originally promulgated in the 1989 10 CFR part 52 rulemaking (see 54 FR 15372; April 18, 1989, at 15399).

''physically include in the plant-specific DCD proprietary information and safeguards information referenced in the DCD.'' The Commission's view was that by ''physically'' including the proprietary information and SGI developed by the original DCR applicant in the application, this would be demonstrative of the referencing applicant's rights to use that information; otherwise, the referencing applicant could provide the equivalent information (62 FR 25800; May 12, 1997, at 25818, third column).

In 2007, at the request of the Nuclear Energy Institute and other industry commenters, the word, ''physically'' was removed from paragraph IV of each of the four DCRs, to allow the DCR applicant more flexibility in how the proprietary information and SGI are included in the application referencing the DCR (72 FR 49352; August 28, 2007, at 49363–49365). This change was not intended to represent a retreat from the Commission's position that the referencing applicant has the appropriate commercial rights to reference the proprietary and SGI information or its equivalent. However, the NRC acknowledges that under the current language of paragraph IV.A.3, the NRC must do more to verify that the referencing applicant has the appropriate commercial rights to the proprietary and SGI information developed by the originating applicant (unless, of course, the referencing applicant indicates that it is supplying ''equivalent'' information).

The Commission did not describe in the 1989 rulemaking the particular regulatory approach and structure to be used for a DCR with two or more suppliers of the certified design. In the years after the 1989 10 CFR part 52 rulemaking, the Commission did not need to address the circumstance of multiple suppliers of the same certified design (multiple suppliers) to an end user.[6] However, with the filing of the U.S. ABWR design certification amendment request by the STPNOC, as well as Toshiba's March 3, 2010, letter to the NRC stating that it intends to seek renewal of the U.S. ABWR design certification (ADAMS Accession No. ML100710026), the NRC must now determine the regulatory approach and structure for the amendment (and, for completeness, the renewal) of a certified design where there will be multiple suppliers.

[6] The term, ''user,'' means an entity which references the standard DCR in its application, and the holder of a permit or license which incorporates the standard design certification.

When the NRC was advised of the STPNOC's intent to submit an amendment of the U.S. ABWR design certification, it began a process of identifying and considering possible regulatory alternatives, with the goal of identifying a single regulatory approach and structure to be used for all design certifications with multiple suppliers. The NRC considered three alternatives which it could reasonably select:

1. *Separate rules:* Develop separate DCRs for each supplier.
2. *Branches:* Develop one DCR with multiple branches, with each branch describing a complete design to be supplied by each supplier.
3. *Options:* Develop one DCR with options, with each option describing a portion of the certified design which may be selected by the user as an option to the original ''reference'' certified design.

Table 1 presents the NRC's current views with respect to the differences between these three alternatives.

In light of the Commission's past practice of protecting the proprietary information and legitimate commercial interests of the original design certification applicant wherever consistent with other applicable law, the NRC believes that it should consider that practice when evaluating possible alternatives for the approach and structure of a DCR with multiple suppliers. Upon consideration, the NRC concludes that the ''branches'' alternative should be adopted as the general approach for all renewals of design certifications and for major design certification amendments. The ''branches'' alternative: (1) Is consistent with all applicable law, (2) protects the proprietary information and legitimate commercial interests of the original design certification applicant (as well as the additional suppliers), and (3) meets the NRC's regulatory concerns. Each of these considerations is discussed separately below.

No Statutory or Other Legal Prohibition to the ''Branches'' Alternative

There is no statutory or other legal prohibition, explicit or otherwise, against use of the ''branches'' alternative in the AEA, the Administrative Procedure Act, the National Technology Transfer and Advancement Act, or other statutes applicable to the NRC. Design certification rulemaking is not specifically addressed in the AEA. The AEA provisions do not appear to circumscribe or prohibit the NRC's use of a regulatory approach of approving multiple suppliers of a set of closely-related certified designs in a single codified rule.

Moreover, nothing in 10 CFR part 52 compels the use of a particular alternative for addressing multiple suppliers. As discussed previously, the Commission contemplated that multiple suppliers could supply the same certified design from the time it first adopted the concept of design certification by rulemaking. However, the Commission did not mandate any specific regulatory approach for accommodating multiple suppliers of a certified design. Those provisions intended to protect proprietary information and the commercial interests of each supplier do not mandate any specific approach for accommodating multiple suppliers, and do not foreclose the use of the ''branches'' alternative.

Protection of Proprietary Information and Legitimate Commercial Interests of All Suppliers

The ''branches'' alternative fully protects the proprietary information and legitimate commercial interests of all suppliers. Under the ''branches'' alternative, each supplier is responsible for creating and maintaining its own DCD (including the non-public version of the DCD containing sensitive unclassified non-safeguards information (SUNSI), *i.e.,* proprietary information, and SGI developed by the supplier). Because each DCD is self-contained, the NRC does not foresee any circumstance that would require the NRC to provide the non-public DCD (or information supporting its DCD) prepared and supported by the original design certification applicant to the new supplier, or to provide the non-public DCD prepared and supported by the new supplier to the original applicant. Nor does the use of the ''branches'' alternative affect the legal issues associated with providing access to SUNSI (including proprietary information) and SGI to members of the public to facilitate public comment on a proposed design certification rulemaking adding a new supplier and branch.

The ''branches'' alternative has no effect on the legal applicability, or on the NRC's implementation of the 10 CFR parts 52 and 170 provisions discussed previously, which are directed at protecting the proprietary information and commercial interests of the original design applicant. These provisions, properly applied, should also protect the proprietary information and interests of all other suppliers of a subsequently-approved ''branch.'' Thus, the ''branches'' alternative provides all suppliers all of the protection of their proprietary information and commercial

interests, which the Commission intended to be afforded to these suppliers.

A rulemaking adopting a new ''branch'' (a '''branch' rulemaking'') would not disturb the issue resolution and finality accorded to the original certified design (as amended in any subsequent rulemakings), or to the certified design of any other suppliers in any previously approved branches. Nor would a ''branch'' rulemaking necessarily require the Commission to consider and address, in the final rulemaking adding the new ''branch,'' comments on the existing certified design. The NRC believes that each ''branch'' rulemaking is limited to adding the new ''branch,'' together with requirements and conditions specific to the new ''branch.'' Therefore, the NRC asserts that: (1) The nuclear safety and other associated matters (severe accident mitigation design alternatives (SAMDAs)) resolved in the preceding design certification rulemaking(s) continue to be effective and are not being re-examined in the ''branch'' rulemaking; and (2) comments on the existing certified design(s) are out-of-scope and should not be considered in the ''branch'' rulemaking.[7]

The ''branches'' alternative would not require the original supplier (or indeed any previously-approved supplier) of the certified design to modify their DCD or incur other costs as part of the ''branch'' rulemaking. Hence, there is no financial impact upon the pre-existing suppliers. The NRC has not identified any credible argument that could be raised by the original design certification applicant that an NRC decision allowing a new supplier to supply the certified design could be the proximate cause of any diminution in the commercial value of the original applicant's certified design. The concept of multiple suppliers of a single certified design is inherent in the concept of design certification by rulemaking. The Commission anticipated multiple suppliers of a single design certification when it was considering the regulatory approach for certification (rulemaking versus licensing), and afforded protection to the original applicant by various provisions of 10 CFR part 52. This protection was embodied in provisions included in each of the DCRs issued to date, and these provisions would continue to be included in future DCRs. Hence, no supplier—including the original design certification applicant—may reasonably claim that the approval of a new ''branch'' constitutes an unwarranted diminution in the commercial value of the certified design which it sponsored.

NRC's Regulatory Concerns Are Met

The NRC believes that any alternative and structure for a DCR with multiple suppliers must meet the following regulatory concerns. Any rule amendment (or renewal) which introduces a new supplier must minimize the possibility of re-opening the safety and regulatory conclusions reached by the NRC with respect to previously approved aspects of the design and supplier(s). In addition, if the new supplier is proposing changes to the actual certified design, then the substitute or new portions of the design,[8] must to the maximum extent practical, be attributable solely to the ''sponsoring'' supplier, and therefore distinguishable from the ''common'' portions of the design which each supplier must support (the ''branches'' alternative adopting the premise that the supplier must be technically qualified to supply all of the certified design, including the ''common'' portions).[9] The regulatory approach and structure must reflect a sound basis for allowing the NRC to make a technical qualifications finding with respect to the supplier. Finally, the approach and structure must allow for imposition of applicable NRC requirements on each supplier, and the legal ability of the NRC to undertake enforcement and regulatory action on each supplier.

The ''branches'' alternative meets all of these regulatory concerns. This alternative creates a separate branch for the design to be supplied by the new supplier in the rule and requires the new certified design to be described in a separate DCD created and supported by the new supplier. Therefore there is a strong basis for arguing that the certified design(s) already approved by the NRC are not affected and that the issue finality accorded to those certified designs (as controlled by 10 CFR 52.63) continues. Hence, in any rulemaking approving a new branch, the NRC need not consider any comments seeking changes to the existing certified design.

The use of a separate DCD to describe the new certified design, by its very nature, serves to (1) distinguish any substitute or new portions of the certified design sponsored only by the new supplier and (2) make clear that the substitute or new portions are being sponsored solely by the new supplier (because the other branches do not contain any reference to or mention of the substitute or new portions of the design sponsored by the new supplier). The use of a separate DCD describing the entire design is also consistent with the NRC's position that it must conduct a technical qualifications review of the new supplier and make a finding that the new supplier is technically qualified to provide the entire certified design. The NRC's recommendation to use a separate DCD, coupled with a structure of the DCR language (as codified in one of the appendices to 10 CFR part 52) that applies common regulatory requirements to all suppliers, allows for the NRC to take regulatory action against any supplier without regard to whether the supplier was the original design certification applicant.

For these reasons, the NRC concluded that its regulatory concerns are met under the ''branches'' alternative. However, during discussions with the STPNOC about the processing of its request to amend the U.S. ABWR design certification, the STPNOC proposed that the NRC adopt a process similar to the ''options'' approach for the STPNOC U.S. ABWR amendment.

[7] If the out-of-scope comment seeking to modify the existing certified design was submitted by the original sponsor of that design, then the NRC believes that the original sponsor should seek an amendment of its certified design in accordance with the design certification amendment process as addressed in 10 CFR 52.57 and 52.59, and 10 CFR 2.800(c) and 10 CFR 2.811–2.819 (as well as the procedures common to all petitions for rulemaking in 10 CFR 2.804–2.810, as prescribed in 10 CFR 2.800(b)). By contrast, if the out-of-scope comment seeking to modify the existing certified design was submitted by any other entity (*e.g.,* an entity that is not the supplier of that certified design branch), then the staff believes that these comments should be regarded as petitions for rulemaking and processed in accordance with the provisions of 10 CFR 2.800(c) and 10 CFR 2.802–2.803 (as well as the procedures common to all petitions for rulemaking in 10 CFR 2.804–2.810, as prescribed in 10 CFR 2.800(b)).

[8] A ''substitute'' portion of the certified design sponsored by the new supplier serves to replace a discrete portion of a design as sponsored by the original design certification applicant (in other words, the basis for comparison of a new branch must always be the original certified design), but without augmenting or adding a completely new functional capability. By contrast, a ''new'' portion of the certified design sponsored by the new supplier serves to either: (1) Augment a discrete portion of the design as sponsored by the original design certification applicant or (2) add a completely new functional capability not previously considered and addressed in the original certified design. As an example, the amendment of the U.S. ABWR DCR sought by the STPNOC would add new functional capabilities—the ability to withstand aircraft impacts of the kind described in the AIA rule, 10 CFR 50.150. Hence, the ''changes'' sought by the STPNOC would be considered ''new'' portions of the certified design.

[9] The NRC believes a broad finding of technical qualifications is necessary because the original design certification applicant is under no legal or NRC regulatory obligation (consistent with the concept of providing protection to the proprietary information and legitimate commercial interests of the original supplier) to provide technical support on the ''common'' portions of the certified design to either the new supplier or a user.

The STPNOC request was based upon a number of factors that the NRC considered to be unique to the STPNOC's situation. First, under the ''branches'' approach, the STPNOC would have to supply the U.S. ABWR proprietary information (or its equivalent) which was originally developed by GE and approved by the NRC in the original U.S. ABWR design certification rulemaking. While the STPNOC has contractual rights from GEH to use the GE-developed U.S. ABWR proprietary information for STP Units 3 and 4, it does not have the right to supply the GE-developed U.S. ABWR proprietary information to other companies in connection with any other application for a COL that references the certified U.S. ABWR. In addition, neither the STPNOC nor its contractors would be in a position to provide complete information to substitute for the GE-developed U.S. ABWR proprietary information in time to support the schedule for issuance of the COLs for STP Units 3 and 4, should they be approved by the NRC. Second, the STPNOC indicated that some portion of the GE-developed U.S. ABWR proprietary information relates to fuel design, and the STPNOC does not intend to use the GE fuel design for initial operation of STP Units 3 and 4. Rather, the STPNOC intends to use another fuel design and obtain NRC approval via an application for a COL amendment (*i.e.,* after the issuance of the COLs). The GE-developed fuel design also would not be used to operate any of the possible six U.S. ABWRs that could be developed under the agreement between Toshiba and NINA, which has the right to develop four U.S. ABWRs in addition to STP Units 3 and 4. Finally, the STPNOC indicated that the ''options'' approach would not be used at renewal; the renewal application Toshiba was developing would reflect the use of the ''branches'' alternative (*i.e.,* Toshiba would be seeking approval of and supplying the entire U.S. ABWR design at renewal, including replacement proprietary information). Based on these factors, the STPNOC requested that it be considered the supplier for only that portion of the U.S. ABWR design certification necessary to comply with the AIA, and which is the subject of its amendment request.

Upon consideration, the NRC has decided to use the ''options'' approach for the STPNOC amendment of the U.S. ABWR design certification, based on the following considerations. As with the ''branches'' alternative, there is no statute or NRC regulation prohibiting the use of the ''options'' approach, nor is there any provision which prohibits the concurrent use of both alternatives—so long as the NRC is able to articulate a basis for doing so. Moreover, all of the NRC's safety and regulatory objectives are met. The STPNOC is providing sufficient information to determine its technical qualifications [10] to supply the STPNOC-sponsored amendments addressing the AIA rule to third party users (*i.e.,* users other than the STPNOC itself). In addition, the NRC believes that there are no insurmountable issues in requiring the user (in most cases, the COL applicant referencing the U.S. ABWR and the STPNOC option) to prepare a single DCD integrating information from both the DCD developed by GE and the DCD developed by the STPNOC. The ''options'' approach also avoids or addresses all of the STPNOC's concerns with the use of the ''branches'' alternative for its request to amend the U.S. ABWR. The STPNOC does not have to develop and submit to the NRC information equivalent to the proprietary information developed by GE to support the STPNOC amendment application. Nor does the STPNOC have to demonstrate its technical qualifications to supply the entire U.S. ABWR-certified design; it has already demonstrated its technical qualifications to supply the STPNOC option. Toshiba has submitted an application for renewal of the U.S. ABWR design certification that is consistent with the ''branches'' approach. Thus, the STPNOC option will have a limited period in which it can be referenced by a future COL applicant, that is, until the renewal of the U.S. ABWR design certification. Finally, the ''options'' approach fully protects the legitimate proprietary and commercial interests of GE in the original U.S. ABWR design certification.

Based on these considerations, the NRC is adopting the ''options'' alternative for the STPNOC amendment of the U.S. ABWR design certification, but will regard the ''branches'' alternative as the default for all renewals of design certifications and for major design certification amendments. Under the ''options'' approach, applicants seeking amendments to already certified designs must be found to be qualified to supply the limited scope of the revisions they seek. If the NRC receives other limited-scope design certification amendments (similar in scope to the STPNOC amendment request), it will consider whether the ''branches'' approach or the ''options'' approach offers the most effective and efficient regulatory option at that time based on the scope of the amendment and the specific circumstances associated with the particular application.

By implementing the ''options'' approach for the STPNOC U.S. ABWR amendment, a COL applicant that references the U.S. ABWR standard design certification can meet the requirements of the AIA rule by referencing both the GE DCD and the STPNOC DCD or by referencing only the GE DCD and addressing the requirements of the AIA rule separately in its COL application.

[10] The NRC staff determined that the STPNOC and its contractors are technically qualified to perform the design work associated with the amended portion of the U.S. ABWR design represented by the STPNOC's application and to supply the amended portion of the U.S. ABWR design. However, the NRC staff determined that the STPNOC, by itself, is not technically qualified to supply the amended portion of the U.S. ABWR design certification represented in the STPNOC's DCD, Revision 1. The NRC is including a provision in the amended U.S. ABWR DCR to specify that if a COL applicant references the STPNOC option but does not show they are obtaining the design from the STPNOC and TANE, acting together, then the COL applicant must demonstrate that the entity supplying the STPNOC option to the applicant possesses the technical qualifications to do so.

TABLE 1—DIFFERENCES IN REGULATORY TREATMENT OF ALTERNATIVES FOR ADDRESSING MULTIPLE DESIGN CERTIFICATION SUPPLIERS

Regulatory feature	Alternative 1: Separate rules	Alternative 2: One rule with multiple branches	Alternative 3: One rule with options
Summary Description of Alternative.	Each supplier's certified design would be contained in a separate design certification rule (separate appendices to 10 CFR part 52). Thus, there would be multiple rules for the same general design. Single DCD (see below).	Each supplier's certified design would be contained in a single design certification rule (a single appendix to 10 CFR part 52). Each supplier's design is a complete design and presented as an alternative or ''branch'' within the rule.	The original applicant's certified design would be contained in a single design certification rule (a single appendix to 10 CFR part 52). An ''option'' represents an alternative to the specified portion(s) of the original applicant's certified design. The supplier of the option would be providing only the portion(s) of the certified design contained within the option. A COL referencing a design with options would obtain the total design from two (or more) suppliers: (i) The main portion of the design from the original applicant (unless the COL applicant demonstrated that another entity was qualified to supply the design) and (ii) the selected design option from the applicable supplier of the option. Two choices for the DCDs (see below).
DCD	One complete DCD for each rule. Rule language would incorporate by reference a single DCD.	Two separate DCDs (one for each supplier), each DCD describing design for that supplier. Rule language would incorporate by reference two DCDs.	*Choice 1 (NRC preferred)* Two separate DCDs: (i) Original applicant's DCD (no change to document) and (ii) a limited-scope DCD describing only the information in the option. *Choice 2* Two separate DCDs: (i) Original applicant's DCD (no change to document) and (ii) new DCD, prepared by supplier of option, integrating the original certified design with the substitute design description of the option in the appropriate locations.
Identification of Applicant in Rule.	Each supplier identified as original applicant in its rule.	The original applicant and the applicant for each branch (each entity constituting a supplier) are identified. **Note:** Original applicant would always be the first branch.	Original applicant and applicant for each ''option'' (each entity constituting a supplier) are identified.
Technical Content of Application for Amendment.	Design information for amended portion of design.	Design information for amended portion of design branch.	*Original supplier* Design information for amended portion of design. *Supplier of option-initial application for option* Design information for amended portion of design. *Supplier of option-application for amendment to option* Design information for amended portion of option

TABLE 1—DIFFERENCES IN REGULATORY TREATMENT OF ALTERNATIVES FOR ADDRESSING MULTIPLE DESIGN CERTIFICATION SUPPLIERS—Continued

Regulatory feature	Alternative 1: Separate rules	Alternative 2: One rule with multiple branches	Alternative 3: One rule with options
Technical Content of Application for Renewal.	Design information for entire design, necessary to comply with renewal updating in accordance with § 52.57.	Design information for entire design branch, necessary to comply with renewal updating in accordance with § 52.57.	*Original supplier* Design information for entire design necessary to comply with renewal updating in accordance with § 52.57. *Supplier of option* N/A (Supplier of option may not renew the DCR option. If both the original applicant and the applicant for the option seek renewal, then renewal will be implemented as ''branches'' under Alternative 2 with two named applicants/suppliers. If the original applicant or the applicant for the option, alone, seeks renewal, then renewal will be implemented as a single rule with one named applicant/supplier.)
Submission of SUNSI (including proprietary information), and SGI (if applicable).	*Amendment* *Original supplier* Submit publicly-available DCD without new SUNSI (including proprietary information) and SGI, and submit separate DCD with any new SUNSI (including proprietary information) and SGI. *Additional supplier* Submit publicly-available DCD without SUNSI (including proprietary information) and SGI, and submit separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to all SUNSI (including proprietary information) and SGI provided by original applicant. *Renewal* *Original supplier* Submit publicly-available DCD without new SUNSI (including proprietary information) and SGI, and submit separate DCD with any new SUNSI (including proprietary information) and SGI. *Additional supplier* Submit publicly-available DCD without SUNSI (including proprietary information) and SGI, and submit separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to all SUNSI (including proprietary information) and SGI provided by original applicant (unless previously provided by the non-original applicant in an earlier amendment proceeding).	*Amendment* *Original supplier* Submit publicly-available DCD without new SUNSI (including proprietary information) and SGI, and submit separate DCD with any new SUNSI (including proprietary information) and SGI. *Supplier of branch* Submit publicly-available DCD without SUNSI (including proprietary information) and SGI, and separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to all SUNSI (including proprietary information) and SGI provided by original applicant. *Renewal* *Original supplier* Submit publicly-available DCD without new SUNSI (including proprietary information) and SGI, and submit separate DCD with any new SUNSI (including proprietary information) and SGI. *Supplier of branch* Submit publicly-available DCD without SUNSI (including proprietary information) and SGI, and submit separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to all SUNSI (including proprietary information) and SGI provided by original applicant (unless previously provided by the non-original applicant in an earlier amendment proceeding).	*Amendment* *Original supplier* Submit publicly-available DCD without new SUNSI (including proprietary information) and SGI, and submit separate DCD with any new SUNSI (including proprietary information) and SGI. *Supplier of option* Submit publicly-available DCD without SUNSI (including proprietary information) and SGI, and submit separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to that SUNSI (including proprietary information) and SGI provided by original applicant which is within the scope of the amendment, plus any new SUNSI (including proprietary information) and SGI necessary to support the amendment. *Renewal* *Original supplier* Submit publicly-available DCD without new SUNSI (including proprietary information) and SGI, and submit separate DCD with any new SUNSI (including proprietary information) and SGI.

TABLE 1—DIFFERENCES IN REGULATORY TREATMENT OF ALTERNATIVES FOR ADDRESSING MULTIPLE DESIGN CERTIFICATION SUPPLIERS—Continued

Regulatory feature	Alternative 1: Separate rules	Alternative 2: One rule with multiple branches	Alternative 3: One rule with options
Nature and Scope of NRC Safety Review—Amendment.	Findings that: (i) Portion of design being amended meets current applicable NRC requirements and (ii) proposed change does not affect previous conclusions in other design areas.	Findings that: (i) Portion of design being amended meets current applicable NRC requirements and (ii) proposed change does not affect previous conclusions in other design areas.	*Original supplier* Findings that: (i) Portion of design being amended meets current applicable NRC requirements and (ii) proposed change does not affect previous conclusions in other design areas. *Supplier of option* Findings that: (i) Design proposed to be added as an option, or portion of existing design being amended (as applicable), meets current applicable NRC requirements, (ii) (if applicable) proposed change to an option does not affect previous conclusions in other design areas of the option, and (iii) design proposed to be added as an option, or proposed change to existing option (as applicable) does not affect safety of design areas in the portion of the design supplied by the original supplier.
Nature and Scope of NRC Safety Review—Renewal.	Findings that: (i) Design complies with AIA Rule, 10 CFR 50.150 (if not already amended); (ii) design complies with all regulations applicable and in effect at time or original certification; (iii) relevant findings for any changes to the design requested by the supplier, per 10 CFR 52.59(c); and (iv) the findings required by 10 CFR 52.59(b) for those changes imposed by the NRC under that section.	Findings that: (i) Design complies with AIA Rule, 10 CFR 50.150 (if not already amended); (ii) design complies with all regulations applicable and in effect at time or original certification; (iii) relevant findings for any changes to the design requested by the supplier, per 10 CFR 52.59(c); and relevant findings for changes imposed by the NRC per 10 CFR 52.59(b); and (iv) the findings required by 10 CFR 52.59(b) for those changes imposed by the NRC under that section.	*Original supplier* Findings that: (i) Design complies with AIA Rule, 10 CFR 50.150 (if not already amended); (ii) design complies with all regulations applicable and in effect at time or original certification; (iii) relevant findings for any changes to the design requested by the supplier, per 10 CFR 52.59(c); and (iv) the findings required by 10 CFR 52.59(b) for those changes imposed by the NRC under that section. *Supplier of option* N/A (Supplier of option would not be allowed to renew the option).
Nature and Scope of NRC Technical Qualifications Review—Initial Supplier Approval.	Supplier is technically qualified to provide entire design, including detailed design information.	*Original supplier* Supplier is technically qualified to provide entire design, including detailed design information. *Supplier of branch* Supplier is technically qualified to provide entire design, including detailed design information and the equivalent SUNSI (including proprietary information) and SGI.	*Original supplier* Supplier is technically qualified to provide entire design, including detailed design information. *Supplier of option* Supplier is technically qualified to provide detailed design information and the equivalent SUNSI (including proprietary information) and SGI, if any, which is within the scope of the amendment.
Nature and Scope of NRC Technical Qualifications Review—Amendment.	N/A	N/A	N/A (if amendment is in same area as original option).
Nature and Scope of NRC Technical Qualifications Review—Renewal.	None, unless significant change in organization or corporate structure/ownership or information showing a change in circumstances so a supplier no longer has technical qualifications.	None, unless significant change in organization or corporate structure/ownership or information showing a change in circumstances so a supplier no longer has technical qualifications.	None, unless significant change in organization or corporate structure/ownership, or information showing a change in circumstances so a supplier no longer has technical qualifications. (supplier of option would not be allowed to renew the option unless it was incorporated into a wholesale renewal of the design certification).

TABLE 1—DIFFERENCES IN REGULATORY TREATMENT OF ALTERNATIVES FOR ADDRESSING MULTIPLE DESIGN CERTIFICATION SUPPLIERS—Continued

Regulatory feature	Alternative 1: Separate rules	Alternative 2: One rule with multiple branches	Alternative 3: One rule with options
Scope of Comments in Proposed Rule FRN—New Rule or Initial Approval of Branch or Option.	Comments on design for new rule (no comment on original DCR).	*Original supplier* N/A (comments on the original supplier's design would be out-of-scope of a rulemaking proposing to add a branch). *Supplier of branch* Same as scope of comments on initial approval of a new DCR.	*Original supplier* N/A (comments on the original supplier's design would be out-of-scope of a rulemaking proposing to add an option). *Supplier of option* (i) Proposed option meets applicable NRC requirements (ii) proposed option does not affect safety of design areas in the portion of the design supplied by the original supplier.
Scope of Comments in Proposed Rule FRN—Amendment.	Whether: (i) Changed portion of design meets current applicable NRC requirements and (ii) changes adversely affect previous conclusions in other design areas.	Whether: (i) Changed portion of design branch meets current applicable NRC requirements and (ii) changes adversely affect previous conclusions in other design areas.	*Original supplier* Whether: (i) Changed portion of design meets current applicable NRC requirements, (ii) changes adversely affect previous conclusions in other design areas, and (iii) changed portion of design requires the NRC to implement conforming changes in the design option. *Supplier of option* Whether: (i) Proposed change to the option meets applicable NRC requirements, (ii) proposed change to the option affects previous conclusions in unchanged portions of the option, and (iii) proposed change to the option affects safety of design areas in the portion of the design supplied by the original supplier.
Scope of Comments in Proposed Rule FRN—Renewal.	Consistent with finding that NRC must make at renewal.	Consistent with finding that NRC must make at renewal.	N/A (Supplier of option would not be allowed to renew the option).
Part 21 Applicability	Each supplier is responsible for 10 CFR part 21 compliance with respect to its design.	Each supplier is responsible for 10 CFR part 21 compliance with respect to its design branch. **Note:** NRC is responsible for advising suppliers of branches of any defects in the portion of the design which was sponsored by another supplier.	*Original supplier* Responsible for 10 CFR part 21 compliance with respect to the entire design with the exception of the option(s). *Supplier of option* Responsible for 10 CFR part 21 compliance with respect to its option. **Note:** NRC is responsible for advising: (i) Suppliers of options of any defects in the design of the original supplier; and (ii) original supplier of any defects in any of the options, for the purpose of facilitating the original supplier's consideration of the option's defect on the original supplier's design.
Supplier Recordkeeping Responsibilities.	Each supplier required to maintain its DCD.	Each supplier required to maintain the DCD representing the branch it sponsored.	*Original supplier* Maintain the DCD for the entire design. *Supplier of option* Maintain the DCD for its option.
Mode of Referencing by COL applicant.	Reference the selected rule.	Reference one branch of the rule.	Reference the rule with identification of option selected.

Notes:

1. If there is only a single description in a table cell, then that means that the description applies to all suppliers.

2. For purposes of this table, ''supplier'' means an entity that: (1) Submits an application for a new design certification, an amendment to an existing design certification, or a renewal for a design certification; and (2) intends to, has offered, or is providing design and engineering services related to the certified design to a license applicant. The information in this table does not apply to petitions for rulemaking under 10 CFR 2.802 submitted by entities who are not acting, do not intend to act, or the NRC believes are not reasonably capable of acting as a ''supplier.'' ''Original supplier'' means the supplier who was the original applicant for the design certification.

C. Changes to Appendix A to 10 CFR Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor.

1. Introduction (Section I)

The NRC is amending Section I, ''Introduction,'' to identify the STPNOC as the applicant for the amendment of the U.S. ABWR DCR to address the AIA rule, 10 CFR 50.150. The portion of the certified design sponsored by the STPNOC in this amendment, and which this rulemaking finds the STPNOC (acting together with TANE) is technically qualified to supply, is termed the ''STPNOC-certified design option'' or ''STPNOC option.'' As discussed in greater detail in the section-by-section analysis for Section III, ''Scope and Contents,'' an applicant or licensee referencing this appendix may use the GE-certified design (which was first certified by the NRC in a 1997 rulemaking (62 FR 25800; May 12, 1997)), or both the GE-certified design together with the STPNOC option (the GE/STPNOC composite certified design).

The overall purpose of paragraph I of this appendix is to identify the standard plant design that was approved and the applicant for certification of the standard design. Identification of both the original design certification applicant and the applicant for any amendment to the design is necessary to implement this appendix, for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide the design information and instead uses an alternate nuclear plant supplier, then the COL applicant must meet the requirements in paragraph IV.A.4 of this appendix and 10 CFR 52.73. The COL applicant must demonstrate that the alternate supplier is qualified to provide the standard plant design information.

Second, by identifying the STPNOC as the applicant for the amendment of the U.S. ABWR DCR, the provisions of 10 CFR 52.63 will be given effect whenever a COL applicant references the certified design option sponsored by the STPNOC, but does not use the STPNOC to supply the design information for this option and instead uses an alternate supplier. In this circumstance, the COL applicant must meet the requirements in paragraph IV.A.4 of this appendix and 10 CFR 52.73 with respect to the STPNOC option (*i.e.,* the COL applicant must demonstrate that the alternate supplier is qualified to provide the certified design information constituting the STPNOC option).

In addition, by identifying the STPNOC as the applicant, the STPNOC must maintain the generic DCD for the STPNOC option throughout the time this appendix may be referenced by a COL, as required by paragraph X.A.1 of this appendix.

2. Definitions (Section II)

The NRC is revising the definition of ''generic design control document'' (generic DCD) in paragraph A in Section II, ''Definitions,'' to indicate that there will now be two generic DCDs incorporated by reference into this appendix—the DCD for the original U.S. ABWR design certification submitted by GE Nuclear Energy (GE DCD) and the DCD for the amendment to the U.S. ABWR design submitted by the STPNOC (STPNOC DCD). The NRC is making this change to the definition of ''generic DCD'' to make it clear that all requirements in this appendix related to the ''generic DCD'' apply to both the GE DCD and the STPNOC DCD, unless otherwise specified.

During development of the first two DCRs, the Commission decided that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs maintained by each applicant and licensee that reference this appendix. This distinction is necessary to specify the relevant plant-specific requirements to applicants and licensees referencing the appendix. To facilitate the maintenance of the master DCDs, the NRC will require that each application for a standard design certification or amendment to a standard design certification be updated to include an electronic copy of the final version of the DCD. The final version will be required to incorporate all amendments to the DCD submitted since the original application as well as any changes directed by the NRC as a result of its review of the original DCD or as a result of public comments. This final version will become the master DCD incorporated by reference in the DCR. The master DCD will be revised as needed to include generic changes to the version of the DCD approved in this design certification rulemaking. These changes would occur as the result of generic rulemaking by the Commission, under the change criteria in Section VIII.

The NRC is incorporating by reference a second DCD into Appendix A of 10 CFR part 52 (*i.e.,* the DCD for the STPNOC option (STPNOC DCD)). Under the revised rule, a reference to a ''generic DCD'' means, in context, either or both: (i) The DCD for the original U.S. ABWR design certification submitted by GE (GE DCD) and (ii) the STPNOC DCD submitted by the STPNOC.

3. Scope and Contents (Section III)

The purpose of Section III is to describe and define the scope and contents of this design certification and to present how documentation discrepancies or inconsistencies are to be resolved. Paragraph III.A is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic technical specifications into this appendix. The NRC is (i) redesignating a portion of the existing paragraph A regarding the OFR approval of the incorporation by reference of the design control documents as paragraph A.1; (ii) redesignating the remaining portion of the existing paragraph A regarding the GE DCD availability as paragraph A.2; and (iii) adding a new paragraph A.3 regarding STPNOC DCD availability. These changes were directed by OFR so that the incorporation by reference language is consistent with the guidance contained in the **Federal Register** Document Drafting Handbook, January 2011 Revision.

The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published in the *Code of Federal Regulations.* This material, like any other properly issued regulation, has the force and effect of law. The STPNOC DCD was prepared to meet the technical information contents of application requirements for design certifications under 10 CFR 52.47(a) and the requirements of the OFR for incorporation by reference under 1 CFR part 51. One of the requirements of the OFR for incorporation by reference is that the applicant for the design certification (or amendment to the design certification) must make the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph III.A.3 identifies a STPNOC representative to be contacted to obtain a copy of the STPNOC DCD.

The generic DCD (master copy) for the STPNOC DCD is electronically accessible in ADAMS under Accession No. ML102870017; at the OFR; and, at *http://www.regulations.gov* by searching under Docket ID NRC–2010–0134. Copies of the STPNOC generic DCD will also be available at the NRC's PDR. Questions concerning the accuracy of information in an application that

references this appendix will be resolved by checking the master copy of the generic DCD in ADAMS. If the design certification amendment applicant makes a generic change (through NRC rulemaking) to the DCD under 10 CFR 52.63 and the change process provided in Section VIII of Appendix A, then at the completion of the rulemaking the NRC will request approval of the Director, OFR, for the revised master DCD. The NRC will require that the design certification amendment applicant maintain an up-to-date copy of the master DCD under paragraph X.A.1 that includes any generic changes it has made because it is likely that most applicants intending to reference the standard design will obtain the generic DCD from the design certification amendment applicant.

In addition, the NRC is revising paragraph III.B to add text indicating that an applicant or licensee referencing this appendix may reference either the GE DCD, or both the GE DCD and the STPNOC DCD. An applicant referencing this appendix will be required to indicate in its application and in all necessary supporting documentation which of these two alternatives it is implementing. This information is necessary to support the NRC's review and processing of the license application.

A COL applicant that does not reference both the GE DCD and the STPNOC DCD will be required, in accordance with 10 CFR 50.150(a)(3)(v)(B) to comply with the requirements of 10 CFR 50.150 as part of its COL application.

The NRC is making a minor change to the wording of the last sentence in paragraph III.B in the final rule for clarity. In the proposed rule, this sentence read, ''An applicant referencing this appendix shall indicate in its application and in all necessary supporting documentation which of these two options it is implementing.'' This sentence is revised in the final rule to read, ''An applicant referencing this appendix shall indicate in its application and in all necessary supporting documentation whether it is implementing the GE DCD, or both the GE DCD and the STPNOC DCD.'' This avoids the use of the word ''options'' which was used in a different context in this paragraph than it was in other sections of the rule.

Paragraphs III.C and III.D set forth the way potential conflicts are to be resolved. Paragraph III.C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. The NRC is making a minor change to paragraph III.C, which currently states that, if there is a conflict between Tier 1 and Tier 2 of ''the'' DCD, then Tier 1 controls. The revised paragraph states that, if there is a conflict between Tier 1 and Tier 2 of ''a'' DCD, then Tier 1 controls. This change of ''the'' to ''a'' is necessary to indicate that this requirement applies to both the GE DCD and the STPNOC DCD.

The NRC is also making a change to paragraph III.D. Paragraph III.D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the final safety evaluation report (FSER) for the certified standard design. The revision indicates that this is also the case for an inconsistency between the STPNOC DCD and the NRC's associated FSER, referred to as the ''AIA FSER.''

In the proposed rule, the NRC had proposed to redesignate current paragraph III.E as proposed paragraph III.F and to add a new paragraph, III.E, stating that, if there is a conflict between the design as described in the GE DCD and a design matter which implements the STPNOC-certified design option but is not specifically described in the STPNOC DCD, then the GE DCD controls. The NRC had proposed this paragraph to address the situation when, despite the best efforts of the STPNOC and the NRC, there were unintended consequences or unaddressed issues resulting from the STPNOC's amendment to the U.S. ABWR design. The NRC received a comment on this aspect of the proposed rule from NINA stating that proposed paragraph III.E should be deleted because it was unnecessary and not clear. For the reasons set forth in the NRC response to comment NINA–8 in Section II of this document, the NRC agrees that inclusion of this provision is not necessary and has decided to delete the proposed paragraph III.E in the final rule.

4. Additional Requirements and Restrictions (Section IV)

Section IV presents additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A presents the information requirements for these applicants. Paragraph IV.A.3 currently requires the applicant to include, not simply reference, the proprietary information and SGI referenced in the U.S. ABWR DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements. The NRC is revising paragraph IV.A.3 to indicate that a COL applicant must include, in the plant-specific DCD, the proprietary information and SGI referenced in both the GE DCD and the STPNOC DCD, as applicable.

The NRC is also adding a new paragraph IV.A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Paragraph IV.A.4.a requires that a COL applicant referencing this appendix include, as part of its application, a demonstration that an entity other than GE Nuclear Energy is qualified to supply the U.S. ABWR-certified design unless GE Nuclear Energy supplies the design for the applicant's use. Paragraph IV.A.4.b requires that a COL applicant referencing the STPNOC-certified design option include, as part of its application, a demonstration that an entity other than the STPNOC and TANE acting together is qualified to supply the STPNOC-certified design option, unless the STPNOC and TANE acting together supply the design option for the applicant's use. In cases where a COL applicant is not using GE Nuclear Energy to supply the U.S. ABWR-certified design, or is not using the STPNOC and TANE acting together to supply the STPNOC-certified design option, this information is necessary to support any NRC finding under 10 CFR 52.73(a) that an entity other than the one originally sponsoring the design certification or design certification amendment is qualified to supply the certified design or certified design option.

Under 10 CFR 52.47(a)(7), a design certification applicant is required to include information in its application to demonstrate that it is technically qualified to engage in the proposed activities (*e.g.,* supplying the certified design to license applicants). Based on the NRC's review of the STPNOC application to amend the U.S. ABWR-certified design, the NRC determined that the STPNOC and its contractors are technically qualified to perform the design work associated with the amended portion of the U.S. ABWR design represented by the STPNOC's application and to supply the amended portion of the U.S. ABWR design. However, the staff determined that the STPNOC, by itself, is not technically qualified to supply the amended portion of the U.S. ABWR design certification represented in the STPNOC's DCD. Rather, the staff determined that the STPNOC and TANE acting together are qualified to supply the amended portion of the U.S. ABWR design certification represented in the STPNOC's DCD. Therefore, the NRC is including

paragraph IV.A.4.b to ensure that the basis for the NRC finding of technical qualifications in support of this design certification amendment remains valid.

5. Applicable Regulations (Section V)

The purpose of Section V is to specify the regulations applicable and in effect when the design certification is approved (*i.e.,* as of the date specified in paragraph V.A, which is the date that Appendix A was originally approved by the Commission and signed by the Secretary of the Commission). The NRC is revising paragraph V.A to indicate that the current text in this paragraph (new paragraph V.A.1) applies to the GE DCD and to add a new paragraph (V.A.2) indicating the regulations that apply to the STPNOC DCD, as approved by the Commission and signed by the Secretary of the Commission in approving this amendment to Appendix A.

In the final rule, the NRC is making a change to the rule text in proposed paragraph V.A.2, which stated that the regulations that apply to the U.S. ABWR design as contained in the STPNOC DCD are in 10 CFR parts 50 and 52 that are applicable and technically relevant, as described in the FSER on the STPNOC amendment. The purpose of the change in the final rule is to more accurately reflect the issue resolution afforded to the STPNOC DCD. The NRC's review of the STPNOC's proposed amendment to the U.S. ABWR had three objectives. The first objective was to confirm that the applicant had complied with the AIA rule (10 CFR 50.150). The second objective was to determine that there would be no adverse impacts from complying with the requirements for consideration of aircraft impacts on conclusions reached by the NRC in its review of the original U.S. ABWR design certification. The third objective was to determine if the applicant was technically qualified to perform the design work, to amend a portion of the U.S. ABWR design, and to supply the amended portion of the design. To more accurately reflect these objectives, the NRC modified paragraph V.A.2 to state that the regulations that apply to the U.S. ABWR design as contained in the STPNOC DCD are those described in paragraph V.A.1 (as applicable to the original GE DCD) and 10 CFR 50.150, as described in the FSER on the STPNOC amendment addressing the AIA rule (NUREG–1948).

6. Issue Resolution (Section VI)

The purpose of Section VI is to identify the scope of issues that were resolved by the Commission in the original certification rulemaking and, therefore, are ''matters resolved'' within the meaning and intent of 10 CFR 52.63(a)(5). The NRC did not identify any changes to paragraph VI.A in the proposed rule. However, upon consideration of a public comment on the proposed rule suggesting that changes to paragraph VI.A were necessary, the NRC is making changes to paragraph VI.A in the final rule (see comment NINA–10 and associated NRC response in section II of this document).

Paragraph VI.A describes in general terms the nature of the Commission's findings, and makes the finding required by 10 CFR 52.54 for the Commission's approval of this final DCR. Furthermore, paragraph VI.A explicitly states the Commission's determination that this design provides adequate protection to the public health and safety. The NRC is revising paragraph VI.A in the final rule by redesignating current paragraph VI.A as new paragraph VI.A.1 and by adding new paragraphs VI.A.2 and VI.A.3. Paragraph VI.A.2 describes the scope of issue resolution accorded the STPNOC option and states that the Commission has determined that the structures, systems, components, and design features of the U.S. ABWR design, as contained in the STPNOC DCD, comply with the provisions of the AEA of 1954, as amended, and the applicable regulations identified in Section V.A.2, including 10 CFR 50.150, and therefore, provide enhanced protection to the health and safety of the public afforded by compliance with 10 CFR 50.150. Paragraph VI.A.2 further states that a conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications to meet the requirements of 10 CFR 50.150 are not necessary for the U.S. ABWR design.

Paragraph VI.A.3 describes the scope of issue resolution accorded the combination of the GE DCD and the STPNOC option and states that the Commission has determined that the structures, systems, components, and design features of the U.S. ABWR, as contained in both the GE DCD and the STPNOC DCD, when referenced together, comply with the provisions of the AEA of 1954, as amended, and the applicable regulations identified in Section V.A., and, therefore, provide adequate protection to the health and safety of the public. Paragraph VI.A.3 further states that a conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design, when the GE DCD and the STPNOC DCD are referenced together.

Paragraph VI.B presents the scope of issues that may not be challenged as a matter of right in subsequent proceedings and describes the categories of information for which there is issue resolution. Paragraph VI.B.1 provides that all nuclear safety issues arising from the AEA of 1954, as amended, that are associated with the information in the NRC staff's FSER (ADAMS Accession No. ML102710198), the Tier 1 and Tier 2 information and the rulemaking record for this appendix are resolved within the meaning of 10 CFR 52.63(a)(5). These issues include the information referenced in the DCD that are requirements (*i.e.,* ''secondary references''), as well as all issues arising from proprietary information and SGI that are intended to be requirements. Paragraph VI.B.2 provides for issue preclusion of proprietary information and SGI.

The NRC is revising paragraphs VI.B.1 and VI.B.2 to redesignate references to the ''FSER'' as references to the ''U.S. ABWR FSER,'' and references to the ''generic DCD'' as references to the ''GE DCD'' to distinguish the FSER and DCD for the original certified design from the FSER and DCD issued to support the STPNOC amendment to the U.S. ABWR design. In addition, this revision adds additional text to paragraph VI.B.1 to identify the information that is resolved by the Commission in this rulemaking to certify the STPNOC amendment to the U.S. ABWR design.

The NRC is also revising paragraph VI.B.7, which identifies as resolved all environmental issues concerning severe accident mitigation design alternatives (SAMDAs) arising under the National Environmental Policy Act of 1969 (NEPA) associated with the information in the NRC's final environmental assessment (EA) for the U.S. ABWR design and Revision 1 of the technical support document for the U.S. ABWR, dated December 1994, for plants referencing this appendix whose site parameters are within those specified in the technical support document. The NRC is revising this paragraph to also identify as resolved all environmental issues concerning SAMDAs associated with the information in the NRC's final EA and Revision 0 of ABWR–LIC–09–621, ''Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification,'' for the AIA amendment to the U.S. ABWR design for plants referencing this appendix whose site parameters are

within those specified in the technical support document.

Finally, the NRC is revising paragraph VI.E, which provides the procedure for an interested member of the public to obtain access to proprietary information and SGI for the U.S. ABWR design, in order to request and participate in proceedings identified in paragraph VI.B of this appendix, that is, proceedings involving licenses and applications which reference this appendix. The NRC is replacing the current information in this paragraph with a statement that the NRC will specify, at an appropriate time, the procedure for interested persons to review SGI or SUNSI (including proprietary information) for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

Access to such information would be for the sole purpose of requesting or participating in certain specified hearings, viz., (i) the hearing required by 10 CFR 52.85 where the underlying application references this appendix, (ii) any hearing provided under 10 CFR 52.103 where the underlying COL references this appendix, and (iii) any other hearing relating to this appendix in which interested persons have the right to request an adjudicatory hearing.

For proceedings where the notice of hearing was published before January 17, 2012, the Commission's order governing access to SUNSI and SGI shall be used to govern access to SUNSI (including proprietary information) and SGI on the STPNOC option. For proceedings in which the notice of hearing or opportunity for hearing is published after January 17, 2012, paragraph VI.E. applies and governs access to SUNSI (including proprietary information) and SGI for both the original GE-certified design and the STPNOC option; as stated in paragraph VI.E, the NRC will specify the access procedures at an appropriate time.

The NRC expects to follow its current practice of establishing the procedures by order when the notice of hearing is published in the **Federal Register**. (See, *e.g.,* Florida Power and Light Co., Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation (75 FR 34777; June 18, 2010); Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility) (74 FR 38052; July 30, 2009)).

In the four currently approved design certifications (10 CFR part 52, appendices A through D), paragraph VI.E presents specific directions on how to obtain access to proprietary information and SGI on the design certification in connection with a license application proceeding referencing that DCR. The NRC is making this change because these provisions were developed before the terrorist events of September 11, 2001. After September 11, 2001, the Congress changed the statutory requirements governing access to SGI, and the NRC revised its rules, procedures, and practices governing control and access to SUNSI and SGI. The NRC now believes that generic direction on obtaining access to SUNSI and SGI is no longer appropriate for newly approved DCRs. Accordingly, the specific requirements governing access to SUNSI and SGI contained in paragraph VI.E of the four currently approved DCRs are not included in the amended DCR for the U.S. ABWR. Instead, the NRC will specify the procedures to be used for obtaining access at an appropriate time in any COL proceeding referencing the U.S. ABWR DCR. The NRC intends to include this change in any future amendment or renewal of the other existing DCRs. However, the NRC is not planning to initiate rulemaking to change paragraph VI.E of the existing DCRs, to minimize unnecessary resource expenditures by both the original DCR applicant and the NRC.

7. Processes for Changes and Departures (Section VIII)

The purpose of Section VIII is to present the processes for generic changes to, or plant-specific departures (including exemptions) from, the DCD. The Commission adopted this restrictive change process to achieve a more stable licensing process for applicants and licensees that reference this DCR. The change processes for the three different categories of Tier 2 information, namely, Tier 2, Tier 2*, and Tier 2* with a time of expiration, are presented in paragraph VIII.B.

Departures from Tier 2 that a licensee may make without prior NRC approval are addressed under paragraph VIII.B.5 (similar to the process in 10 CFR 50.59). The NRC is making changes to Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC is revising paragraph VIII.B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required by 10 CFR 52.47(a)(28) to address 10 CFR 50.150. In addition, the NRC is redesignating paragraphs VIII.B.5.d, B.5.e, and B.5.f as paragraphs VIII.B.5.e, B.5.f, and B.5.g, respectively, and adding a new paragraph VIII.B.5.d. Paragraph VIII.B.5.d requires an applicant or licensee who proposed to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification to consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The FSAR information required by the aircraft impact rule which is subject to this change control requirement consists of the descriptions of the design features and functional capabilities incorporated into the final design of the nuclear power facility and the description of how the identified design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1). The objective of the change controls is to determine whether the design of the facility, as changed or modified, is shown to withstand the effects of the aircraft impact with reduced use of operator actions. In other words, the applicant or licensee must continue to show, with the modified design, that the acceptance criteria in 10 CFR 50.150(a)(1) are met with reduced use of operator actions. The rule does not require an applicant or a licensee implementing a design change to redo the complete AIA to evaluate the effects of the change. The NRC believes it may be possible to demonstrate that a design change is bounded by the original design or that the change provides an equivalent level of protection, without redoing the original assessment.

Consistent with the NRC's intent when it issued the AIA rule, under the revision to this section, plant-specific departures from the AIA information in the FSAR do not require a license amendment, but may be made by the licensee upon compliance with the substantive requirements of the AIA rule (*i.e.,* the AIA rule acceptance criteria). The applicant or licensee is

also required to document, in the plant-specific departure, how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1) in accordance with Section X of this appendix. Applicants and licensees making changes to design features or capabilities included in the certified design may also need to develop alternate means to cope with the loss of large areas of the plant from explosions or fires to comply with the requirements in 10 CFR 50.54(hh). The addition of these provisions to this appendix is consistent with the NRC's intent when it issued the AIA rule in 2009, as noted in the SOC for that rule (74 FR 28112; June 12, 2009, at 28122, third column).

8. Records and Reporting (Section X)

The purpose of Section X is to present the requirements that apply to maintaining records of changes to and departures from the generic DCD, which would be reflected in the plant-specific DCD. Section X also presents the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. Paragraph X.A.1 requires that a generic DCD and the proprietary information and SGI referenced in the generic DCD be maintained by the applicant for this rule. The NRC is revising paragraph X.A.1 to indicate that there are two applicants for this appendix and that the requirements to maintain a copy of the applicable generic DCD applies to both the applicant for the original U.S. ABWR certification (GE) and the applicant for the AIA amendment to the U.S. ABWR design (STPNOC). Paragraph X.A.1 also requires the design certification applicant to maintain the proprietary information and SGI referenced in the generic DCD. The NRC is replacing the term ''proprietary information'' with the broader term ''sensitive unclassified non-safeguards information (including proprietary information).'' Information categorized as SUNSI is information that is generally not publicly available and encompasses a wide variety of categories, including information about a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as SGI or classified as National Security Information or Restricted Data (security-related information), but which the NRC may protect from public disclosure under 10 CFR 2.390.

This change ensures that both GE and the STPNOC (as well as any future applicants for amendments to the U.S. ABWR DCR who intend to supply the certified design) are required to maintain a copy of the applicable generic DCD, and maintain the applicable SUNSI (including proprietary information) and SGI—developed by that applicant—that were approved as part of the relevant design certification rulemakings. In the certification of the original U.S. ABWR design, the NRC approved both proprietary information and SGI as part of the design certification rulemaking. In this amendment to the U.S. ABWR design, the NRC is approving information designated as SUNSI as part of the amendment rulemaking.

The NRC notes that the generic DCD concept was developed, in part, to meet OFR requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the proprietary information and SGI were not included in the public version of the DCD prepared by GE, and the SUNSI was not included in the public version of the DCD prepared by the STPNOC. Only the public version of the generic STPNOC DCD is identified and incorporated by reference into this rule. Nonetheless, the SUNSI for the STPNOC option was reviewed by the NRC and, as stated in paragraph VI.B.2, the NRC considers the information to be resolved within the meaning of 10 CFR 52.63(a)(5). Because this information is in the non-public versions of the GE and STPNOC DCDs, this SUNSI (including proprietary information) and SGI, or its equivalent, is required to be provided by an applicant for a license referencing this DCR.

In addition, the NRC is adding a new paragraph X.A.4.a that requires the applicant for the amendment to the U.S. ABWR design to address the AIA requirements to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). The NRC is also adding new paragraph X.A.4.b that requires an applicant or licensee who references this appendix to include both the GE DCD and the STPNOC DCD to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). The addition of paragraphs X.A.4.a and X.A.4.b is consistent with the NRC's intent when it issued the AIA rule in 2009 (74 FR 28112; June 12, 2009, at 28121, second column).

IV. Section-by-Section Analysis

A. Introduction (Section I)

The NRC is amending Section I, ''Introduction,'' to identify the STPNOC as the applicant for the amendment of the U.S. ABWR DCR to address the AIA rule, 10 CFR 50.150.

B. Definitions (Section II)

The NRC is revising the definition of ''generic design control document (generic DCD)'' to indicate that there will be two generic DCDs incorporated by reference into this appendix—the DCD for the original U.S. ABWR design certification submitted by GE Nuclear Energy (GE DCD) and the DCD for the amendment to the U.S. ABWR design submitted by the STPNOC (STPNOC DCD). This will make it clear that all requirements in this appendix related to the ''generic DCD'' apply to both the GE DCD and the STPNOC DCD, unless otherwise specified.

C. Scope and Contents (Section III)

The NRC is (i) redesignating a portion of the existing paragraph A regarding the OFR approval of the incorporation by reference of the design control documents as paragraph A.1; (ii) redesignating the remaining portion of the existing paragraph A regarding the GE DCD availability as paragraph A.2; and (iii) adding a new paragraph A.3 regarding STPNOC DCD availability.

The NRC is revising paragraph III.B to add text indicating that an applicant or licensee referencing this appendix may use either the GE DCD, or both the GE DCD and the STPNOC DCD. By doing so, the applicant or licensee effectively indicates which generic design it is using (*i.e.,* the GE-certified design, or the GE/STPNOC composite certified design). An applicant referencing this appendix is required to indicate in its application and in all necessary supporting documentation which of these two alternatives it is implementing.

The NRC is making a minor change to paragraph III.C, which currently states that, if there is a conflict between Tier 1 and Tier 2 of ''the'' DCD, then Tier 1 controls. The revised paragraph states that, if there is a conflict between Tier 1 and Tier 2 of ''a'' DCD, then Tier 1 controls. This change of ''the'' to ''a'' was necessary because the requirement also applies to the STPNOC DCD.

Paragraph III.D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the FSER for the certified standard design. The NRC is making a change to paragraph III.D which indicates that in the event of an

inconsistency between the STPNOC DCD and the AIA FSER, the STPNOC DCD controls.

D. Additional Requirements and Restrictions (Section IV)

The NRC is revising paragraph IV.A.3 to indicate that a COL applicant must include, in the plant-specific DCD, the proprietary information and SGI referenced in both the GE DCD and the STPNOC DCD, as applicable, or its equivalent.

Section IV presents additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A presents the information requirements for these applicants. Paragraph IV.A.3 requires the applicant to include the proprietary information and SGI referenced in the DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements. The NRC is revising paragraph IV.A.3 to indicate that a COL applicant must include, in the plant-specific DCD, the SUNSI (including proprietary information) and SGI referenced in both the GE DCD and the STPNOC DCD, as applicable, or the equivalent of this information. If the COL applicant is referencing only the GE DC, then the applicant must include the proprietary information and SGI developed by GE (as presented in the non-public version of the GE DCD), or the equivalent of this information. If the COL applicant is referencing both the GE DCD and the STPNOC DCD, then the applicant must include: (1) The proprietary information and SGI developed by GE (as presented in the non-public version of the GE DCD), or the equivalent of this information; and (2) the SUNSI developed by the STPNOC (as presented in the non public version of the STPNOC DCD), or the equivalent of this information.

The NRC is also adding a new paragraph IV.A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Paragraph IV.A.4.a requires that a COL applicant referencing this appendix include, as part of its application, a demonstration that an entity other than GE is qualified to supply the U.S. ABWR-certified design unless GE supplies the design for the applicant's use. Paragraph IV.A.4.b requires that a COL applicant referencing the STPNOC-certified design option include, as part of its application, a demonstration that an entity other than the STPNOC and TANE acting together is qualified to supply the STPNOC-certified design option, unless the STPNOC and TANE acting together supply the design option for the applicant's use. In cases where a COL applicant is not using GE to supply the U.S. ABWR-certified design, or is not using the STPNOC and TANE acting together to supply the STPNOC-certified design option, the required information will be used to support any NRC finding under 10 CFR 52.73(a) that an entity other than the one originally sponsoring the design certification or design certification amendment is qualified to supply the certified design or certified design option.

E. Applicable Regulations (Section V)

Paragraph V.A is revised so that the paragraph V.A.1 identifies the applicable regulations for the GE-certified design, and paragraph V.A.2 presents the applicable regulations for the STPNOC Option. In the final rule, the NRC is making a change to the rule text in proposed paragraph V.A.2, which stated that the regulations that apply to the U.S. ABWR design as contained in the STPNOC DCD are in 10 CFR parts 50 and 52 that are applicable and technically relevant, as described in the FSER on the STPNOC amendment. The purpose of the change in the final rule is to more accurately reflect the issue resolution afforded to the STPNOC DCD, as reflected in the objectives of the NRC's review of the STPNOC's proposed amendment to the U.S. ABWR: (1) To confirm that the applicant had complied with the AIA rule (10 CFR 50.150); (2) to determine that there would be no adverse impacts from complying with the AIA rule on conclusions reached by the NRC in its review of the original U.S. ABWR design certification; and (3) to determine if the applicant was technically qualified to perform the design work to amend a portion of the U.S. ABWR design and to supply the amended portion of the design. To more accurately reflect these objectives, the NRC modified paragraph V.A.2 to state that the regulations that apply to the U.S. ABWR design as contained in the STPNOC DCD are those described in paragraph V.A.1 (as applicable to the original GE DCD) and 10 CFR 50.150, as described in the FSER on the STPNOC amendment addressing the AIA rule (NUREG–1948).

F. Issue Resolution (Section VI)

The NRC is revising paragraph VI.A in the final rule by redesignating current paragraph VI.A as new paragraph VI.A.1 and by adding new paragraphs VI.A.2 and VI.A.3. Paragraph VI.A.1 describes the scope of issue resolution accorded the original GE DCD. Paragraph VI.A.2 describes the scope of issue resolution accorded the STPNOC option. Paragraph VI.A.3 describes the scope of issue resolution accorded the combination of the GE DCD and the STPNOC option.

The NRC is revising paragraphs VI.B.1 and VI.B.2 to redesignate references to the ''FSER'' as references to the ''U.S. ABWR FSER'' and references to the ''generic DCD'' as references to the ''GE DCD.'' This was done to distinguish the FSER and DCD for the original certified design from the FSER and DCD issued to support the STPNOC amendment to the U.S. ABWR design. In addition, this revision adds text to paragraph VI.B.1 to identify the information resolved by the Commission in this rulemaking to certify the STPNOC AIA amendment to the U.S. ABWR design.

The NRC is revising paragraph VI.B.7 to identify as resolved all environmental issues concerning SAMDAs associated with the information in the NRC's final EA and Revision 0 of ABWR–LIC–09–621, ''Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification,'' for the AIA amendment to the U.S. ABWR design for plants referencing this appendix whose site parameters are within those specified in the technical support document. The existing site parameters specified in the technical support document are not affected by this design certification amendment.

G. Processes for Changes and Departures (Section VIII)

The NRC is revising Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC is revising paragraph VIII.B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required by 10 CFR 52.47(a)(28) to address aircraft impacts.

In addition, the NRC is redesignating paragraphs VIII.B.5.d, B.5.e, and B.5.f as paragraphs VIII.B.5.e, B.5.f, and B.5.g, respectively, and adding a new paragraph VIII.B.5.d. New paragraph VIII.B.5.d requires an applicant referencing the U.S. ABWR DCR, that proposed to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, to consider the effect of the changed feature or

capability on the original 10 CFR 50.150(a) assessment.

H. Records and Reporting (Section X)

The NRC is revising paragraph X.A.1 to refer to ''applicants'' for this appendix and to replace the term ''proprietary information'' with the broader term ''sensitive unclassified non-safeguards information.'' Paragraph X.A.1 is revised to require the design certification amendment applicant to maintain the SUNSI which it developed and used to support its design certification amendment application. This ensures that the referencing applicant has direct access to this information from the design certification amendment applicant, if it has contracted with the applicant to provide the SUNSI to support its license application. The STPNOC generic DCD and the NRC-approved version of the SUNSI are required to be maintained for the period that this appendix may be referenced.

The NRC is also adding a new paragraph X.A.4.a that requires the STPNOC to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). This new provision, which is consistent with 10 CFR 50.150(c)(3), will facilitate any NRC inspections of the assessment that the NRC decides to conduct.

Similarly, the NRC is adding new paragraph X.A.4.b that requires an applicant or licensee who references this appendix, to include both the GE DCD and the STPNOC DCD, to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). This provision is consistent with 10 CFR 50.150(c)(4). For all applicants and licensees, the supporting documentation retained onsite should describe the methodology used in performing the assessment, including the identification of potential design features and functional capabilities to show that the acceptance criteria in 10 CFR 50.150(a)(1) would be met.

V. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of this chapter. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with the particular State's administrative procedure laws. Category ''NRC'' regulations do not confer regulatory authority on the State.

VI. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see the **ADDRESSES** section of this document.

Document	PDR	Web	ADAMS
Comment Letter (1) of Thomas Shadis on Proposed Rule PR–52 Regarding U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment.	X	X	ML110760174
Comment Letter (2) of Jerald G. Head on Behalf of GE-Hitachi Opposing Proposed Rule PR 52 regarding U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment.	X	X	ML110950657
Comment Letter (3) of Mark McBurnett on Behalf of Nuclear Innovation North America LLC on Proposed Rule PR 52 regarding U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment.	X	X	ML11103A032
SECY–10–0142, ''Proposed Rule—U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment''.	X	X	ML102100129
STPNOC Application to Amend the Design Certification Rule for the U.S. ABWR	X	X	ML092040048
South Texas Project, Units 3 and 4, Combined License Application	X	X	ML072850066
March 3, 2010, letter from Toshiba to NRC stating that Toshiba intends to seek renewal of the U.S. ABWR design certification.	X	.....	ML100710026
General Electric ABWR Design Control Document	X	.....	ML11126A129
ABWR STP AIA Amendment Design Control Document, Revision 3 (public version)	X	X	ML102870017
Applicant's Supplemental Environmental Report—Amendment to the ABWR Standard Design Certification	X	X	ML093170455
Final Safety Evaluation Report for the STPNOC Amendment to the ABWR Design Certification	X	X	ML102710198
NUREG–1948, ''Final Safety Evaluation Report Related to the Aircraft Impact Amendment to the U.S. Advanced Boiling Water Reactor (ABWR) Design Certification''.	.....	X	ML11182A163
NRC's Final Environmental Assessment Relating to the Certification of the U.S. ABWR (Attachment 2 of SECY 96–077).	X	X	ML003708129
Revision 1 of the Technical Support Document for the U.S. ABWR, December 1994	X	.....	ML100210563
Environmental Assessment by the U.S. NRC Relating to the Certification of the STPNOC Amendment to the U.S. ABWR Standard Plant Design.	X	.....	ML110970669
NUREG–1503, ''Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design''.	X	X	ML080670592
NUREG–1503, Supplement 1, ''Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design''.	X	X	ML080710134
Regulatory History of Design Certification [11]	X	.....	ML003761550

VII. Voluntary Consensus Standards

The National Technology and Transfer Act of 1995 (the Act), Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is approving the AIA amendment to the U.S. ABWR standard plant design for use in nuclear power plant licensing

[11] The regulatory history of the NRC's design certification reviews is a package of documents that is available in the NRC's PDR and ADAMS. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs.

under 10 CFR parts 50 or 52. Design certifications (and amendments thereto) are not generic rulemakings establishing a generally applicable standard with which all 10 CFR parts 50 and 52 nuclear power plant licensees must comply. Design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications (and amendments thereto) are initiated by an applicant for rulemaking, rather than by the NRC. For these reasons, the NRC concludes that the Act does not apply to this rule.

VIII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under NEPA, and the Commission's regulations in Subpart A, ''National Environmental Policy Act; Regulations Implementing Section 102(2),'' of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' that this DCR amendment is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the final EA, is that the Commission has made a generic determination under 10 CFR 51.32(b)(2) that there is no significant environmental impact associated with the issuance of an amendment to a design certification.

This amendment to 10 CFR part 52 does not authorize the siting, construction, or operation of a facility using the AIA amendment to the U.S. ABWR design; it only codifies the AIA amendment to the U.S. ABWR design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate under NEPA as part of the application for the construction and operation of a facility referencing the AIA amendment to the U.S. ABWR DCR.

In addition, as part of the EA for the AIA amendment to the U.S. ABWR design, the NRC reviewed the STPNOC's evaluation of various design alternatives to prevent and mitigate severe accidents in Revision 0 of ABWR–LIC–09–621, ''Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification.'' According to 10 CFR 51.30(d), an EA for a design certification amendment is limited to the consideration of whether the design change which is the subject of the amendment renders a SAMDA previously rejected in the earlier EA to become cost beneficial, or results in the identification of new SAMDAs, in which case the costs and benefits of new SAMDAs and the bases for not incorporating new SAMDAs in the design certification must be addressed. Based upon review of the STPNOC's evaluation, the Commission concludes that the design changes (1) do not cause a SAMDA previously rejected in the EA for the original U.S. ABWR design certification to become cost-beneficial and (2) do not result in the identification of any new SAMDAs that could become cost beneficial.

The Commission did not receive any comments on the draft EA and has prepared a final EA. All environmental issues concerning SAMDAs associated with the information in the final EA and Revision 0 of ABWR–LIC–09–621, ''Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification,'' are considered resolved for plants referencing the AIA amendment to the U.S. ABWR design whose site parameters are within those specified in Revision 1 of the technical support document for the U.S. ABWR, dated December 1994. The existing site parameters specified in the technical support document are not affected by this design certification amendment.

The final EA, upon which the Commission's finding of no significant impact is based, and the STPNOC DCD are available for examination and copying at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852.

IX. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), Approval Numbers 3150–0151 and 3150–0210.

The burden to the public for these information collections is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS. RESOURCE@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503. You may also email comments to *Chad S Whiteman@omb.eop.gov* or comment by telephone at (202) 395–4718.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

XI. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule provides for certification of an amendment to a nuclear power plant design. Neither the design certification amendment applicant, nor prospective nuclear power plant licensees who reference this DCR, fall within the scope of the definition of ''small entities'' presented in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). Thus, this rule does not fall within the purview of the Regulatory Flexibility Act.

XII. Backfitting

The Commission has determined that this rule does not constitute a backfit as defined in the backfit rule (10 CFR 50.109) because this design certification amendment does not impose new or changed requirements on existing 10 CFR part 50 licensees, nor does it impose new or changed requirements on existing DCRs in Appendices A through D of 10 CFR part 52. Therefore, a backfit analysis was not prepared for this rule.

The rule does not constitute backfitting as defined in the backfit rule (10 CFR 50.109) with respect to either operating licenses under 10 CFR part 50 because there are no operating licenses referencing this DCR. The rule does not constitute backfitting as defined in the backfit rule or otherwise impose requirements inconsistent with the applicable finality requirements under 10 CFR part 52 (10 CFR 52.63, 52.83 and 52.98) because: (i) There are no COLs issued by the NRC referencing this rule, and (ii) neither the backfit rule nor the finality provisions in 10 CFR part 52 protect COL applicants from changes in NRC requirements which may occur during the pendency of their application before the NRC.

The rule is not inconsistent with the finality requirements in 10 CFR 52.63 as applied to COLs. The rule establishes an option to the existing DCR which addresses the requirements of the AIA rule. A COL referencing the U.S. ABWR DCR may voluntarily choose to select the STPNOC option, or may choose to reference the U.S. ABWR design without selecting the STPNOC option.

The AIA rule itself mandated that the U.S. ABWR DCR be revised (either during the DCR's current term or no later than its renewal) to address the requirements of the AIA rule. The AIA rule may therefore be regarded as inconsistent with applicable finality provisions in 10 CFR part 52 and section VI of the U.S. ABWR DCR. However, the NRC provided an administrative exemption from these finality requirements when the final AIA rule was issued. (*See* 74 FR 28112; June 12, 2009, at 28143–45). Accordingly, the NRC has already addressed the backfitting implications of applying the AIA rule to the U.S. ABWR.

Because the rule does not constitute backfitting and is not otherwise inconsistent with finality provisions in 10 CFR part 52, the NRC has not prepared a backfit analysis or documented evaluation for this rule.

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the AEA of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 52.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 1. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

■ 2. Appendix A to 10 CFR part 52 is amended as follows:

■ a. Section I is revised.

■ b. In section II, paragraph A is revised.

■ c. In section III, paragraphs A, B, C, and D are revised.

■ d. In section IV, paragraph A.3 is revised, and new paragraph A.4 is added.

■ e. In section V, paragraph A is revised.

■ f. In section VI, paragraphs A, B, and E are revised.

■ g. In section VIII, paragraph B.5.b is revised, paragraphs B.5.d, B.5.e, and B.5.f are redesignated as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and new paragraph B.5.d is added.

■ h. In section X, paragraph A.1 is revised and new paragraph A.4 is added.

The revisions and additions read as follows:

Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

I. Introduction

A. Appendix A constitutes the standard design certification for the U.S. Advanced Boiling Water Reactor (U.S. ABWR) design, in accordance with 10 CFR part 52, subpart B. The applicant for the original certification of the U.S. ABWR design was GE Nuclear Energy (GE).

B. The applicant for the amendment to the U.S. ABWR design to address the requirements in 10 CFR 50.150, ''Aircraft impact assessment,'' (AIA rule) is the STP Nuclear Operating Company (STPNOC).

II. Definitions

A. *Generic design control document (generic DCD)* means either or both of the documents containing the Tier 1 and Tier 2 information and generic technical specifications that are incorporated by reference into this appendix.

* * * * *

III. Scope and Contents

A. Design Control Documents

1. *Incorporation by reference approval.* Certain documents identified in paragraphs III.A.2 and III.A.3 of this section are approved for incorporation by reference into this appendix by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Documents approved for incorporation by reference and created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, then contact the NRC's Public Document Room (PDR) reference staff at (800) 397–4209, (301) 415–3747, or by email at *PDR.Resource@nrc.gov.* A copy of these DCDs approved for incorporation by reference are available for examination and copying at the NRC's PDR located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, telephone: (301) 415–5610, email: *Library.Resource@nrc.gov.* All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

2. *GE DCD:* All Tier 1, Tier 2, and the generic technical specifications in the GE Nuclear Energy (GE) ''ABWR Design Control Document, Revision 4, March 1997'' (GE DCD). You may obtain copies of the GE DCD from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 605–6515. To view the GE DCD in ADAMS, search under ADAMS

Accession No. ML11126A129. The GE DCD can also be viewed at the Federal Rulemaking Web site, *http://www.regulations.gov,* by searching for documents filed under Docket ID NRC–2010–0134.

3. *STPNOC DCD:* All Tier 1 and Tier 2 information in the STP Nuclear Operating Company ''Design Control Document ABWR STP Aircraft Impact Assessment Amendment Revision 3, Copyright @ 2010'' (STPNOC DCD). You may obtain copies of the STPNOC DCD from the Regulatory Affairs Manager for STP Units 3 and 4, STP Nuclear Operating Company, P.O. Box 289, Wadsworth, Texas 77483, telephone: (361) 972–8440. To view the STPNOC DCD in ADAMS, search under ADAMS Accession No. ML102870017. The STPNOC DCD can also be viewed at the Federal Rulemaking Web site, *http://www.regulations.gov,* by searching for documents filed under Docket ID NRC–2010–0134.

B. 1. An applicant or licensee referencing this appendix, in accordance with section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. An applicant or licensee referencing this appendix may reference either the GE DCD, or both the GE DCD and the STPNOC DCD. An applicant referencing this appendix shall indicate in its application and in all necessary supporting documentation whether it is implementing the GE DCD, or both the GE DCD and the STPNOC DCD.

2. Conceptual design information, as set forth in the generic DCD, and the ''Technical Support Document for the ABWR'' are not part of this appendix. Tier 2 references to the probabilistic risk assessment (PRA) in the ABWR standard safety analysis report do not incorporate the PRA into Tier 2.

C. If there is a conflict between Tier 1 and Tier 2 of a DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and the application for design certification of the U.S. ABWR design, NUREG–1503, ''Final Safety Evaluation Report related to the Certification of the Advanced Boiling Water Reactor Design'' (ABWR FSER), and Supplement No. 1, or NUREG–1948 ''Safety Evaluation Report—The STP Nuclear Operating Company Amendment to the Advanced Boiling Water Reactor (ABWR) Design Certification'' (AIA FSER), then the generic DCD controls.

* * * * *

IV. Additional Requirements and Restrictions

A. * * *

3. Include, in the plant-specific DCD, the sensitive unclassified non-safeguards information (including proprietary information) and safeguards information referenced in the GE DCD and the STPNOC DCD, as applicable.

4.a. Include, as part of its application, a demonstration that an entity other than GE Nuclear Energy is qualified to supply the U.S. ABWR-certified design unless GE Nuclear Energy supplies the design for the applicant's use.

b. For an applicant referencing the STPNOC-certified design option, include, as part of its application, a demonstration that an entity other than the STPNOC and Toshiba America Nuclear Energy (TANE) acting together is qualified to supply the STPNOC-certified design option, unless the STPNOC and TANE acting together supply the design option for the applicant's use.

* * * * *

V. Applicable Regulations

A.1. Except as indicated in paragraph B of this section, the regulations that apply to the U.S. ABWR design as contained in the GE DCD are in 10 CFR parts 20, 50, 73, and 100, codified as of May 2, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1503) and Supplement No. 1.

2. Except as indicated in paragraph B of this section, the regulations that apply to the U.S. ABWR design as contained in the STPNOC DCD are those described in paragraph A.1 of this section and 10 CFR 50.150, codified as of December 7, 2011, as described in the FSER on the STPNOC amendment addressing the AIA rule (NUREG–1948).

* * * * *

VI. Issue Resolution

A. 1. *GE DCD.* The Commission has determined that the structures, systems, components, and design features of the U.S. ABWR design, as contained in the GE DCD, comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in section V.A.1 of this appendix; and, therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design. This conclusion does not include a finding with respect to compliance with the requirements of 10 CFR 50.150.

2. *STPNOC DCD.* The Commission has determined that the structures, systems, components, and design features of the STPNOC amendment to the U.S. ABWR design, as contained in the STPNOC DCD, comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in section V.A.2 of this appendix, including 10 CFR 50.150; and, therefore, provide enhanced protection to the health and safety of the public afforded by compliance with 10 CFR 50.150. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications to meet the requirements of 10 CFR 50.150 are not necessary for the STPNOC amendment to the U.S. ABWR design.

3. *GE and STPNOC DCD referenced together.* The Commission has determined that the structures, systems, components, and design features of the U.S. ABWR, as contained in both the GE DCD and the STPNOC DCD, when referenced together, comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in section V.A. of this appendix; and, therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design, when the GE DCD and the STPNOC DCD are referenced together.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the ABWR FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for the original certification of the U.S. ABWR design and all nuclear safety issues, except for operational requirements, associated with the information in the AIA FSER, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the AIA amendment to the U.S. ABWR design;

2. All nuclear safety and safeguards issues associated with the referenced sensitive unclassified non-safeguards information (including proprietary information) and safeguards information which, in context, are intended as requirements in the GE DCD and the STPNOC DCD;

3. All generic changes to the DCD under and in compliance with the change processes in sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.g of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the U.S. ABWR design and Revision 1 of the technical support document for the U.S. ABWR, dated December 1994, and for the NRC's final environmental assessment and Revision 0 of ABWR–LIC–09–621, ''Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification,'' for the AIA amendment to the U.S. ABWR design for plants referencing this

appendix whose site parameters are within those specified in the technical support document.

* * * * *

E. The NRC will specify at an appropriate time the procedures to be used by an interested person who wishes to review portions of the design certification or references containing safeguards information or sensitive unclassified non-safeguards information (including proprietary information, such as trade secrets and commercial or financial information obtained from a person that are privileged or confidential (10 CFR 2.390 and 10 CFR part 9)), for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD or one affecting information required by 10 CFR 52.47(a)(28) to address 10 CFR 50.150, requires a license amendment if it would:

* * * * *

d. If an applicant or licensee proposes to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also document how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1) in accordance with section X of this appendix.

* * * * *

X. Records and Reporting

A. * * *

1. The applicants for this appendix shall maintain a copy of the applicable generic DCD that includes all generic changes to Tier 1, Tier 2, and the generic technical specifications and other operational requirements. The applicants shall maintain the sensitive unclassified non-safeguards information (including proprietary information) and safeguards information referenced in the applicable generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

* * * * *

4.a. The applicant for the amendment to the U.S. ABWR design to address the requirements in 10 CFR 50.150, ''Aircraft impact assessment,'' shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal).

b. An applicant or licensee who references this appendix to include both the GE DCD and the STPNOC DCD shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal).

* * * * *

Dated at Rockville, Maryland, this 7th day of December 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–31906 Filed 12–15–11; 8:45 am]

BILLING CODE 7590–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB–2011–0022]

RIN 3170–AA06

Fair Debt Collection Practices Act (Regulation F)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of the Federal Trade Commission's (Commission's) rulemaking authority for the Fair Debt Collection Practices Act (FDCPA) to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation F (Fair Debt Collection Practices Act). This interim final rule does not impose any new substantive obligations on persons subject to the existing regulations, previously published by the Commission.

DATES: This interim final rule is effective December 30, 2011. Comments must be received on or before February 14, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0022 or RIN 3170–AA06, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, 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, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. 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: Krista Ayoub or Jane Gao, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Debt Collection Practices Act (FDCPA) was enacted to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses.[1] Prior to July 21, 2011, the FDCPA provided that the Federal Trade Commission (Commission) must by regulation exempt from the FDCPA requirements any class of debt collection practices within any state if the Commission determines that under the law of that state that class of debt collection practices is subject to requirements substantially similar to those imposed by the FDCPA, and that there is adequate provision for enforcement.[2]

[1] 15 U.S.C. 1692 *et seq.*

[2] 15 U.S.C. 16992o.

Historically, procedures that states may use to apply for this exemption have been implemented by the Commission in 16 CFR Part 901. Under the FDCPA, the Commission did not have general authority to promulgate trade regulations or other regulations with respect to the collection of debts by debt collectors as defined in the FDCPA.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [3] amended a number of consumer financial protection laws, including the FDCPA. The Dodd-Frank Act transferred rulemaking authority related to the state exemptions under the FDCPA to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011.[4] *See* sections 1061 and 1089 of the Dodd-Frank Act.[5] Pursuant to the Dodd-Frank Act and the FDCPA, as amended, the Bureau is publishing for public comment an interim final rule establishing a new Regulation F (Fair Debt Collection Practices Act), 12 CFR Part 1006, implementing the FDCPA.

II. Summary of the Interim Final Rule

A. General

The interim final rule substantially duplicates the Commission's rule related to state exemptions under the FDCPA as the Bureau's new Regulation F, 12 CFR Part 1006, making only certain non-substantive, technical, formatting, and stylistic changes. Subpart A of Regulation F contains the rule related to state exemptions under the FDCPA. Subpart B is reserved for any future rulemaking by the Bureau under the FDCPA. To minimize any potential confusion, other than republishing the Commission's rule in 16 CFR Part 901 with the Bureau's part number, the Bureau is preserving where possible the numbering the Commission used in 16 CFR Part 901. Additionally, while this interim final rule generally incorporates the Commission's existing regulatory text, the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities.

B. Specific Changes

Footnotes 1 and 2 in the Commission's rule (16 CFR 901.2) that provide guidance on the meaning of ''state law'' and ''class of debt collection practices'' respectively were moved to a newly-created subsection for definitions in § 1006.1. Footnote 3 in the Commission's rule (16 CFR 901.4) was moved to newly-created paragraph (a)(2) in § 1006.4, and other text in that section was renumbered accordingly. In § 1006.5, an address in the Commission's rule (16 CFR 901.5) is replaced with an address for the Bureau, indicating where interested parties may go to review applications submitted by states for exemptions from the FDCPA. In addition, the Commission's rule (16 CFR 901.6) indicated that the Commission would inform the appropriate official of any state that receives such an exemption of any subsequent amendments of the FDCPA (including the Commission's formal advisory opinions, and informal staff interpretations issued by an authorized official or employee of the Commission). In § 1006.6, the Bureau indicates that it will inform the appropriate official of any state that receives such an exemption of any subsequent amendments to the FDCPA or Regulation F. The Bureau anticipates that it will adopt any additional guidance on the FDCPA as part of Regulation F, instead of through formal advisory opinions or informal staff interpretations. In addition, references to the Commission and its administrative structure have been replaced with references to the Bureau. Conforming edits have been made to internal cross-references. Conforming edits have also been made to reflect the scope of the Bureau's authority pursuant to the FDCPA, as amended by the Dodd-Frank Act.

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this interim final rule pursuant to its authority under the FDCPA and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the Commission's authority under an enumerated consumer law to prescribe rules, issue guidelines, conduct studies, or issue reports.[6] The FDCPA is an enumerated consumer law.[7] Accordingly, effective July 21, 2011, the authority of the Commission to issue regulations related to state exemptions under the FDCPA transferred to the Bureau.[8]

The FDCPA, as amended, requires that the Bureau by regulation exempt from the requirements of the FDCPA any class of debt collection practices within any state if the Bureau determines that under the law of that state that class of debt collection practices is subject to requirements substantially similar to those imposed by the FDCPA, and that there is adequate provision for enforcement.[9]

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA) [10] generally requires public notice and an opportunity to comment before promulgation of substantive regulations.[11] The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.[12] The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to the public interest under these circumstances. In addition, substantially all the changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of FDCPA authority from the Commission to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and-comment requirements.

The Bureau's good cause findings are based on the following considerations. As an initial matter, the Commission's existing regulation was a result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule makes only non-substantive, technical changes to the existing text of the regulation, such as changing internal cross-references, replacing appropriate

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] Dodd-Frank section 1029 generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

[5] In addition, the Dodd-Frank Act granted the Bureau rulemaking authority to prescribe regulations with respect to the collection of debts by debt collectors, as defined in the FDCPA, except as provided for in section 1029 of the Consumer Financial Protection Act of 2010. Public Law 111–203, section 1089(4); 15 U.S.C.1692l(d).

[6] Public Law 111–203, section 1061(b)(5).

[7] *Id.* Section 1002(12)(H) (defining ''enumerated consumer laws'' to include the FDCPA).

[8] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau. Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. See 76 FR 43569 (July 21, 2011).

[9] Public Law 111–203, section 1089(1); 15 U.S.C. 1692o.

[10] 5 U.S.C. 551 *et seq.*

[11] 5 U.S.C. 553(b), (c).

[12] 5 U.S.C. 553(b)(3)(A), (B).

nomenclature to reflect the transfer of authority to the Bureau, and changing the address for reviewing applications submitted by state officials and notices. Given the technical nature of these changes, and the fact that the interim final rule does not impose any additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying the Commission's regulation to reflect the transfer of authority to the Bureau will help facilitate compliance with FDCPA and its implementing regulations, and the new regulations will help reduce uncertainty the applicable regulatory framework. Using notice-and-comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30 days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulation, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.[13]

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulation. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule.

C. Section 1022(b)(2) of the Dodd-Frank Act

In developing the interim final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts.[14] The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying the Commission's rules in 16 CFR Part 901 to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help reduce any uncertainty regarding the applicable regulatory framework. The interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

The interim final rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying the Commission's rules in 16 CFR Part 901, as well as regulations implementing thirteen other existing consumer financial laws,[15] the Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market or systemic objectives that may be administered by such agencies.[16] The Bureau also has consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate Federal agencies during the comment period.

IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[17] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[18] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[19]

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is

[13] This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

[14] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to interim final rules and to costs, benefits, and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[15] The fourteen laws implemented by this and its companion rulemakings are: The Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act, sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[16] In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

[17] 5 U.S.C. 601 *et seq.*

[18] 5 U.S.C. 603, 604.

[19] 5 U.S.C. 609.

required,[20] and the panel requirement applies only when a rulemaking requires an IRFA.[21] As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, the rule imposes no new, substantive obligations on entities subject to Regulation F. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Bureau has determined that this interim final rule does not impose any new recordkeeping or reporting requirements on covered entities or members of the public that would be collections of information requiring approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 12 CFR Part 1006

Administrative practice and procedure, Consumer protection, Credit, Intergovernmental relations.

Authority and Issuance

For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1006 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1006—FAIR DEBT COLLECTION PRACTICES ACT (REGULATION F)

Subpart A—Procedures for State Application for Exemption From the Provisions of the Act

Sec.
1006.1 Purpose and definitions.
1006.2 Application.
1006.3 Supporting documents.
1006.4 Criteria for determination.
1006.5 Public notice of filing.
1006.6 Exemption from requirements.
1006.7 Adverse determination.
1006.8 Revocation of exemption.

Subpart B—[Reserved]

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1692o.

Subpart A—Procedures for State Application for Exemption From the Provisions of the Act

§ 1006.1 Purpose and definitions.

(a) *Purpose.* This part, known as Regulation F, is issued by the Bureau of Consumer Financial Protection (Bureau). This subpart establishes procedures and criteria whereby states may apply to the Bureau for exemption of a class of debt collection practices within the applying state from the provisions of the Fair Debt Collection Practices Act (the Act) as provided in section 817 of the Act, 15 U.S.C. 1692o.

(b) *Definitions.* For purposes of this subpart:

Class of debt collection practices includes one or more such classes of debt collection practices.

State law includes any regulations that implement state law and formal interpretations thereof by a court of competent jurisdiction or duly authorized agency of that state.

§ 1006.2 Application.

Any state may apply to the Bureau pursuant to the terms of this part for a determination that, under the laws of that state, any class of debt collection practices within that state is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under sections 803 through 812 of the Act, and that there is adequate provision for state enforcement of such requirements. The application shall be in writing, addressed to the Bureau, signed by the Governor, Attorney General or state official having primary enforcement or responsibility under the state law which is applicable to the class of debt collection practices, and shall be supported by the documents specified in this subpart.

§ 1006.3 Supporting documents.

The application shall be accompanied by the following, which may be submitted in paper or electronic form:

(a) A copy of the full text of the state law that is claimed to contain requirements substantially similar to those imposed under sections 803 through 812 of the Act, or to provide greater protection to consumers than sections 803 through 812 of the Act, regarding the class of debt collection practices within that state.

(b) A comparison of each provision of sections 803 through 812 of the Act with the corresponding provision of the state law, together with reasons supporting the claim that the corresponding provisions of the state law are substantially similar to or provide greater protection to consumers than provisions of sections 803 through 812 of the Act and an explanation as to why any differences between the state and Federal law are not inconsistent with the provisions of sections 803 through 812 of the Act and do not result in a diminution in the protection otherwise afforded consumers; and a statement that no other state laws (including administrative or judicial interpretations) are related to, or would have an effect upon, the state law that is being considered by the Bureau in making its determination.

(c) A copy of the full text of the state law that provides for enforcement of the state law referred to in paragraph (a) of this section.

(d) A comparison of the provisions of the state law that provides for enforcement with the provisions of section 814 of the Act, together with reasons supporting the claim that such state law provides for administrative enforcement of the state law referred to in paragraph (a) of this section that is substantially similar to, or more extensive than, the enforcement provided under section 814 of the Act.

(e) A statement identifying the office designated or to be designated to administer the state law referred to in paragraph (a) of this section, together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged or to be engaged in enforcement, and a description of the procedures under which such state law is to be administratively enforced. The statement should also include reasons to support the claim that there is adequate provision for enforcement of such state law.

§ 1006.4 Criteria for determination.

The Bureau will consider the criteria set forth below, and any other relevant information, in determining whether the law of a state is substantially similar to, or provides greater protection to consumers than, the provisions of sections 803 through 812 of the Act regarding the class of debt collection practices within that state, and whether there is adequate provision for state enforcement of such law. In making that determination, the Bureau primarily will consider each provision of the state law in comparison with each corresponding provision in sections 803 through 812 of the Act, and not the state law as a whole in comparison with the Act as a whole.

(a)(1) In order for provisions of state law to be substantially similar to, or provide greater protection to consumers than the provisions of sections 803 through 812 of the Act, the provisions of state law at least shall provide that:

(i) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by sections 803 through 812 of the Act.

(ii) Debt collectors provide all of the applicable notifications required by the provisions of sections 803 through 812

[20] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

[21] 5 U.S.C. 609(b).

of the Act, with the content and in the terminology, form, and time periods prescribed by this part pursuant to sections 803 through 812; however, required references to state law may be substituted for the references to Federal law required in this part. Notification requirements under state law in additional circumstances or with additional detail that do not frustrate any of the purposes of the Act may be determined by the Bureau to be consistent with sections 803 through 812 of the Act;

(iii) Debt collectors take all affirmative actions and abide by obligations substantially similar to, or more extensive than, those prescribed by sections 803 through 812 of the Act under substantially similar or more stringent conditions and within the same or more stringent time periods as are prescribed in sections 803 through 812 of the Act;

(iv) Debt collectors abide by the same or more stringent prohibitions as are prescribed by sections 803 through 812 of the Act;

(v) Obligations or responsibilities imposed on consumers are no more costly, lengthy, or burdensome relative to consumers exercising any of the rights or gaining the benefits of the protections provided in the state law than corresponding obligations or responsibilities imposed on consumers in sections 803 through 812 of the Act.

(vi) Consumers' rights and protections are substantially similar to, or more favorable than, those provided by sections 803 through 812 of the Act under conditions or within time periods that are substantially similar to, or more favorable to consumers than, those prescribed by sections 803 through 812 of the Act.

(2) Paragraph (a)(1) of this section is not to be construed as indicating that the Bureau would consider adversely any additional requirements of state law that are not inconsistent with the purpose of the Act or the requirements imposed under sections 803 through 812 of the Act.

(b) In determining whether provisions for enforcement of the state law referred to in § 1006.3(a) of this part are adequate, consideration will be given to the extent to which, under state law, provision is made for administrative enforcement, including necessary facilities, personnel, and funding.

§ 1006.5 Public notice of filing.

In connection with any application that has been filed in accordance with the requirements of §§ 1006.2 and 1006.3 of this part and following initial review of the application, a notice of such filing shall be published by the Bureau in the **Federal Register**, and a copy of such application shall be made available for examination by interested persons during business hours at the Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006. A period of time shall be allowed from the date of such publication for interested parties to submit written comments to the Bureau regarding that application.

§ 1006.6 Exemption from requirements.

If the Bureau determines on the basis of the information before it that, under the law of a state, a class of debt collection practices is subject to requirements substantially similar to, or that provide greater protection to consumers than, those imposed under sections 803 through 812 and section 814 of the Act, and that there is adequate provision for state enforcement, the Bureau will exempt the class of debt collection practices in that state from the requirements of sections 803 through 812 and section 814 of the Act in the following manner and subject to the following conditions:

(a) Notice of the exemption shall be published in the **Federal Register**, and the Bureau shall furnish a copy of such notice to the state official who made application for such exemption, to each Federal authority responsible for administrative enforcement of the requirements of sections 803 through 812 of the Act, and to the Attorney General of the United States. Any exemption granted shall be effective 90 days after the date of publication of such notice in the **Federal Register**.

(b) The appropriate official of any state that receives an exemption shall inform the Bureau in writing within 30 days of any change in the state laws referred to in § 1006.3(a) and (c) of this part. The report of any such change shall contain copies of the full text of that change, together with statements setting forth the information and opinions regarding that change that are specified in § 1006.3(b) and (d). The appropriate official of any state that has received such an exemption also shall file with the Bureau from time to time such reports as the Bureau may require.

(c) The Bureau shall inform the appropriate official of any state that receives such an exemption of any subsequent amendments of the Act or this part that might necessitate the amendment of state law for the exemption to continue.

(d) No exemption shall extend to the civil liability provisions of section 813 of the Act. After an exemption is granted, the requirements of the applicable state law shall constitute the requirements of sections 803 through 812 of the Act, except to the extent such state law imposes requirements not imposed by the Act or this part.

§ 1006.7 Adverse determination.

(a) If, after publication of a notice in the **Federal Register** as provided under § 1006.5 of this part, the Bureau finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Bureau shall notify the appropriate state official of the facts upon which such findings are based and shall afford that state authority a reasonable opportunity to demonstrate or achieve compliance.

(b) If, after having afforded the state authority such opportunity to demonstrate or achieve compliance, the Bureau finds on the basis of the information before it that it still cannot make a favorable determination in connection with the application, the Bureau shall publish in the **Federal Register** a notice of its determination regarding the application and shall furnish a copy of such notice to the state official who made application for such exemption.

§ 1006.8 Revocation of exemption.

(a) The Bureau reserves the right to revoke any exemption granted under the provisions of this part, if at any time it determines that the state law does not, in fact, impose requirements that are substantially similar to, or that provide greater protection to applicants than, those imposed under sections 803 through 812 of the Act or that there is not, in fact, adequate provision for state enforcement.

(b) Before revoking any such exemption, the Bureau shall notify the appropriate state official of the facts or conduct that, in the Bureau's opinion, warrant such revocation, and shall afford that state such opportunity as the Bureau deems appropriate in the circumstances to demonstrate or achieve compliance.

(c) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Bureau determines that the state has not done so, notice of the Bureau's intention to revoke such exemption shall be published in the **Federal Register**. A period of time shall be allowed from the date of such publication for interested persons to submit written comments to the Bureau regarding the intention to revoke.

(d) If such exemption is revoked, notice of such revocation shall be published by the Bureau in the **Federal Register**, and a copy of such notice shall

be furnished to the appropriate state official, to the Federal authorities responsible for enforcement of the requirements of the Act, and to the Attorney General of the United States. The revocation shall become effective, and the class of debt collection practices affected within that state shall become subject to the requirements of sections 803 through 812 of the Act, 90 days after the date of publication of the notice in the **Federal Register**.

Subpart B—[Reserved]

Dated: October 24, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2011–31733 Filed 12–15–11; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1009

[Docket No. CFPB–2011–0024]

RIN 3170–AA06

Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance (Regulation I)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of the Federal Trade Commission's (Commission's) rulemaking authority for section 43(b)–(f) of the Federal Deposit Insurance Act (FDIA) to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation I (Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance). This interim final rule does not impose any new substantive obligations on persons subject to the existing regulations, previously published by the Commission.

DATES: This interim final rule is effective December 30, 2011. Comments must be received on or before February 14, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2011–0024 or RIN 3170–AA06, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, 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, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. 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: Krista Ayoub or Jane Gao, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Deposit Insurance Act (FDIA),[1] among other things, establishes the Federal Deposit Insurance Corporation which must insure the deposits of banks and savings associations entitled to the benefits of insurance under the FDIA. Not all depository institutions are required to maintain Federal deposit insurance. The FDIA requires that depository institutions lacking Federal deposit insurance make certain insurance-related disclosures in periodic statements, account records, locations where deposits are normally received, and advertising.[2] The FDIA also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of Federal deposit insurance.[3] Prior to July 21, 2011, the FDIA required that the Federal Trade Commission (Commission), by regulation or order, prescribe the manner and content of these disclosures.

Historically, the disclosure requirements required by the FDIA for depository institutions lacking Federal deposit insurance have been implemented by the Commission in 16 CFR Part 320. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[4] amended a number of consumer financial protection laws, including the FDIA. In addition to various substantive amendments, the Dodd-Frank Act transferred rulemaking authority for implementing the disclosure requirements for depository institutions lacking Federal deposit insurance, as described above, to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011.[5] *See* sections 1061 and 1090 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and the FDIA, as amended, the Bureau is publishing for public comment an interim final rule establishing a new Regulation I (Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance), 12 CFR Part 1009, implementing the disclosure requirements in the FDIA for depository institutions lacking Federal deposit insurance.

II. Summary of the Interim Final Rule

A. General

The interim final rule substantially duplicates the Commission's rule in 16 CFR Part 320 as the Bureau's new Regulation I, 12 CFR Part 1009, making only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, other than republishing the Commission's existing rule in 16 CFR Part 320 with the Bureau's part number, the Bureau is preserving where possible the numbering the Commission used in its existing rule. Additionally, while this interim final rule generally incorporates the Commission's existing regulatory

[1] 12 U.S.C. 1811 *et seq.*

[2] 12 U.S.C. 1831t.

[3] *Id.*

[4] Public Law 111–203,124 Stat. 1376 (2010).

[5] Dodd-Frank section 1029 generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

text, the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities.

B. Specific Changes

A paragraph that was not enumerated in the Commission's rule (16 CFR 320.5) is enumerated as paragraph (c)(2) in § 1009.5, and other provisions in § 1009.5 are renumbered accordingly. In § 1009.7, the provision specifying enforcement authority for the requirements set forth in Regulation I is revised from that in the Commission's rule (16 CFR 320.7) to reflect changes made to the enforcement authority by the Dodd-Frank Act. In addition, references to the Commission and its administrative structure have been replaced with references to the Bureau. Conforming edits have been made to internal cross-references. Conforming edits have also been made to reflect the scope of the Bureau's authority pursuant to the FDIA to issue implementing regulations for disclosures required of depository institutions lacking Federal deposit insurance, as amended by the Dodd-Frank Act.

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this interim final rule pursuant to its authority under the FDIA and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the Commission's authority under an enumerated consumer law to prescribe rules, issues guidelines, conduct studies, or issue reports.[6] Section 43(b)–(f) of the FDIA is an enumerated consumer law.[7] Accordingly, effective July 21, 2011, the authority of the Commission to issue regulations pursuant to section 43(b)–(f) of the FDIA transferred to the Bureau.[8]

Section 43(c) of the FDIA, as amended, provides that the Bureau, by regulation or order, must prescribe the manner and content of disclosures required under section 43 of the FDIA that must be given by depository institutions lacking Federal depository insurance.[9] In addition, section 43(d) of the FDIA, as amended, authorizes the Bureau, by regulation or order, to make exceptions to certain disclosure requirements set forth in section 43(b) of the FDIA for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.[10]

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA)[11] generally requires public notice and an opportunity to comment before promulgation of substantive regulations.[12] The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.[13] The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to the public interest under these circumstances. In addition, substantially all the changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of FDIA authority under section 43(c) and (d) from the Commission to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and-comment requirements.

The Bureau's good cause findings are based on the following considerations. As an initial matter, the Commission's existing regulation was a result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule only makes non-substantive, technical changes to the existing text of the regulation, such as renumbering, changing internal cross-references, and replacing appropriate nomenclature to reflect the transfer of authority to the Bureau. Given the technical nature of these changes, and the fact that the interim final rule does not impose any additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying the Commission's regulation to reflect the transfer of authority to the Bureau will help facilitate compliance with FDIA and its implementing regulations, and the new regulations will help reduce uncertainty regarding the applicable regulatory framework. Using notice-and-comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30 days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulation, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.[14]

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulation. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule.

C. Section 1022(b)(2) of the Dodd-Frank Act

In developing the interim final rule, the Bureau has conducted an analysis of

[6] Public Law 111–203, section 1061(b)(5).

[7] *Id.* Section 1002(12)(I) (defining ''enumerated consumer laws'' to include section 43(b)–(f) of the FDIA).

[8] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau. Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. See 76 FR 43569 (July 21, 2011).

[9] Public Law 111–203, section 1090(2)(A); 12 U.S.C. 1831t(c).

[10] *Id.* section 1090(2)(B); 12 U.S.C. 1831t(d).

[11] 5 U.S.C. 551 *et seq.*

[12] 5 U.S.C. 553(b), (c).

[13] 5 U.S.C. 553(b)(3)(A), (B).

[14] This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

potential benefits, costs, and impacts.[15] The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying the Commission's rules in 16 CFR Part 320 to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help facilitate compliance with section 43(b)–(f) of the FDIA and its implementing regulations and help reduce any uncertainty regarding the applicable regulatory framework. The interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

Although not required by the interim final rule, covered entities may incur some costs in updating compliance manuals and related materials to reflect the new numbering and other technical changes reflected in the new Regulation I. The Bureau has worked to reduce any such burden by preserving the existing numbering to the extent possible and believes that such costs will likely be minimal. These changes could be handled in the short term by providing a short, standalone summary alerting users to the changes and in the long term could be combined with other updates at the firm's convenience. The Bureau intends to continue investigating the possible costs to affected entities of updating manuals and related materials to reflect these changes and solicits comments on this and other issues discussed in this section.

The interim final rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying the Commission's rules in 16 CFR Part 320, as well as regulations implementing thirteen other existing consumer financial laws,[16] the Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market, or systemic objectives that may be administered by such agencies.[17] The Bureau also has consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate Federal agencies during the comment period.

IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[18] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[19] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[20]

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is required,[21] and the panel requirement applies only when a rulemaking requires an IRFA.[22] As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, this interim final rule has only a minor impact on entities subject to Regulation I. The rule imposes no new, substantive obligations on covered entities. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

At the time it adopted its existing regulation (16 CFR Part 320), the Commission determined that the rule's disclosures and written acknowledgement statements were a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public,'' and thus did not constitute a collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* as set forth in the Office of Management and Budget regulations.[23] The Bureau has determined that this interim final rule does not impose any new recordkeeping or reporting requirements on covered institutions or members of the public beyond those already imposed by the Commission's existing regulation. Accordingly, this interim final rule contains no collections of information

[15] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to interim final rules and to costs, benefits, and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[16] The fourteen laws implemented by this and its companion rulemakings are: the Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act, sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[17] In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

[18] 5 U.S.C. 601 *et seq.*

[19] 5 U.S.C. 603, 604.

[20] 5 U.S.C. 609.

[21] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

[22] 5 U.S.C. 609(b).

[23] 5 CFR 1320.3(c)(2); *see* Disclosures for Non-Federally Insured Depository Institutions Under the Federal Deposit Insurance Corporation Improvement Act (FDICIA), 75 FR 31682, 31686 (June 4, 2010).

requiring approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 12 CFR Part 1009

Credit unions, Depository institutions, Federal Deposit Insurance Act, Federal Trade Commission Act, and Federal deposit insurance.

Authority and Issuance

■ For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1009 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1009—DISCLOSURE REQUIREMENTS FOR DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE (REGULATION I)

Sec.

1009.1 Scope.
1009.2 Definitions.
1009.3 Disclosures in periodic statements and account records.
1009.4 Disclosures in advertising and on the premises.
1009.5 Disclosure acknowledgment.
1009.6 Exception for certain depository institutions.
1009.7 Enforcement.

Authority: 12 U.S.C. 1831t, 5512, 5581.

§ 1009.1 Scope.

This part, known as Regulation I, is issued by the Bureau of Consumer Financial Protection. This part applies to all depository institutions lacking Federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of Federal deposit insurance.

§ 1009.2 Definitions.

For purposes of this part:

Depository institution means any bank or savings association as defined under 12 U.S.C. 1813, or any credit union organized and operated according to the laws of any state, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to Federal credit unions.

Lacking Federal deposit insurance means the depository institution is neither an insured depository institution as defined in 12 U.S.C. 1813(c)(2), nor an insured credit union as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

Standard maximum deposit insurance amount means the maximum amount of deposit insurance as determined under section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)).

§ 1009.3 Disclosures in periodic statements and account records.

Depository institutions lacking Federal deposit insurance must include a notice disclosing clearly and conspicuously that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money, in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate. For example, a notice would comply with the requirement if it conspicuously stated: ''[Institution's name] is not federally insured. If it fails, the Federal Government does not guarantee that you will get your money back.'' The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

§ 1009.4 Disclosures in advertising and on the premises.

(a) *Required disclosures.* Each depository institution lacking Federal deposit insurance must include a clear and conspicuous notice disclosing that the institution is not federally insured:

(1) At each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main internet page; and

(2) In all advertisements except as provided in paragraph (c) of this section.

(b) *Format and type size.* The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

(c) *Exceptions.* The following need not include a notice that the institution is not federally insured:

(1) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution; and

(2) Small utilitarian items that do not mention deposit products or insurance, if inclusion of the notice would be impractical.

§ 1009.5 Disclosure acknowledgment.

(a) *New depositors obtained other than through a conversion or merger.* With respect to any depositor who was not a depositor at the depository institution on or before October 13, 2006, and who is not a depositor as described in paragraph (b) of this section, a depository institution lacking Federal deposit insurance may receive a deposit for the account of such depositor only if the institution has obtained the depositor's signed written acknowledgement that:

(1) The institution is not federally insured; and

(2) If the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(b) *New depositors obtained through a conversion or merger.* With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking Federal insurance after October 13, 2006, a depository institution lacking Federal deposit insurance may receive a deposit for the account of such depositor only if:

(1) The institution has obtained the depositor's signed written acknowledgement described in paragraph (a) of this section; or

(2) The institution makes an attempt, sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment. In making such an attempt, the institution must transmit to each depositor who has not signed and returned a written acknowledgement described in paragraph (a) of this section:

(i) A conspicuous card containing the information described in paragraphs (a)(1) and (2) of this section, and a line for the signature of the depositor; and

(ii) Accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(c) *Depositors obtained on or before October 13, 2006.* (1) Any depository institution lacking Federal deposit insurance may receive any deposit after October 13, 2006, for the account of a depositor who was a depositor on or before that date only if:

(i) The depositor has signed a written acknowledgement described in paragraph (a) of this section; or

(ii) The institution has transmitted to the depositor:

(A) A conspicuous card containing the information described in paragraphs (a)(1) and (2) of this section, and a line for the signature of the depositor; and

(B) Accompanying materials requesting that the depositor sign the card, and return the signed card to the institution.

(2) An institution described in paragraph (c)(1) of this section must have made the transmission described in paragraph (c)(1)(ii) of this section via mail not later than three months after October 13, 2006. The institution must have made a second identical transmission via mail not less than 30 days, and not more than three months, after the first transmission to the depositor in accordance with paragraph (c)(1)(ii) of this section, if the institution has not, by the date of such mailing, received from the depositor a card referred to in paragraph (c)(1)(i) of this section which has been signed by the depositor.

(d) *Format and type size.* The disclosures required by this section must be clear and conspicuous and presented in a simple and easy to understand format, type size, and manner.

§ 1009.6 Exception for certain depository institutions.

The requirements of this part do not apply to any depository institution lacking Federal deposit insurance and located within the United States that does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

§ 1009.7 Enforcement.

Compliance with the requirements of this part shall be enforced under the Consumer Financial Protection Act of 2010, Public Law 111–203, Title X, 124 Stat. 1955, by the Bureau of Consumer Financial Protection, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq,* by the Federal Trade Commission.

Dated: October 24, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2011–31732 Filed 12–15–11; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1014 and 1015

[Docket No. CFPB–2011–0027]

RIN 3170–AA06

Mortgage Acts and Practices—Advertising (Regulation N); Mortgage Assistance Relief Services (Regulation O)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of the Federal Trade Commission's (FTC's) rulemaking authority for section 626 of the Omnibus Appropriations Act, 2009 (Omnibus Appropriations Act) to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation N (Mortgage Acts and Practices—Advertising Rule) and a new Regulation O (Mortgage Assistance Relief Services Rule). This interim final rule does not impose any new substantive obligations on persons subject to the existing Mortgages Acts and Practices—Advertising Rule or the existing Mortgage Assistance Relief Services Rule, previously published by the FTC.

DATES: This interim final rule is effective December 30, 2011. Comments must be received on or before February 14, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0027* or *RIN 3170–AA06,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1500 Pennsylvania Ave. NW., (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. 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: Jane Gao or Krista Ayoub, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted section 626 of the Omnibus Appropriations Act, 2009 (Omnibus Appropriations Act) on March 11, 2009 and directed the Federal Trade Commission (FTC) to commence a rulemaking proceeding within 90 days of enactment with respect to mortgage loans.[1] On May 22, 2009, the enactment of the Credit Card Accountability Responsibility and Disclosure Act of 2009[2] clarified the FTC's rulemaking authority under the Omnibus Appropriations Act to specify that the FTC's rulemaking based on its authority pursuant to the Omnibus Appropriations Act ''shall relate to unfair or deceptive acts or practices regarding mortgage loans,'' which may involve loan modification and foreclosure rescue services.[3]

[1] Public L. 111–8, 123 Stat. 524 (2009). The Omnibus Appropriations Act also directed the FTC to use notice and comment procedures under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, to promulgate rules pursuant to the Omnibus Appropriations Act in lieu of the procedures set forth in section 18 of the FTC Act, 15 U.S.C. 57a. The FTC noted in its Advance Notice of Proposed Rulemaking: Mortgage Acts and Practices, 74 FR 26118 (June 1, 2009), that because Omnibus Appropriations Act rulemaking is not undertaken pursuant to section 18, 15 U.S.C. 57a(f), Federal banking agencies are not required to promulgate substantially similar regulations for entities within their jurisdiction. *Id.* at 26119, note 2.

[2] Public Law 111–24, 123 Stat. 1734 (2009).

[3] *Id.* Section 511(a)(1)(B).

Prior to July 21, 2011, rulemaking authority for the Omnibus Appropriations Act was vested in the FTC. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[4] amended a number of consumer financial protection laws, including the Omnibus Appropriations Act. In addition to various substantive amendments, the Dodd-Frank Act transferred rulemaking authority for the Omnibus Appropriations Act to the Bureau of Consumer Financial Protection (Bureau), effective July 21, 2011. *See* sections 1061 and 1097 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and the Omnibus Appropriations Act, as amended, the Bureau is publishing for public comment an interim final rule establishing a new Regulation N (Mortgage Acts and Practices—Advertising), 12 CFR part 1014, and a new Regulation O (Mortgage Assistance Relief Services), 12 CFR part 1015, implementing the Omnibus Appropriations Act.

II. Summary of the Interim Final Rule

A. General

The interim final rule substantially duplicates the FTC's Mortgage Acts and Practices—Advertising Rule as the Bureau's new Regulation N, 12 CFR part 1014, and the FTC's Mortgage Assistance Relief Services Rule as the Bureau's new Regulation O, 12 CFR part 1015, making only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, other than republishing 16 CFR parts 321 and 322 with the Bureau's part number, the Bureau is preserving where possible the numbering the FTC used in the two rules. Additionally, while this interim final rule generally incorporates the FTC's existing regulatory text, the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities. In future rulemakings, the Bureau expects to amend Regulations N and O to implement certain other changes to the Omnibus Appropriations Act made by the Dodd-Frank Act, such as expanding the scope of Regulations N and O to include persons excluded from coverage under the FTC's existing 16 CFR parts 321 and 322 due to the fact that they are not subject to the FTC's enforcement jurisdiction.[5]

B. Specific Changes

References to the FTC's rulemaking authority have been replaced with references to the Bureau. Conforming edits have been made to internal cross-references. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed as appropriate. In addition, with respect to the Mortgage Assistance Relief Services Rule, the Bureau is correcting a citation error in the FTC's existing § 322.9(c). As adopted by the FTC, § 322.9(c) contains a cross-reference to § 322.10(a). The correct citation should be to §§ 322.9(a) and (b). The Bureau is republishing § 322.9(c) as § 1015.9(c) with the citation corrected to read §§ 1015.9(a) and (b).

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this interim final rule pursuant to its authority under the Omnibus Appropriations Act and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the FTC's authority under an enumerated consumer law to prescribe rules, issue guidelines, conduct studies, or issue reports.[6] The Omnibus Appropriations Act is an enumerated consumer law.[7] Accordingly, effective July 21, 2011, the authority of the FTC to issue regulations pursuant to the Omnibus Appropriations Act transferred to the Bureau.[8]

The Omnibus Appropriations Act, as amended, authorizes the Bureau to issue regulations in accordance with section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, to carry out the provisions of the Omnibus Appropriations Act. These regulations may pertain to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. In its existing regulations, the FTC used this Omnibus Appropriations Act authority to adopt the Mortgage Acts and Practices—Advertising Rule and the Mortgage Assistance Relief Services Rule.

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA)[9] generally requires public notice and an opportunity to comment before promulgation of regulations.[10] The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.[11] The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to the public interest under these circumstances. In addition, substantially all the changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of Omnibus Appropriations Act authority from the FTC to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and comment requirements.

The Bureau's good cause findings are based on the following considerations. As an initial matter, the FTC's existing regulations were a result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule makes only non-substantive, technical changes to the existing text of the regulations, such as renumbering, changing internal cross-references, and replacing appropriate nomenclature to reflect the transfer of authority to the Bureau. Given the technical nature of these changes, and the fact that the interim final rule does not impose any

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] The regulatory text of the FTC's Mortgage Acts and Practices—Advertising Rule contains a clear statement that the rule only applies to persons over which the FTC has jurisdiction under the Federal Trade Commission Act in the scope section of the regulation. *See* 16 CFR 321.1. The existing text of the Mortgage Assistance Relief Services Rule does not contain a similar statement in the scope section of the regulation; however, in the definitions section of the regulation, the definition of ''person'' subject to the regulation specifically excludes entities excluded from the FTC's jurisdiction under the Federal Trade Commission Act. *See* 16 CFR 322.2. FTC staff recommended to the Bureau that the Bureau add a clear statement in the scope section of the Mortgage Assistance Relief Services Rule that states the rule does not apple to entities over which the FTC lacks jurisdiction. Accordingly, the Bureau has added the following sentence, ''This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.'' at the end of § 1015.1.

[6] Public Law 111–203, section 1061(b)(5).

[7] *Id.* Section 1002(12)(Q) (defining ''enumerated consumer laws'' to include the Omnibus Appropriations Act).

[8] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau. Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. *See* 76 FR 43569 (July 21, 2011).

[9] 5 U.S.C. 551 *et seq.*

[10] 5 U.S.C. 553(b), (c).

[11] 5 U.S.C. 553(b)(3)(A), (B).

additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying the FTC's regulations to reflect the transfer of authority to the Bureau will help facilitate compliance with the Omnibus Appropriations Act and its implementing regulations, and will help reduce uncertainty regarding the applicable regulatory framework. Using notice-and-comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30 days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulations, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.[12]

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulations. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule.

C. Section 1022(b)(2) of the Dodd-Frank Act

In developing the interim final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts.[13] The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying Regulations N and O to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help facilitate compliance with the Omnibus Appropriations Act and its implementing regulations and help reduce any uncertainty regarding the applicable regulatory framework. The interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

Although not required by the interim final rule, covered entities may incur some costs in updating compliance manuals and related materials to reflect the new numbering and other technical changes reflected in the new Regulations N and O. The Bureau has worked to reduce any such burden by preserving the existing numbering to the extent possible and believes that such costs will likely be minimal. These changes could be handled in the short term by providing a short, standalone summary alerting users to the changes and in the long term could be combined with other updates at the firm's convenience. The Bureau intends to continue investigating the possible costs to affected entities of updating manuals and related materials to reflect these changes and solicits comments on this and other issues discussed in this section.

The interim final rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying Regulations N and O, as well as regulations implementing thirteen other consumer financial laws,[14] the Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market, or systemic objectives that may be administered by such agencies.[15] The Bureau also has consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate Federal agencies during the comment period.

IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[16] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule

[12] This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

[13] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to interim final rules and to benefits, costs, and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[14] The fourteen laws implemented by this and its companion rulemakings are: the Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of section 43 of the Federal Deposit Insurance Act, sections 502 through 509 of the Gramm-Leach-Bliley Act (except for section 505 as it applies to section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[15] In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

[16] 5 U.S.C. 601 *et seq.*

subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[17] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[18]

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is required,[19] and the panel requirement applies only when a rulemaking requires an IRFA.[20] As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, this interim final rule has only a minor impact on entities subject to Regulations N and O. The rule imposes no new, substantive obligations on covered entities. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Bureau may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains information collection requirements under the Paperwork Reduction Act (PRA), which have been previously approved by OMB, and the ongoing PRA burden for which is unchanged by this rule. There are no new information collection requirements in this interim final rule. The Bureau's OMB control numbers for this information collection are: 3170–0009 for Regulation N (Mortgage Acts and Practices—Advertising) and 3170–0007 for Regulation O (Mortgage Assistance Relief Services).

List of Subjects in 12 CFR Parts 1014 and 1015

Advertising, Communications, Consumer protection, Credit, Mortgages, Business practices related to mortgage loans, Trade practices, Telemarketing.

Authority and Issuance

For the reasons set forth above, the Bureau of Consumer Financial Protection adds parts 1014 and 1015 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

PART 1014—MORTGAGE ACTS AND PRACTICES—ADVERTISING (REGULATION N)

Sec.
1014.1 Scope of regulations in this part.
1014.2 Definitions.
1014.3 Prohibited representations.
1014.4 Waiver not permitted.
1014.5 Recordkeeping requirements.
1014.6 Actions by states.
1014.7 Severability.

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1638 note.

§ 1014.1 Scope of regulations in this part.

This part, known as Regulation N, is issued by the Bureau of Consumer Financial Protection to implement the 2009 Omnibus Appropriations Act, Public L. 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Public Law 111–203, section 1097, 124 Stat. 1376 (July 21, 2010). This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.

§ 1014.2 Definitions.

For the purposes of this part:

Commercial communication means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, on-hold script, upsell script, training materials provided to telemarketing firms, program-length commercial (''infomercial''), the internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term *commercial communication.*

Consumer means a natural person to whom a mortgage credit product is offered or extended.

Credit means the right to defer payment of debt or to incur debt and defer its payment.

Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes any of the following if used as a residence: an individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Mortgage credit product means any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes.

Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

Term means any of the fees, costs, obligations, or characteristics of or associated with the product. It also includes any of the conditions on or related to the availability of the product.

§ 1014.3 Prohibited representations.

It is a violation of this part for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

(a) The interest charged for the mortgage credit product, including but not limited to misrepresentations concerning:

(1) The amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due, or

(2) Whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer;

(b) The annual percentage rate, simple annual rate, periodic rate, or any other rate;

(c) The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged;

(d) The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product, including but not limited to credit insurance or credit disability insurance;

(e) The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including but not limited to misrepresentations about:

(1) Whether separate payment of taxes or insurance is required; or

(2) The extent to which payment for taxes or insurance is included in the

[17] 5 U.S.C. 603, 604.

[18] 5 U.S.C. 609.

[19] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

[20] 5 U.S.C. 609(b).

loan payments, loan amount, or total amount due from the consumer;

(f) Any prepayment penalty associated with the mortgage credit product, including but not limited to misrepresentations concerning the existence, nature, amount, or terms of such penalty;

(g) The variability of interest, payments, or other terms of the mortgage credit product, including but not limited to misrepresentations using the word ''fixed'';

(h) Any comparison between:

(1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product; and

(2) Any actual or hypothetical rate or payment;

(i) The type of mortgage credit product, including but not limited to misrepresentations that the product is or involves a fully amortizing mortgage;

(j) The amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product, including but not limited to misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction;

(k) The existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product;

(l) The potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations;

(m) The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts, including but not limited to misrepresentations that any mortgage credit product can reduce, eliminate, or restructure debt or result in a waiver or forgiveness, in whole or in part, of the consumer's existing obligation with any person;

(n) The association of the mortgage credit product or any provider of such product with any other person or program, including but not limited to misrepresentations that:

(1) The provider is, or is affiliated with, any governmental entity or other organization; or

(2) The product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program;

(o) The source of any commercial communication, including but not limited to misrepresentations that a commercial communication is made by or on behalf of the consumer's current mortgage lender or servicer;

(p) The right of the consumer to reside in the dwelling that is the subject of the mortgage credit product, or the duration of such right, including but not limited to misrepresentations concerning how long or under what conditions a consumer with a reverse mortgage can stay in the dwelling;

(q) The consumer's ability or likelihood to obtain any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or term;

(r) The consumer's ability or likelihood to obtain a refinancing or modification of any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such refinancing or modification; and

(s) The availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product or term, including but not limited to the qualifications of those offering the services or advice.

§ 1014.4 Waiver not permitted.

It is a violation of this part for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this part.

§ 1014.5 Recordkeeping requirements.

(a) Any person subject to this part shall keep, for a period of twenty-four months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, the following evidence of compliance with this part:

(1) Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period;

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers.

(b) Any person subject to this part may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this part.

§ 1014.6 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by Public Law 111–203, section 1097, 124 Stat. 2102 (July 21, 2010).

§ 1014.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection's intention that the remaining provisions shall continue in effect.

PART 1015—MORTGAGE ASSISTANCE RELIEF SERVICES (REGULATION O)

Sec.

1015.1 Scope of regulations in this part.
1015.2 Definitions.
1015.3 Prohibited representations.
1015.4 Disclosures required in commercial communications.
1015.5 Prohibition on collection of advance payments and related disclosures.
1015.6 Assisting and facilitating.
1015.7 Exemptions.
1015.8 Waiver not permitted.

1015.9 Recordkeeping and compliance requirements.
1015.10 Actions by states.
1015.11 Severability.

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1638 note.

§ 1015.1 Scope of regulations in this part.

This part, known as Regulation O, is issued by the Bureau of Consumer Financial Protection to implement the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as clarified by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Public Law 111–203, section 1097, 124 Stat. 1376 (July 21, 2010). *This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.*

§ 1015.2 Definitions.

For the purposes of this part:

Clear and prominent means:

(1) In textual communications, the required disclosures shall be easily readable; in a high degree of contrast from the immediate background on which it appears; in the same languages that are substantially used in the commercial communication; in a format so that the disclosure is distinct from other text, such as inside a border; in a distinct type style, such as bold; parallel to the base of the commercial communication, and, except as otherwise provided in this rule, each letter of the disclosure shall be, at a minimum, the larger of 12-point type or one-half the size of the largest letter or numeral used in the name of the advertised Web site or telephone number to which consumers are referred to receive information relating to any mortgage assistance relief service. Textual communications include any communications in a written or printed form such as print publications or words displayed on the screen of a computer;

(2) In communications disseminated orally or through audible means, such as radio or streaming audio, the required disclosures shall be delivered in a slow and deliberate manner and in a reasonably understandable volume and pitch;

(3) In communications disseminated through video means, such as television or streaming video, the required disclosures shall appear simultaneously in the audio and visual parts of the commercial communication and be delivered in a manner consistent with paragraphs (1) and (2) of this definition. The visual disclosure shall be at least four percent of the vertical picture or screen height and appear for the duration of the oral disclosure;

(4) In communications made through interactive media, such as the internet, online services, and software, the required disclosures shall:

(i) Be consistent with paragraphs (1) through (3) of this definition;

(ii) Be made on, or immediately prior to, the page on which the consumer takes any action to incur any financial obligation;

(iii) Be unavoidable, *i.e.,* visible to consumers without requiring them to scroll down a Web page; and

(iv) Appear in type at least the same size as the largest character of the advertisement;

(5) In all instances, the required disclosures shall be presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them; and

(6) For program-length television, radio, or internet-based multimedia commercial communications, the required disclosures shall be made at the beginning, near the middle, and at the end of the commercial communication.

Client trust account means a separate account created by a licensed attorney for the purpose of holding client funds, which is:

(1) Maintained in compliance with all applicable state laws and regulations, including licensing regulations; and

(2) Located in the state where the attorney's office is located, or elsewhere in the United States with the consent of the consumer on whose behalf the funds are held.

Commercial communication means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing any service, plan, or program, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (''infomercial''), the internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term ''commercial communication.''

(1) *General Commercial Communication* means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is not directed at a specific consumer.

(2) *Consumer-Specific Commercial Communication* means a commercial communication that occurs prior to the consumer agreeing to permit the provider to seek offers of mortgage assistance relief on behalf of the consumer, or otherwise agreeing to use the mortgage assistance relief service, and that is directed at a specific consumer.

Consumer means any natural person who is obligated under any loan secured by a dwelling.

Dwelling means a residential structure containing four or fewer units, whether or not that structure is attached to real property, that is primarily for personal, family, or household purposes. The term includes any of the following if used as a residence: An individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

Dwelling loan means any loan secured by a dwelling, and any associated deed of trust or mortgage.

Dwelling Loan Holder means any individual or entity who holds the dwelling loan that is the subject of the offer to provide mortgage assistance relief services.

Material means likely to affect a consumer's choice of, or conduct regarding, any mortgage assistance relief service.

Mortgage Assistance Relief Service means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

(1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;

(2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

(3) Obtaining any forbearance or modification in the timing of payments

from any dwelling loan holder or servicer on any dwelling loan;

(4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:

(i) Cure his or her default on a dwelling loan,

(ii) Reinstate his or her dwelling loan,

(iii) Redeem a dwelling, or

(iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;

(5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or

(6) Negotiating, obtaining or arranging:

(i) A short sale of a dwelling,

(ii) A deed-in-lieu of foreclosure, or

(iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

Mortgage Assistance Relief Service Provider or *Provider* means any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service. This term does not include:

(1) The dwelling loan holder, or any agent or contractor of such individual or entity.

(2) The servicer of a dwelling loan, or any agent or contractor of such individual or entity.

Person means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity, except to the extent that any person is specifically excluded from the Federal Trade Commission's jurisdiction pursuant to 15 U.S.C. 44 and 45(a)(2).

Servicer means the individual or entity responsible for:

(1) Receiving any scheduled periodic payments from a consumer pursuant to the terms of the dwelling loan that is the subject of the offer to provide mortgage assistance relief services, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609); and

(2) Making the payments of principal and interest and such other payments with respect to the amounts received from the consumer as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract.

Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of any service, by use of one or more telephones and which involves more than one interstate telephone call.

§ 1015.3 Prohibited representations.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) Representing, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that a consumer cannot or should not contact or communicate with his or her lender or servicer.

(b) Misrepresenting, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:

(1) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of *Mortgage Assistance Relief Service* in § 1015.2;

(2) The amount of time it will take the mortgage assistance relief service provider to accomplish any represented service or result, such as those set forth in the definition of *Mortgage Assistance Relief Service* in § 1015.2;

(3) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:

(i) The United States government,

(ii) Any governmental homeowner assistance plan,

(iii) Any Federal, State, or local government agency, unit, or department,

(iv) Any nonprofit housing counselor agency or program,

(v) The maker, holder, or servicer of the consumer's dwelling loan, or

(vi) Any other individual, entity, or program;

(4) The consumer's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the consumer's dwelling loan;

(5) The terms or conditions of the consumer's dwelling loan, including but not limited to the amount of debt owed;

(6) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for a mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;

(7) That the mortgage assistance relief service provider has completed the represented services or has a right to claim, demand, charge, collect, or receive payment or other consideration;

(8) That the consumer will receive legal representation;

(9) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the consumer can obtain mortgage assistance relief, including negotiating directly with the dwelling loan holder or servicer, or using any nonprofit housing counselor agency or program;

(10) The amount of money or the percentage of the debt amount that a consumer may save by using the mortgage assistance relief service;

(11) The total cost to purchase the mortgage assistance relief service; or

(12) The terms, conditions, or limitations of any offer of mortgage assistance relief the provider obtains from the consumer's dwelling loan holder or servicer, including the time period in which the consumer must decide to accept the offer;

(c) Making a representation, expressly or by implication, about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time such representation is made, the provider possesses and relies upon competent and reliable evidence that substantiates that the representation is true. For the purposes of this paragraph, *competent and reliable evidence* means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

§ 1015.4 Disclosures required in commercial communications.

It is a violation of this rule for any mortgage assistance relief service provider to engage in the following conduct:

(a) *Disclosures in All General Commercial Communications*—Failing to place the following statements in every general commercial communication for any mortgage assistance relief service:

(1) ''(Name of company) is not associated with the government, and our service is not approved by the government or your lender.''

(2) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of *Mortgage Assistance Relief Service* in § 1015.2, ''Even if you accept this offer and use our service, your lender may not agree to change your loan.''

(3) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading ''IMPORTANT NOTICE,'' which must be in bold face

font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement ''Before using this service, consider the following information.''

(b) *Disclosures in All Consumer-Specific Commercial Communications*—Failing to disclose the following information in every consumer-specific commercial communication for any mortgage assistance relief service:

(1) ''You may stop doing business with us at any time. You may accept or reject the offer of mortgage assistance we obtain from your lender [or servicer]. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us (insert amount or method for calculating the amount) for our services.'' For the purposes of this paragraph (b)(1), the amount ''you will have to pay'' shall consist of the total amount the consumer must pay to purchase, receive, and use all of the mortgage assistance relief services that are the subject of the sales offer, including, but not limited to, all fees and charges.

(2) ''(Name of company) is not associated with the government, and our service is not approved by the government or your lender.''

(3) In cases where the mortgage assistance relief service provider has represented, expressly or by implication, that consumers will receive any service or result set forth in paragraphs (2) through (6) of the definition of *Mortgage Assistance Relief Service* in § 1015.2, ''Even if you accept this offer and use our service, your lender may not agree to change your loan.''

(4) The disclosures required by this paragraph must be made in a clear and prominent manner, and—

(i) In textual communications the disclosures must appear together and be preceded by the heading ''IMPORTANT NOTICE,'' which must be in bold face font that is two point-type larger than the font size of the required disclosures; and

(ii) In communications disseminated orally or through audible means, wholly or in part, the audio component of the required disclosures must be preceded by the statement ''Before using this service, consider the following information'' and, in telephone communications, must be made at the beginning of the call.

(c) *Disclosures in All General Commercial Communications, Consumer-Specific Commercial Communications, and Other Communications*—In cases where the mortgage assistance relief service provider has represented, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any mortgage assistance relief service, that the consumer should temporarily or permanently discontinue payments, in whole or in part, on a dwelling loan, failing to disclose, clearly and prominently, and in close proximity to any such representation that ''If you stop paying your mortgage, you could lose your home and damage your credit rating.''

§ 1015.5 Prohibition on collection of advance payments and related disclosures.

It is a violation of this rule for any mortgage assistance relief service provider to:

(a) Request or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer;

(b) Fail to disclose, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, the following information: ''This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed pursuant to § 1015.4(b)(1)] for our services.'' The disclosure required by this paragraph must be made in a clear and prominent manner, on a separate written page, and preceded by the heading: ''IMPORTANT NOTICE: Before buying this service, consider the following information.'' The heading must be in bold face font that is two point-type larger than the font size of the required disclosure; or

(c)(1) Fail to provide, at the time the mortgage assistance relief service provider furnishes the consumer with the written agreement specified in paragraph (a) of this section, a notice from the consumer's dwelling loan holder or servicer that describes all material differences between the terms, conditions, and limitations associated with the consumer's current mortgage loan and the terms, conditions, and limitations associated with the consumer's mortgage loan if he or she accepts the dwelling loan holder's or servicer's offer, including but not limited to differences in the loan's:

(i) Principal balance;

(ii) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;

(iii) Amount and number of the consumer's scheduled periodic payments on the loan;

(iv) Monthly amounts owed for principal, interest, taxes, and any mortgage insurance on the loan;

(v) Amount of any delinquent payments owing or outstanding;

(vi) Assessed fees or penalties; and

(vii) Term.

(2) The notice must be made in a clear and prominent manner, on a separate written page, and preceded by heading: ''IMPORTANT INFORMATION FROM YOUR [name of lender or servicer] ABOUT THIS OFFER.'' The heading must be in bold face font that is two-point-type larger than the font size of the required disclosure.

(d) Fail to disclose in the notice specified in paragraph (c) of this section, in cases where the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer is a trial mortgage loan modification, the terms, conditions, and limitations of this offer, including but not limited to:

(1) The fact that the consumer may not qualify for a permanent mortgage loan modification; and

(2) The likely amount of the scheduled periodic payments and any arrears, payments, or fees that the consumer would owe in failing to qualify.

§ 1015.6 Assisting and facilitating.

It is a violation of this rule for a person to provide substantial assistance or support to any mortgage assistance relief service provider when that person knows or consciously avoids knowing that the provider is engaged in any act or practice that violates this rule.

§ 1015.7 Exemptions.

(a) An attorney is exempt from this part, with the exception of § 1015.5, if the attorney:

(1) Provides mortgage assistance relief services as part of the practice of law;

(2) Is licensed to practice law in the state in which the consumer for whom the attorney is providing mortgage assistance relief services resides or in which the consumer's dwelling is located; and

(3) Complies with state laws and regulations that cover the same type of conduct the rule requires.

(b) An attorney who is exempt pursuant to paragraph (a) of this section

is also exempt from § 1015.5 if the attorney:

(1) Deposits any funds received from the consumer prior to performing legal services in a client trust account; and

(2) Complies with all state laws and regulations, including licensing regulations, applicable to client trust accounts.

§ 1015.8 Waiver not permitted.

It is a violation of this rule for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this rule.

§ 1015.9 Recordkeeping and compliance requirements.

(a) Any mortgage assistance relief provider must keep, for a period of twenty-four (24) months from the date the record is created, the following records:

(1) All contracts or other agreements between the provider and any consumer for any mortgage assistance relief service;

(2) Copies of all written communications between the provider and any consumer occurring prior to the date on which the consumer entered into an agreement with the provider for any mortgage assistance relief service;

(3) Copies of all documents or telephone recordings created in connection with compliance with paragraph (b) of this section;

(4) All consumer files containing the names, phone numbers, dollar amounts paid, and descriptions of mortgage assistance relief services purchased, to the extent the mortgage assistance relief service provider keeps such information in the ordinary course of business;

(5) Copies of all materially different sales scripts, training materials, commercial communications, or other marketing materials, including Web sites and weblogs, for any mortgage assistance relief service; and

(6) Copies of the documentation provided to the consumer as specified in § 1015.5 of this rule;

(b) A mortgage assistance relief service provider also must:

(1) Take reasonable steps sufficient to monitor and ensure that all employees and independent contractors comply with this rule. Such steps shall include the monitoring of communications directed at specific consumers, and shall also include, at a minimum, the following:

(i) If the mortgage assistance relief service provider is engaged in the telemarketing of mortgage assistance relief services, performing random, blind recording and testing of the oral representations made by individuals engaged in sales or other customer service functions;

(ii) Establishing a procedure for receiving and responding to all consumer complaints; and

(iii) Ascertaining the number and nature of consumer complaints regarding transactions in which all employees and independent contractors are involved;

(2) Investigate promptly and fully each consumer complaint received;

(3) Take corrective action with respect to any employee or contractor whom the mortgage assistance relief service provider determines is not complying with this rule, which may include training, disciplining, or terminating such individual; and

(4) Maintain any information and material necessary to demonstrate its compliance with paragraphs (b)(1) through (3) of this section.

(c) A mortgage assistance relief provider may keep the records required by paragraphs (a) and (b) of this section in any form, and in the same manner, format, or place as it keeps such records in the ordinary course of business.

(d) It is a violation of this rule for a mortgage assistance relief service provider not to comply with this section.

§ 1015.10 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009), and as amended by Public Law 111–203, section 1097, 124 Stat. 2102 (July 21, 2010).

§ 1015.11 Severability.

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau of Consumer Financial Protection's intention that the remaining provisions shall continue in effect.

Dated: October 24, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2011–31731 Filed 12–15–11; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1317; Directorate Identifier 2011–NM–193–AD; Amendment 39–16893; AD 2011–26–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200, –200LR, –300, and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Model 777–200, –300, and –300ER series airplanes. That AD currently requires installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. This AD expands the applicability in the existing AD. This AD was prompted by fuel system reviews conducted by the manufacturer, which determined that electrical arcing on the fuel tank boundary structure or inside the fuel tanks could result in a fire or explosion. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective January 3, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 20, 2011 (75 FR 78588, December 16, 2010).

We must receive any comments on this AD by January 30, 2012.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services

Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1; fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; *phone:* (425) 917–6500; fax: (425) 917–6590; email *margaret.langsted@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On November 18, 2010, we issued AD 2010–24–12, amendment 39–16531 (75 FR 78588, December 16, 2010), for certain Model 777–200, –300, and –300ER series airplanes. That AD requires installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. That AD resulted from fuel system reviews conducted by the manufacturer. We issued that AD to prevent electrical arcing on the fuel tank boundary structure or inside the fuel tanks, which could result in a fire or explosion.

Actions Since AD was Issued

Since we issued AD 2010–24–12, Amendment 39–16531 (75 FR 78588, December 16, 2010), the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, asked that we specify if Model 777–200LR airplanes are affected by the existing AD, and clarify Note 1 of the existing AD. We have determined that Model 777–200LR airplanes were inadvertently excluded from the applicability of the existing AD. The subject airplanes are identified in the effectivity of Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008, which was referred to in the existing AD as the appropriate source of service information for accomplishing certain actions. In light of these facts, we have added Model 777–200LR airplanes to the applicability in this AD as they are subject to the identified unsafe condition.

We have also revised Note 1 of the existing AD to further clarify the applicability of the AD with regard to Model 777–200 airplanes.

FAA's Determination

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

AD Requirements

This AD retains all requirements of AD 2010–24–12, Amendment 39–16531 (75 FR 78588, December 16, 2010). This AD adds Model 777–200LR airplanes to the applicability of the existing AD, and adds paragraph (i) to this AD to specify the actions (cap sealing the fasteners) required for those airplanes.

FAA's Justification and Determination of the Effective Date

The FAA has found that an additional airplane model has been identified which is subject to the same unsafe condition specified in AD 2010–24–12, Amendment 39–16531 (75 FR 78588, December 16, 2010). There are no U.S.-registered Model 777–200LR airplanes; therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–1317; and directorate identifier 2011–NM–193–AD; at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 129 airplanes of U.S. registry. This new AD adds no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2010–24–12, (75 FR 78588, December 16, 2010).	Between 278 and 358 work-hours × $85 per hour.	$2,241	Between $25,871 and $32,671 per product.	Between $3,337,359 and $4,214,559.

Currently, there are no affected Model 777–200LR airplanes on the U.S. Register. However, if a Model 777–200LR airplane is imported and placed on the U.S. Register in the future, the required actions will take about 480 work hours, at an average labor rate of $85 per work hour. Required parts cost about $2,241 per product. Based on these figures, we estimate the cost of this AD for Model 777–200LR airplanes to be $43,041 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of

the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–24–12, amendment 39–16531 (75 FR 78588, December 16, 2010), and adding the following new AD:

2011–26–03 The Boeing Company: Amendment 39–16893; Docket No. FAA–2011–1317; Directorate Identifier 2011–NM–193–AD.

(a) Effective Date

This AD is effective January 3, 2012.

(b) Affected ADs

This AD supersedes AD 2010–24–12, amendment 39–16531 (75 FR 78588, December 16, 2010).

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as identified in the applicable service information specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(1) For Model 777–200, –300, and –300ER airplanes: Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

(2) For Model 777–200 and –300 airplanes: Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006.

(3) For Model 777–200, –300, and –300ER airplanes: Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007.

(4) For Model 777–200, –200LR, –300, and –300ER airplanes: Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

Note 1: Operators should consider any reference to Model 777–200ER airplanes identified in the service information specified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, as applicable, to be to the Model 777–200 airplanes designated by the type certificate data sheet.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57: Wings.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing on the fuel tank boundary structure or inside the main and center fuel tanks, which could result in a fire or explosion.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

Restatement of Requirements of AD 2010–24–12, Amendment 39–16531 (75 FR 78588, December 16, 2010)

(g) Corrective Actions (Installing Teflon Sleeving, Cap Sealing, One-Time Inspection)

Within 60 months after January 20, 2011 (the effective date of AD 2010–24–12, amendment 39–16531 (75 FR 78588, December 16, 2010)), do the applicable actions specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD.

(1) For airplanes identified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009: Install Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure and cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

(2) For airplanes identified in Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006: Cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006.

(3) For airplanes identified in Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007: Do a general visual inspection to determine if certain fasteners are cap sealed and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007. Do all applicable corrective actions before further flight.

(4) For Model 777–200, –300, and –300ER airplanes identified in Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008: Cap seal the fasteners in the center fuel tanks that were not sealed during production, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(h) Credit for Actions Done Using Previous Issues of the Service Bulletins

(1) Actions done before January 20, 2011, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0050, dated January 26, 2006; or Revision 1, dated August 2, 2007; are acceptable for compliance with the corresponding actions required by paragraph (g)(1) of this AD, provided that the applicable additional work specified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009, is done within the compliance time specified in paragraph (g) of this AD. The additional work must be done in accordance with Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

(2) Actions done before January 20, 2011, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0057, dated August 7, 2006, are acceptable for compliance with the actions required by paragraph (g)(3) of this AD.

New Requirements of This AD

(i) Cap Sealing the Fasteners

For Model 777–200LR airplanes identified in Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008: Within 60 months after the effective date of this AD, cap seal the fasteners in the center fuel tanks that were not sealed during production, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly

to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(k) Related Information

For more information about this AD, contact Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; *phone:* (425) 917–6500; *fax:* (425) 917–6590; email *margaret.langsted@faa.gov.*

(l) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on January 20, 2011 (75 FR 78588, December 16, 2010).

(i) Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009;

(ii) Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006;

(iii) Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007; and

(iv) Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone (206) 544–5000, extension 1, fax (206) 766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

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

Issued in Renton, Washington, on December 5, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–31893 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2006–26661; Amdt. No. 61–129]

RIN 2120–AI86

Pilot, Flight Instructor, and Pilot School Certification; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is correcting a final rule published on August 21, 2009 (74 FR 42500). In that rule, the FAA amended its regulations to revise the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. This document corrects an error in the codified text of that document to permit a person serving as an examiner and administering a practical test for the issuance of a sport pilot certificate in a light-sport aircraft other than a glider or balloon to hold either a medical certificate or a U.S. driver's license. The FAA is also clarifying the regulatory text related to when an instrument proficiency check is required to act as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR. Finally, this document corrects one section of the final rule to clarify the FAA's original intent with regard to the use of flight simulation training devices for training and testing when seeking to add a type rating to an existing pilot certificate or obtain a type rating concurrently with a pilot certificate.

DATES: Effective December 16, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Jeffrey Smith, Airmen Certification and Training Branch, AFS–810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 493–4789; email to *jeffrey.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2009, the FAA published a final rule entitled, ''Pilot, Flight Instructor, and Pilot School Certification'' (74 FR 42500). That final rule revised the training, qualification, certification, and operating requirements for pilots, flight instructors, ground instructors, and pilot schools. The FAA is now issuing a technical amendment to correct an error in § 61.23 and to clarify the original intent of § 61.64.

Discussion of Technical Amendment to § 61.23

As part of the 2009 final rule, the FAA revised § 61.23 to set forth the medical certification requirements for persons serving as examiners and administering practical tests. As modified in the final rule, the current text of that section requires an examiner administering a practical test in an aircraft, other than a glider or balloon, to hold at least a third-class medical certificate.

During the rulemaking process, the FAA received a comment stating that examiners administering practical tests to applicants for a sport pilot certificate should not be required to hold a medical certificate. These tests—particularly those conducted in powered parachutes and weight-shift-control aircraft—are frequently conducted by examiners who hold only a sport pilot certificate. A person exercising the privileges of a sport pilot certificate may hold either a medical certificate or a U.S. driver's license to exercise those privileges. Although the preamble to the final rule acknowledged the comment, the regulatory text did not address the issue raised by the comment.

Although an examiner is generally not the pilot in command of an aircraft during a practical test, an examiner may, on occasion, need to act as pilot in command of an aircraft during the course of a practical test. Accordingly, the FAA believes that an examiner must meet the appropriate medical certification requirements to act as pilot in command of the aircraft in which the test is being conducted should the need arise. An examiner conducting a practical test for a sport pilot certificate in a light-sport aircraft other than a glider or balloon would therefore only need to hold either a medical certificate or a U.S. driver's license.

The technical amendment will revise § 61.23(c) to permit a person to serve as an examiner and administer a practical test for the issuance of a sport pilot certificate in a light-sport aircraft other

than a glider or balloon if that person holds and possesses either a medical certificate issued under part 67 or a U.S. driver's license.

Discussion of Technical Amendment to § 61.57(d)

Section 61.57(c) sets forth the instrument recent flight experience requirements for a pilot to act as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR. Under that provision, a pilot must have performed and logged certain tasks and maneuvers within six calendar months preceding the month of the flight on which the pilot intends to serve as pilot in command. Section 61.57(d) sets forth the time when a pilot who does not meet the instrument recent experience requirements of paragraph (c) must accomplish an instrument proficiency check (IPC) before serving as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR.

In the 2009 final rule, the FAA modified the language in § 61.57(d) to remove confusing language (''within the prescribed time, or within 6 calendar months after the prescribed time'') and replaced it with language that a pilot must perform the instrument recent flight experience within a period of 12 months to avoid having to accomplish an IPC. The FAA acknowledges that the language as modified allows for interpretations inconsistent with the intent of the rule and contrary to the manner the rule has been historically applied.

In this technical amendment, the FAA is revising the language in paragraph (d) to clarify the intent of the rule. The revised language makes it clear that a pilot who has failed to maintain instrument currency for more than six calendar months may not serve as pilot in command under IFR or in weather conditions less than the minimums prescribed for VFR until completing an instrument proficiency check. A pilot whose instrument currency has been lapsed for less than six months may continue to reestablish instrument currency by performing the tasks and maneuvers required in paragraph (c).

Discussion of Technical Amendment to § 61.64

Prior to issuance of the 2009 final rule, 14 CFR 61.63(e), (f), and (g) set forth the requirements for the use of flight simulators and flight training devices for a pilot seeking to add ratings to an existing pilot certificate other than the airline transport pilot certificate. Under former § 61.63(e), (f), and (g), any pilot who completed ''all training and testing requirements'' in a flight simulator for an additional rating on an existing pilot certificate other than an airline transport pilot certificate had to have specific flight experience (*e.g.*, hold a type rating for a turbojet airplane of the same class of airplane for which the type rating is sought) to avoid having to fulfill a supervised operating experience requirement before acting as pilot in command of the aircraft for which the additional rating was sought.

The requirements for the use of flight simulators and flight training devices for obtaining an airline transport pilot certificate with a type rating or adding a type rating to an existing airline transport pilot certificate were covered by 14 CFR 61.157(g), (h), and (i). Under former § 61.157(h), (i) and (j), any pilot who completed ''all of the training and the required practical test'' in a flight simulator for a type rating on an airline transport pilot certificate had to have the same prior flight experience listed in former § 61.63 to avoid having to fulfill a supervised operating experience requirement before acting as pilot in command in the aircraft for which the type rating was sought.

In 2007, the FAA proposed to consolidate the requirements of §§ 61.63(e), (f), and (g) and 61.157(g), (h), and (i) into new § 61.64 (72 FR 5806; February 7, 2007). In the preamble to the final rule, the FAA stated that in consolidating these sections ''[n]o substantive changes had been made'' (74 FR 42500 and 74 FR 42522). One commenter objected because, as consolidated in § 61.64, a pilot would be required to meet one of the experience prerequisites if any portion of the practical test for a type rating was completed in a flight simulator. The commenter noted that this requirement differed from the existing rule which required a pilot to meet one of the experience prerequisites only if he or she completed the entire practical test in a simulator. Two months after the final rule was published, the FAA issued a technical correction that made several changes to § 61.64. 74 FR 53643 (Oct. 20, 2009). The correction did not affect the language identified by the commenter that could be construed as requiring a pilot to meet one of the experience prerequisites if a simulator was used for any portion of the practical test.

Although the FAA stated in the 2009 final rule that no substantive changes were being made in consolidating the requirements in §§ 61.63 and 61.157, the language of the consolidation resulted in apparent changes to the requirements for using flight simulation training devices (FSTD) to train and test for an additional rating on an existing pilot certificate. The consolidation of the two provisions into § 61.64 could be read to expand the number of pilots who would be subject to the supervised operating limitation because the regulatory text as written applies to a pilot who completes any training or testing in flight simulators to meet one of the listed experience requirements or receive a limitation. This result was not the FAA's intention in consolidating the provisions. The FAA, therefore, is modifying § 61.64 to reflect that a supervised operating limitation must be placed on a pilot certificate if the pilot applying for the rating uses a flight simulator for the entire practical test and fails to meet one of the listed flight experience requirements.

In making the changes to § 61.64, the FAA emphasizes that §§ 61.63 and 61.157 continue to set forth the training requirements for additional ratings and type ratings. Section 61.64 merely details the use of FSTD in training and testing for those ratings. We note that, if § 61.63 requires a pilot to meet the training requirements of another section, for example § 61.129 (commercial pilot), then the FSTD limitations set forth in § 61.129 will apply to that training and the pilot will not be able to train and test completely through simulation. In addition, pilots who train under the aeronautical experience requirements that limit the use of simulation for training (*e.g.*, § 61.129; part 141 appendices) will continue to have the option of accomplishing a segmented practical test (*see* 14 CFR 61.39(d); 14 CFR 61.45(a); and FAA Order 8900.1, Vol. 5, Chapter 1, Section 4).

This technical amendment also makes several clarifying changes to § 61.64, including (1) reinserting the language ''except preflight inspection'' to the provisions related to the requirement that the entire practical test take place in a Level C or higher flight simulator if an aircraft is not used, (2) modifying the language of the limitation, (3) rewording the language in paragraph (g) related to the manner in which the supervised operating experience must be obtained, and (4) clarifying the language in paragraph (g) related to the means by which the supervised operating limitation may be removed from a pilot certificate. The FAA has also made a conforming change to the applicability provision in § 61.61.

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and

recordkeeping requirements, Security measure and Teachers.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.23 by revising paragraph (c) to read as follows:

§ 61.23 Medical Certificates: Requirements and duration.

* * * * *

(c) *Operations requiring either a medical certificate or U.S. driver's license.* (1) A person must hold and possess either a medical certificate issued under part 67 of this chapter or a U.S. driver's license when—

(i) Exercising the privileges of a student pilot certificate while seeking sport pilot privileges in a light-sport aircraft other than a glider or balloon;

(ii) Exercising the privileges of a sport pilot certificate in a light-sport aircraft other than a glider or balloon;

(iii) Exercising the privileges of a flight instructor certificate with a sport pilot rating while acting as pilot in command or serving as a required flight crewmember of a light-sport aircraft other than a glider or balloon; or

(iv) Serving as an Examiner and administering a practical test for the issuance of a sport pilot certificate in a light-sport aircraft other than a glider or balloon.

* * * * *

■ 3. Amend § 61.57 by revising paragraph (d) introductory text to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(d) *Instrument proficiency check.* Except as provided in paragraph (e) of this section, a person who has failed to meet the instrument experience requirements of paragraph (c) for more than six calendar months may reestablish instrument currency only by completing an instrument proficiency check. The instrument proficiency check must consist of the areas of operation and instrument tasks required in the instrument rating practical test standards.

* * * * *

■ 4. Revise § 61.61 to read as follows:

§ 61.61 Applicability.

This subpart prescribes the requirements for the issuance of additional aircraft ratings after a pilot certificate is issued, issuance of a type rating concurrently with a pilot certificate, and the requirements for and limitations of pilot authorizations issued by the Administrator.

■ 5. Revise § 61.64 to read as follows:

§ 61.64 Use of a flight simulator and flight training device.

(a) *Use of a flight simulator or flight training device.* If an applicant for a certificate or rating uses a flight simulator or flight training device for training or any portion of the practical test, the flight simulator and flight training device—

(1) Must represent the category, class, and type (if a type rating is applicable) for the rating sought; and

(2) Must be qualified and approved by the Administrator and used in accordance with an approved course of training under part 141 or part 142 of this chapter; or under part 121 or part 135 of this chapter, provided the applicant is a pilot employee of that air carrier operator.

(b) Except as provided in paragraph (f) of this section, if an airplane is not used during the practical test for a type rating for a turbojet airplane (except for preflight inspection), an applicant must accomplish the entire practical test in a Level C or higher flight simulator and the applicant must—

(1) Hold a type rating in a turbojet airplane of the same class of airplane for which the type rating is sought, and that type rating may not contain a supervised operating experience limitation;

(2) Have 1,000 hours of flight time in two different turbojet airplanes of the same class of airplane for which the type rating is sought;

(3) Have been appointed by the U.S. Armed Forces as pilot in command in a turbojet airplane of the same class of airplane for which the type rating is sought;

(4) Have 500 hours of flight time in the same type of airplane for which the type rating is sought; or

(5) Have logged at least 2,000 hours of flight time, of which 500 hours were in turbine-powered airplanes of the same class of airplane for which the type rating is sought.

(c) Except as provided in paragraph (f) of this section, if an airplane is not used during the practical test for a type rating for a turbo-propeller airplane (except for preflight inspection), an applicant must accomplish the entire practical test in a Level C or higher flight simulator and the applicant must—

(1) Hold a type rating in a turbo-propeller airplane of the same class of airplane for which the type rating is sought, and that type rating may not contain a supervised operating experience limitation;

(2) Have 1,000 hours of flight time in two different turbo-propeller airplanes of the same class of airplane for which the type rating is sought;

(3) Have been appointed by the U.S. Armed Forces as pilot in command in a turbo-propeller airplane of the same class of airplane for which the type rating is sought;

(4) Have 500 hours of flight time in the same type of airplane for which the type rating is sought; or

(5) Have logged at least 2,000 hours of flight time, of which 500 hours were in turbine-powered airplanes of the same class of airplane for which the type rating is sought.

(d) Except as provided in paragraph (f) of this section, if a helicopter is not used during the practical test for a type rating in a helicopter (except for preflight inspection), an applicant must accomplish the entire practical test in a Level C or higher flight simulator and the applicant must meet one of the following requirements—

(1) Hold a type rating in a helicopter and that type rating may not contain the supervised operating experience limitation;

(2) Have been appointed by the U.S. Armed Forces as pilot in command of a helicopter;

(3) Have 500 hours of flight time in the type of helicopter; or

(4) Have 1,000 hours of flight time in two different types of helicopters.

(e) Except as provided in paragraph (f) of this section, if a powered-lift is not used during the practical test for a type rating in a powered-lift (except for preflight inspection), an applicant must accomplish the entire practical test in a Level C or higher flight simulator and the applicant must meet one of the following requirements—

(1) Hold a type rating in a powered-lift without a supervised operating experience limitation;

(2) Have been appointed by the U.S. Armed Forces as pilot in command of a powered-lift;

(3) Have 500 hours of flight time in the type of powered-lift for which the rating is sought; or

(4) Have 1,000 hours of flight time in two different types of powered-lifts.

(f) If the applicant does not meet one of the experience requirements of paragraphs (b)(1) through (5), (c)(1) through (5), (d)(1) through (4) or (e)(1) through (4) of this section, as appropriate to the type rating sought, then—

(1) The applicant must complete the following tasks on the practical test in an aircraft appropriate to category, class, and type for the rating sought: Preflight inspection, normal takeoff, normal instrument landing system approach, missed approach, and normal landing; or

(2) The applicant's pilot certificate will be issued with a limitation that states: ''The [name of the additional type rating] is subject to pilot in command limitations,'' and the applicant is restricted from serving as pilot in command in an aircraft of that type.

(g) The limitation described under paragraph (f)(2) of this section may be removed from the pilot certificate if the applicant complies with the following—

(1) Performs 25 hours of flight time in an aircraft of the category, class, and type for which the limitation applies under the direct observation of the pilot in command who holds a category, class, and type rating, without limitations, for the aircraft;

(2) Logs each flight and the pilot in command who observed the flight attests in writing to each flight;

(3) Obtains the flight time while performing the duties of pilot in command; and

(4) Presents evidence of the supervised operating experience to any Examiner or FAA Flight Standards District Office to have the limitation removed.

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

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2011–32333 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0867; Airspace Docket No. 11–AAL–16]

Amendment of Class E Airspace; Anaktuvuk Pass, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Anaktuvuk Pass Airport, Anaktuvuk Pass, AK. The creation of two standard instrument approach procedures at the airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations. This action also adjusts the geographic coordinates of the airport.

DATES: Effective date, 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jeanette Roller, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4541.

SUPPLEMENTARY INFORMATION:

History

On September 13, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Anaktuvuk Pass, AK (76 FR 56354). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Reference to the adjustment to the geographic coordinates of the airport was inadvertently omitted in the NPRM, and is now noted.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by revising Class E airspace extending upward from 700 feet above the surface, at Anaktuvuk Pass Airport, to accommodate the creation of two standard instrument approach procedures. This action is necessary for the safety and management of IFR operations. This action also brings the coordinates for the Anaktuvuk Pass Airport into agreement with the FAA's aeronautical database.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it creates additional controlled airspace at Anaktuvuk Pass Airport, Anaktuvuk, AK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Anaktuvuk Pass, AK [Amended]

Anaktuvuk Pass Airport, AK
(Lat. 68°08′01″ N., long. 151°44′36″ W.)
Anaktuvuk Pass, NDB
(Lat. 68°08′12″ N., long. 151°44′39″ W.)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of the Anaktuvuk Pass Airport, AK and within 8 miles northwest and 4 miles southeast of the Anaktuvuk Pass NDB 240° bearing extending from the 9.3-mile radius to 16.7 miles southwest of the Anaktuvuk Pass Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 66-mile radius of the Anaktuvuk Pass Airport, AK.

Issued in Seattle, Washington, on December 3, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–32210 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. DOT–OST–2010–0140]

RIN 2105–AD92

Enhancing Airline Passenger Protections: Limited Extension of Effect Date for Full Fare Price Advertising

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule delays the effective date regarding the time period for compliance with a portion of the full fare and other advertising requirements from January 24, 2012, to January 26, 2012. The intended effect of this delay is to provide regulatory relief to petitioner American Airlines by allowing the carrier and any other similarly situated carriers or ticket agents to avoid having to update full fare information in on-line reservations systems on a day of the week that is the petitioner's, and may be other carriers' and ticket agents', heaviest on-line traffic and revenue day. This action is necessary to minimize the detrimental effects of any difficulties that may arise in the immediate aftermath of on-line implementation of programming necessary to comply with the new requirement that sellers of air transportation advertise the full fare, including all government-imposed taxes and fees. This delay is a minor substantive change, in the public interest, and unlikely to result in adverse comment.

DATES: The effective date for the amendment to 14 CFR 399.84, published April 25, 2011, at 76 FR 23110, and delayed July 28, 2011, at 76 FR 45181, is further delayed until January 26, 2012. This delay is effective December 23, 2011, unless an adverse comment or a written notice of intent to submit an adverse comment is received by December 23, 2011. OST will publish in the **Federal Register** a timely document confirming the delayed effective date for the amendment to 14 CFR 399.84.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2010–0140 by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2010–0140 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, a business, a labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Deputy Assistant General Counsel, or Dayton Lehman Jr, Principal Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 366–9342 (phone), (202) 366–7152 (fax), *blane.workie@dot.gov* or *dayton.lehman@dot.gov* (email), respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation issued a rule requiring that all airlines and ticket agents that advertise airfares or air tours must advertise the full fare to be paid for the air transportation or air tour, including all government-imposed taxes and fees. This rule changes the Department's past policy of permitting government taxes and fees imposed on a per-person basis, such as passenger facility charges and segment fees, to be stated separately from the advertised fare. The first time carriers and ticket agents must provide the full fare information in all fare advertisements, including their on-line reservations systems, is January 24, 2012. (76 FR 45181, July 28, 2011)

On December 8, 2011, American Airlines (American) submitted a motion to the Department requesting a change of the effective date of the rule from the 24th to the 26th of January, because the 24th falls on a Tuesday, which it states is its busiest internet traffic and revenue day each week and may be the busiest for other sellers of air transportation as well. The carrier seeks to avoid having the complexities of rolling out the new pricing system when traffic and revenue activity is heaviest and any problems with the new system would be exacerbated. American points out that it is not feasible to implement the change earlier due to the extremely tight schedule necessary to complete its reprogramming and testing effort and that the requested 2-day extension will have no material negative effect on consumers. American asks that the requested relief apply to the Web sites of any party affected by the new rule, as well as to advertising that refers customers to Web sites for booking, such as that which appears on-line, in print, on television, and radio. American states that it informally canvassed several carriers and that the responses received were favorable. In addition, Department staff has informally heard from several organizations representing travel agencies and consumers which state they have no objection to the short extension requested.

Other carriers as well as ticket agents have in the past advised us that reprogramming their on-line

reservations systems to comply with the new rule is a complex undertaking. Indeed, in response to such concerns, we extended the effective date of this rule for 90 days, from October 24, 2011, to its present date of January 24, 2012. (76 FR 45181, July 28, 2011) We can appreciate that any errors that might occur the first day the new system is implemented would have a greater impact on carriers or ticket agents selling air transportation if that day happens to be their busiest business day. We are concerned that, similarly, any such problems may have a more wide-ranging negative effect on consumers, as well. For this reason, and because we agree that a two-day delay in the start of the new rule will not significantly affect consumers, we find that grant of American's petition is in the public interest. In order to avoid confusion over airfares advertised using various media, which include Web sites, email, print, television, and radio, this short two-day extension will apply to all fare advertisements.

The Direct Final Rule Procedure

On January 30, 2004, OST published a final rule adopting direct final rulemaking procedures intended to expedite the rulemaking process for noncontroversial rules. By using direct final rulemaking, OST can reduce the time necessary to develop, review, clear and publish a rule to which no adverse public comment is anticipated by eliminating the need to publish separate proposed and final rules (69 FR 4455).

OST anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, if no adverse or negative comment or written notice of intent to submit such a comment is received, OST will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If OST does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. Accordingly, this final rule has not been reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), DOT certifies that this final rule does not have a significant impact on a substantial number of small entities. The final rule does not impose any duties or obligations on small entities.

C. Executive Order 13132 (Federalism)

This Final Rule does not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

D. Executive Order 13084

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because the rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. DOT has determined that there is no new information collection requirements associated with this final rule.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this Final Rule.

Issued this 13th day of December 2011, in Washington, DC.

Susan Kurland,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 2011–32336 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 111202715–1724–01]

RIN 0694–AF46

Addition of Certain Persons to the Entity List; and Implementation of Entity List Annual Review Changes

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding two persons to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the United Arab Emirates (U.A.E.).

This rule also amends the Entity List on the basis of the annual review of the Entity List conducted by the End-User Review Committee (ERC). The ERC conducts the annual review to determine if any entries on the Entity List should be removed or modified.

This rule removes two persons located in Singapore and two persons located in Taiwan on the basis of the annual review, and revises the entry concerning one person located in Malaysia to add an alternate address.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of

license exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List decisions

Additions to the Entity List

This rule implements the decision of the ERC to add two persons to the Entity List on the basis of Section 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The two entries added to the Entity List consist of two persons located in the U.A.E.

The ERC reviewed Section 744.11(b) (Criteria for revising the Entity List) in making the determination to add the two persons located in the U.A.E. to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to Section 744.11. Paragraphs (b)(1)–(b)(5) of Section 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

The two persons in the U.A.E. being added to the Entity List under this rule have been determined by the ERC to be involved in activities that could be contrary to the national security or foreign policy interests of the United States. Specifically, BIS's Office of Export Enforcement is investigating the presence of Blue Coat internet filtering devices in Syria and has developed evidence regarding the parties involved in the transfer of these devices to Syria. Waseem Jawad, using the company name Infotec, a.k.a., Info Tech, ordered multiple Blue Coat SG9000–20 Proxy devices in December 2010 from a Blue Coat authorized distributor in the U.A.E. That authorized distributor in turn placed an order for the devices with Blue Coat. A December 2010 email notification identified the end-user of the Blue Coat products for this order as the Ministry of Communication (National Telecom), Al Fadi Street, Baghdad, Iraq. In February 2011, the devices were shipped from the United States to the United Arab Emirates, and ownership was transferred to Waseem Jawad, Info Tech, RAKFTZ, U.A.E. Approximately three days later, the devices departed the U.A.E. for delivery to Syria. Several of these devices have been identified by serial number as the devices being used by the Syrian Telecommunications Establishment in Damascus, Syria. The investigation is ongoing and additional parties related to these transactions may be added to the Entity List in the future.

For the two persons added to the Entity List, the ERC specified a license requirement for all items subject to the EAR and established a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following two persons under two entries to the Entity List:

United Arab Emirates

(1) *Infotec,* a.k.a., Info Tech., Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.; *and*

(2) *Waseem Jawad,* Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.; *and* P.O. Box: 25123, Dubai U.A.E.

Annual Review of the Entity List

This rule also amends the Entity List on the basis of the annual review of the Entity List conducted by the ERC, in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions). The changes from the annual review of the Entity List that are approved by the ERC are implemented in stages as the ERC completes its review of entities listed under different destinations on the Entity List. This rule implements the results of the annual review for entities located in Malaysia, Singapore, and Taiwan.

A. Removals From the Entity List

This rule removes four entities from the Entity List, which consists of two entities from Singapore and two entities from Taiwan. Specifically, this rule implements the decision of the ERC to remove two entities, Strive Components and Synoptics Imaging Systems Pte Ltd., located in Singapore, and two entities, Christine Sun and In-Tech Company, a.k.a., In-Tech Telecom, located in Taiwan, from the Entity List on the basis of the annual review of the Entity List, as follows:

Singapore

(1) *Strive Components,* Block 10 Toa Payoh Industrial Park Lor 8 #01–1221, Singapore, 319062; *and*

(2) *Synoptics Imaging Systems Pte Ltd.,* 12 Lor Bakar Batu #06–09, Singapore, 348745.

Taiwan

(1) *Christine Sun,* 7th Floor, Number 17, Zhonghua Rd., Sec 2, Xinzhuang City, Taipei, Taiwan; *and*

(2) *In-Tech Company, a.k.a., In-Tech Telecom,* Number 15, Lane 347, Jhongjheng Road, Sinjihuang City, Taipei, Taiwan, *and* 7th Floor, Number 17, Zhonghua Rd., Sec 2, Xinzhuang City, Taipei, Taiwan.

The removal of the above-referenced four entities from the Entity List eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to the four entities. However, the removal of these four entities from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in section 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export

or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Additionally these removals do not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

B. Modifications to the Entity List

On the basis of a decision made by the ERC during the annual review, this rule amends one entry currently on the Entity List under Malaysia by adding an alternate address, as follows:

Malaysia

(1) *VTE Industrial Automation SDN BHD,* 97C, Jalan Kenari 23, Puchong Jaya, Puchong, Selangor, Malaysia; *and* 45–02, Jalan Kenari 19A, Puchong Jaya, 47100 Malaysia.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on December 16, 2011, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before January 3, 2012. Any such items not actually exported or reexported before midnight, on January 3, 2012, require a license in accordance with the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States and/or to take steps to set up additional aliases, change addresses, and take other steps to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 13, 2011, 76 FR 3009, January 18, 2011; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70391 (November 9, 2011).

■ 2. Supplement No. 4 to part 744 is amended:

■ (a) By revising under Malaysia, in alphabetical order, one Malaysian entity;

■ (b) By removing under Singapore, the two Singaporean entities: ''Strive Components, Block 10 Toa Payoh Industrial Park Lor 8 #01–1221, Singapore, 319062'' and ''Synoptics Imaging Systems Pte Ltd., 12 Lor Bakar Batu #06–09, Singapore, 348745'';

■ (c) By removing under Taiwan, the two Taiwanese entities: ''Christine Sun,

7th Floor, Number 17, Zhonghua Rd., Sec 2, Xinzhuang City, Taipei, Taiwan'' and ''In-Tech Company, a.k.a., In-Tech Telecom, Number 15, Lane 347, Jhongjheng Road, Sinjihuang City, Taipei, Taiwan, and 7th Floor, Number 17, Zhonghua Rd., Sec 2, Xinzhuang City, Taipei, Taiwan''; and

■ (d) By adding under United Arab Emirates, in alphabetical order, two U.A.E. entities:

The additions and revisions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
Malaysia				
*	*	*	*	*
	VTE Industrial Automation SDN BHD, 97C, Jalan Kenari 23, Puchong Jaya, Puchong, Selangor, Malaysia; *and* 45–02, Jalan Kenari 19A, Puchong Jaya, 47100 Malaysia.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	73 FR 54503, 9/22/08. 76 FR [INSERT FR PAGE NUMBER] 12/16/11.
*	*	*	*	*
United Arab Emirates				
*	*	*	*	*
	Infotec, a.k.a., Info Tech, Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	76 FR [INSERT FR PAGE NUMBER] 12/16/11.
*	*	*	*	*
	Waseem Jawad, Ras Al Khaimah Free Trade Zone (RAKFTZ), U.A.E.; *and* P.O. Box: 25123, Dubai U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	76 FR [INSERT FR PAGE NUMBER] 12/16/11.
*	*	*	*	*

Dated: December 12, 2011.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2011–32341 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2011–N–0003]

Oral Dosage Form New Animal Drugs; Estriol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Intervet, Inc. The NADA provides for the veterinary prescription use of estriol tablets for the control of estrogen-responsive urinary incontinence in ovariohysterectomized female dogs.

DATES: This rule is effective December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Lisa M. Troutman, Center for Veterinary Medicine (HFV–116), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, (240) 276–8322, *email: lisa.troutman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Intervet, Inc., 556 Morris Ave., Summit, NJ 07901, filed NADA 141–325 that provides for the veterinary prescription use of INCURIN (estriol) Tablets for the control of estrogen-responsive urinary incontinence in ovariohysterectomized female dogs. The NADA is approved as of July 24, 2011, and the regulations are amended in 21 CFR part 520 to reflect the approval.

A summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning on the date of approval.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Add § 520.852 to read as follows:

§ 520.852 Estriol.

(a) *Specifications.* Each tablet contains 1 milligram (mg) estriol.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer at an initial dose of 2 mg per dog per day. The dosage may be titrated to as low as 0.5 mg per dog every second day, depending on response.

(2) *Indications for use.* For the control of estrogen-responsive urinary incontinence in ovariohysterectomized female dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 9, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–32214 Filed 12–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

[Docket No. FDA–2011–N–0003]

Ophthalmic and Topical Dosage Form New Animal Drugs; Hydrocortisone Aceponate, Miconazole Nitrate, and Gentamicin Sulfate Otic Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Virbac AH, Inc. The NADA provides for the veterinary prescription use of a hydrocortisone aceponate, miconazole nitrate, and gentamicin sulfate suspension for the treatment of otitis externa in dogs.

DATES: This rule is effective December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Lisa M. Troutman, Center for Veterinary Medicine (HFV–116), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, (240) 276–8322, email: *lisa.troutman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Virbac AH, Inc., 3200 Meacham Blvd., Fort Worth, TX 76137, filed NADA 141–330 for the veterinary prescription use of EASOTIC (hydrocortisone aceponate, miconazole nitrate, gentamicin sulfate) Suspension for the treatment of otitis externa in dogs associated with susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (*Staphylococcus pseudintermedius*). The NADA is approved as of October 31, 2011, and 21 CFR part 524 is amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524 Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Add § 524.1132 to read as follows:

§ 524.1132 Hydrocortisone aceponate, miconazole nitrate, gentamicin sulfate otic suspension.

(a) *Specifications.* Each milliliter (mL) of suspension contains 1.11 milligrams (mg) of hydrocortisone aceponate, 15.1 mg of miconazole nitrate, and 1,505 micrograms of gentamicin sulfate.

(b) *Sponsor.* See No.051311 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Instill 1.0 mL in the affected ear once daily for 5 days.

(2) *Indications for use.* For the treatment of otitis externa in dogs associated with susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (*Staphylococcus pseudintermedius*).

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 13, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–32226 Filed 12–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1980

[Docket Number OSHA–2011–0126]

RIN 1218–AC53

Procedures for the Handling of Retaliation Complaints Under Section 806 of the Sarbanes-Oxley Act of 2002, as Amended; Correction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim final rule; correction.

SUMMARY: The Occupational Safety and Health Administration is correcting an interim final rule on the procedures for the handling of retaliation complaints under Section 806 of the Sarbanes-Oxley Act of 2002, As Amended, published in the **Federal Register** of November 3, 2011 (76 FR 68084).

DATES: Effective December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sandra Dillon, Acting Director, Office of the Whistleblower Protection Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199.

SUPPLEMENTARY INFORMATION: In FR Doc. 2011–28274 on page 68084 in the **Federal Register** of Thursday,

November 3, 2011, an incorrect amendatory instruction published inadvertently creating duplicate paragraphs (b)(1)(ii) in § 1980.102. This document corrects that error.

Therefore, OSHA amends 29 CFR part 1980 by making the following correcting amendment:

PART 1980—PROCEDURES FOR THE HANDLING OF RETALIATION COMPLAINTS UNDER SECTION 806 OF THE SARBANES-OXLEY ACT OF 2002, AS AMENDED

■ 1. The authority citation for part 1980 continues to read as follows:

Authority: 18 U.S.C. 1514A, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111–203 (July 21, 2010); Secretary of Labor's Order No. 4–2010 (Sept. 2, 2010), 75 FR 55355 (Sept. 10, 2010); Secretary of Labor's Order No. 1–2010 (Jan. 15, 2010), 75 FR 3924 (Jan. 25, 2010).

§ 1980.102 [Corrected]

■ 2. In § 1980.102, redesignate the second paragraph (b)(1)(ii) as paragraph (b)(1)(iii).

Signed at Washington, DC on December 9, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–32095 Filed 12–15–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–1078]

RIN 1625–AA08

Special Local Regulations; Boca Raton Holiday Boat Parade, Intracoastal Waterway, Boca Raton, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of the Intracoastal Waterway in Boca Raton, Florida during the Boca Raton Holiday Boat Parade on Saturday, December 17, 2011. The marine parade will consist of approximately 60 vessels. The marine parade will begin at C–15 Canal then head south on the Intracoastal Waterway to the Hillsborough Bridge, where the marine parade will conclude. These special local regulations are necessary to provide for the safety of life on navigable waters of the United States during the marine parade. The special local regulations consist of a series of moving buffer zones around participant vessels as they transit from C–15 Canal to the Hillsborough Bridge. Persons and vessels that are not participating in the marine parade are prohibited from entering, transiting through, anchoring in, or remaining within any of the buffer zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 6 p.m. until 9 p.m. on December 17, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1078 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1078 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Lieutenant Jennifer S. Makowski, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–8724, email *Jennifer.S.Makowski@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about this year's Boca Raton Holiday Boat Parade until November 7, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to marine parade participants, participant vessels, spectators, and the general public.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233.

The purpose of the rule is to insure safety of life on navigable waters of the United States during the Boca Raton Holiday Boat Parade.

Discussion of Rule

On December 17, 2011, the City of Boca Raton is hosting the Boca Raton Holiday Boat Parade on the Intracoastal Waterway in Boca Raton, Florida. The marine parade will consist of approximately 60 vessels. The marine parade will begin at C–15 Canal and transit south on the Intracoastal Waterway to the Hillsborough Bridge. Although this event occurs annually, and special local regulations have been promulgated in the Code of Federal Regulations at 33 CFR 100.701, the date of the marine parade does not correspond with the date published in the Code of Federal Regulations, and the special local regulations have been modified. Therefore, the special local regulations set forth in 33 CFR 100.701 are inapplicable for this year's Boca Raton Holiday Boat Parade.

The special local regulations consist of a series of buffer zones around vessels participating in the Boca Raton Holiday Boat Parade. These buffer zones are as follows: (1) All waters within 75 yards of the lead marine parade vessel; (2) all waters within 75 yards of the last marine parade vessel; and (3) all waters within 50 yards of all other marine parade vessels. Notice of the special local regulations, including the identities of the lead marine parade vessel and the last marine parade vessel, will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. These special local regulations will be enforced from 6 p.m. until 9 p.m. on December 17, 2011. Persons and vessels are prohibited from entering, transiting through, anchoring, or remaining within the buffer zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and

vessels desiring to enter, transit through, anchor in, or remain within any of the buffer zones may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the buffer zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only three hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the buffer zones without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the buffer zones if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Intracoastal Waterway encompassed within the special local regulations from 6 p.m. until 9 p.m. on December 17, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves special local regulations issued in conjunction with a marine parade. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T07–1078 to read as follows:

§ 100.35T07–1078 Special Local Regulations; Boca Raton Holiday Boat Parade, Intracoastal Waterway, Boca Raton, FL.

(a) *Regulated Areas.* The following buffer zones are regulated areas during the Boca Raton Holiday Boat Parade: all waters within 75 yards of the lead marine parade vessel; all waters within 75 yards of the last marine parade vessel; and all waters within 50 yards of all other marine parade vessels. The identities of the lead marine parade vessel and the last marine parade vessel will be provided prior to the marine parade by Local Notice to Mariners and Broadcast Notice to Mariners. The marine parade will begin at C–15 Canal then head south on the Intracoastal Waterway to the Hillsborough Bridge, where the marine parade will conclude.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 6 p.m. until 9 p.m. on December 17, 2011.

Dated: November 22, 2011.

C.P. Scraba,

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

[FR Doc. 2011–32255 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1116]

Drawbridge Operation Regulation; Oakland Inner Harbor, Oakland, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Fruitvale Avenue Drawbridge across Oakland Inner Harbor, mile 5.6, between the cities of Alameda and Oakland, Alameda County, CA. The deviation is necessary to allow the County of Alameda Public Works Agency to perform seismic retrofitting on the drawbridge. This deviation allows the bridge owner to secure the drawspan in the closed-to-navigation position during the project.

DATES: This deviation is effective from 12:01 a.m., December 12, 2011 to 11:59 p.m. on February 3, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–1116 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1116 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437–3516, email *David.H.Sulouff@uscg.mil.* If you have

questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The County of Alameda Public Works Agency has requested a temporary change to the operation of the Fruitvale Avenue Drawbridge, mile 5.61, over Oakland Inner Harbor, between the cities of Alameda and Oakland, Alameda County, CA. The drawbridge navigation span provides a vertical clearance of 15 feet above Mean High Water in the closed-to-navigation position. The draw opens on signal; except that, from 8 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels. However, the draw shall open during the above closed periods for vessels which must, for reasons of safety, move on a tide or slack water, if at least two hours notice is given, as required by 33 CFR 117.181. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position for seismic retrofitting during three time periods: (a) From 12:01 a.m., December 12, 2011 to 11:59 p.m. on December 23, 2011; (b) from 12:01 a.m., January 3, 2012 to 11:59 p.m. on January 12, 2012; and (c) from 12:01 a.m., January 23, 2012 to 11:59 p.m. on February 3, 2012. At all other times, the drawspan will promptly return to normal operation. This temporary deviation has been coordinated with waterway users. No objections to the proposed temporary deviation were raised.

Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

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

Dated: December 2, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2011–32260 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1091]

RIN 1625–AA00

Safety Zones; New Year's Eve Fireworks Displays Within the Captain of the Port Miami Zone, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones during New Year's Eve fireworks displays on certain navigable waterways in Miami Beach and West Palm Beach, Florida. These safety zones are necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the three safety zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1091 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1091 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Lieutenant Jennifer S. Makowski Sector Miami Prevention Department, Coast Guard; telephone (305) 535–8724, email *Jennifer.S.Makowski@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information regarding the fireworks displays until December 2, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks displays. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks displays.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

Discussion of Rule

Multiple fireworks displays are planned for New Year's Eve celebrations throughout the Captain of the Port Miami Zone. The fireworks will be launched from barges and will explode over navigable waters of the United States.

The Coast Guard is establishing three temporary safety zones for New Year's Eve fireworks displays on Saturday, December 31, 2011 on navigable waters of the Captain of the Port Miami Zone. The three safety zones are listed below.

1. *Miami Beach, Florida.* All waters within a 374 yard radius around the barge from which the fireworks will be launched, located 275 yards east of Bay Front Park. This safety zone will be enforced from 11:59 p.m. on December

31, 2011 until 12:30 a.m. on January 1, 2012.

2. *Miami Beach, Florida.* All waters within a 234 yard radius around the barge from which the fireworks will be launched, located 650 yards north east of Star Island. This safety zone will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

3. *West Palm Beach, Florida.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located 650 yards north of Royal Park Bascule Bridge. This safety zone will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the safety zones may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the safety zones is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

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

Regulatory Planning and Review

Executive Orders 13563, Improving Regulation and Regulatory Review, and 12866, Regulatory Planning and Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation under Executive Order 12866.

The economic impact of this rule is not significant for the following reasons: (1) The safety zones will be enforced for a total of 31 minutes; (2) vessel traffic in the areas are expected to be minimal during the enforcement period; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within any of the safety zones without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding areas during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zones during the enforcement period if authorized by the Captain of the Port Miami or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the three safety zones established by this regulation during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing three temporary safety zones, as described in paragraph 34(g) of the Instruction, that will be enforced for a total of 31 minutes. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–1091 to read as follows:

§ 165.T07–1091 Safety Zones; New Year's Eve Fireworks Displays Within the Captain of the Port Miami Zone, FL.

(a) *Regulated Areas.* The following regulated areas are safety zones, with the specific enforcement period for each safety zone. All coordinates are North American Datum 1983.

(1) *Miami Beach, FL.* All waters within a 374 yard radius around the barge from which the fireworks will be launched, located on Biscayne Bay in approximate position 25°46′19″ N, 80°10′34″ W. This regulated area will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

(2) *Miami Beach, FL.* All waters within a 234 yard radius around the barge from which the fireworks will be launched, located on Biscayne Bay in approximate position 25°46′54″ N, 80°08′42″ W. This regulated area will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

(3) *West Palm Beach, FL.* All waters within a 280 yard radius around the pier from which the fireworks will be launched, located on the Intracoastal Waterway in approximate position 26°42′32″ N, 80°02′48″ W. This regulated area will be enforced from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the regulated areas may contact the Captain of the Port Miami by telephone at (305) 535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 11:59 p.m. on December 31, 2011 until 12:30 a.m. on January 1, 2012.

Dated: December 6, 2011.

C.P. Scraba,

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

[FR Doc. 2011–32352 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1123]

RIN 1625–AA00

Safety Zone; Eisenhower Expressway Bridge Rehabilitation Project; Chicago River South Branch, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chicago River South Branch near Chicago, Illinois. This zone is intended to restrict vessels from a portion of the Chicago River South Branch due to the rehabilitation of the Eisenhower Expressway Bridge. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the rehabilitation of the Eisenhower Expressway Bridge. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Lake Michigan or a designated representative.

DATES: This rule is effective from 7 a.m. December 23, 2011 through 3 p.m. December 28, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1123 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–1123 in the ''Keyword'' box, and then clicking ''search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at (414) 747–7148 or *Adam.D.Kraft@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this. The final details for this project were not received by until less than four weeks before the start of the bridge rehabilitation project. Waiting for a comment period to run would prevent the Coast Guard from performing its statutory function of protecting life on navigable waters and thus would be impractical and contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would prevent the Coast Guard from performing its statutory function of protecting life on navigable waters and thus would be impractical and contrary to the public interest.

Basis and Purpose

The rehabilitation of the Eisenhower Expressway Bridge will occur from 7 a.m. to 3 p.m. on December 23, 2011. The threat or possibility of falling debris associated with the replacement of the bridge leafs poses serious risks of injury to persons and property. As such, the Captain of the Port, Sector Lake Michigan, has determined that the rehabilitation project of the Eisenhower Expressway Bridge poses significant risks to public safety and property and that a safety zone is necessary.

Discussion of Rule

This temporary safety zone will be enforced from 7 a.m. to 3 p.m. on December 23, 2011 to protect the public from dangers associated with the scheduled rehabilitation of the Eisenhower Expressway Bridge. If the rehabilitation project efforts are cancelled due to inclement weather, then this safety zone will be enforced between 7 a.m. and 3 p.m. on December 28, 2011. The temporary safety zone will encompass all U.S. navigable waters of the Chicago River South Branch in the vicinity of the Eisenhower Expressway Bridge between Mile Marker 324.8 and Mile Marker 325.1 of the Chicago River South Branch in Chicago, Illinois.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the bridge project will be relatively small and exist for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor on a portion of the Chicago River South Branch between 7 a.m. and 3 p.m. on December 23, 2011 or, in the event the rehabilitation project efforts are cancelled due to inclement weather, between 7 a.m. and 3 p.m. on December 28, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Vessel traffic will be minimal due to the fact that the location of the safety zone is in an area that typically does not experience high volumes of vessel traffic during the hours of 7 a.m. and 3 p.m. Several commercial traffic entities have already been contacted concerning this closure and have confirmed that the effective period of the closure will not affect them in a negative way.

In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, or his or her on scene representative to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–(888) REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–1123 to read as follows

§ 165.T09–1123 Safety Zone; Bridge Rehabilitation Project, Chicago River South Branch, Chicago, IL

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the Chicago River South Branch in the vicinity of the Eisenhower Expressway Bridge between Mile Marker 324.8 and Mile Marker 325.1 of the Chicago River South Branch in Chicago, IL.

(b) *Enforcement Period.* This rule is enforceable between 7 a.m. and 3 p.m. on December 23, 2011. If the rehabilitation project efforts are cancelled due to inclement weather, then this safety zone will be enforceable between 7 a.m. and 3 p.m. on December 28, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

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

(3) The ''on-scene representative'' of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be on land in the vicinity of the safety zone and will have constant communications with the involved safety vessels which will be provided by the contracting company, Walsh Construction.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

Dated: December 5, 2011.

M.W. Sibley,

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

[FR Doc. 2011–32227 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1122]

RIN 1625–AA00

Safety Zone; Submarine Cable Installation Project; Chicago River South Branch, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chicago River South Branch near Chicago, Illinois. This zone is intended to restrict vessels from a portion of the Chicago River South Branch due to the installation of submarine cables in the vicinity of the Madison Street Bridge. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the installation of submarine cables in the vicinity of the Madison Street Bridge. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Lake Michigan or a designated representative.

DATES: This rule is effective between 5 a.m. and 10 p.m. on December 16, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1122 and are available online by going to *www.regulations.gov,* inserting USCG–2011–1122 in the ''Keyword'' box, and then clicking ''search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building, Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact or email BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at (414) 747–7148 or *Adam.D.Kraft@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this. The final details for this project were not received by the Coast Guard until December 1, 2011, less than four weeks before the start of the submarine cable installation project. Waiting for a comment period to run would prevent the Coast Guard from performing its statutory function of protecting life on navigable waters and thus would be impractical and contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying the effective date would prevent the Coast Guard from performing its statutory function of protecting life on navigable waters and thus would be impractical and contrary to the public interest.

Basis and Purpose

The submarine cable installation project in the vicinity of the Madison Street Bridge will occur from 5 a.m. to 10 p.m. on December 16, 2011. This temporary safety zone is necessary to protect vessels from the hazards associated with those submarine cable installation efforts. The hazards associated with the installation of submarine cables pose serious risks of injury to persons and property. As such, the Captain of the Port, Sector Lake Michigan, has determined that the submarine cable installation project in the vicinity of the Madison Street Bridge

does pose significant risks to public safety and property and that a safety zone is necessary.

Discussion of Rule

The safety zone will encompass all U.S. navigable waters of the Chicago River South Branch in the vicinity of the Madison Street Bridge between Mile Marker 325.1 and Mile Marker 325.5 of the Chicago River South Branch in Chicago, Illinois.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Sector Lake Michigan, or a designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the bridge project will be relatively small and exist for relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

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

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the vicinity of the Madison Street Bridge between Mile Marker 325.1 and Mile Marker 325.5 of the Chicago River South Branch between 5 a.m. and 10 p.m. on December 16, 2011.

This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Vessel traffic will be minimal due to the fact that the location of the safety zone is in an area that typically does not experience high volumes of vessel traffic during the hours of 5 a.m. and 10 p.m. Several commercial traffic entities have already been contacted concerning this closure and have confirmed that the effective period of the closure will not affect them in a negative way.

In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, or his or her on scene representative to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–(888) REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

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

Energy Effects

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–1122 to read as follows

§ 165.T09–1122 Safety Zone; Submarine Cable Installation Project, Chicago River South Branch, Chicago, IL

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the Chicago River South Branch in the vicinity of the Madison Street Bridge between Mile Marker 325.1 and Mile Marker 325.5 of the Chicago River South Branch in Chicago, IL. [DATUM: NAD 83].

(b) *Effective and Enforcement Period.* This rule is effective and enforceable between 5 a.m. and 10 p.m. on December 16, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Lake Michigan, or a designated representative.

(3) The ''designated representative'' of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The designated representative of the Captain of the Port, Sector Lake Michigan, will be on land in the vicinity of the safety zone and will have constant communications with the involved safety vessels which will be provided by the contracting company, James McHugh Construction.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

Dated: December 5, 2011.

M.W. Sibley,

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

[FR Doc. 2011–32229 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at various times from December 21, 2011 until December 22, 2011. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the U.S. Army Corps of Engineers' maintenance operations of dispersal barrier IIB. During these operations, dispersal barriers IIA and IIB will be running simultaneously at 2.3 volts per inch necessitating the restriction to reduce potential safety hazards.

During the enforcement period, entry into, transiting, mooring, laying-up or anchoring within the enforced area of

this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7 a.m. to 11 a.m. and from 1 p.m. to 5 p.m. on December 21–22, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email CWO Jon Grob, Prevention Department, Coast Guard Sector Lake Michigan, telephone (414) 747–7188, email address *Jon.K.Grob@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930, on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at the following times:

(1) On December 21–22, 2011, from 7 a.m. until 11 a.m. and from 1 p.m. until 5 p.m.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the U.S. Army Corps of Engineers' dispersal barrier maintenance and simultaneous operations of Barriers IIA and IIB pose risks to life and property. The combination of vessel traffic and the maintenance operations in the water makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR § 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice.

Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: November 21, 2011.

M.W. Sibley,

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

[FR Doc. 2011–32258 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0867–201157(a); FRL–9507–3]

Approval and Promulgation of Implementation Plans: Kentucky; Visibility Impairment Prevention for Federal Class I Areas; Removal of Federally Promulgated Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to rescind the federally promulgated provisions regarding visibility in the Kentucky State Implementation Plan (SIP). EPA approved Kentucky's visibility rules addressing new source review (NSR) for sources in nonattainment areas on July 11, 2006. EPA's approval of these rules neglected to remove the previous federally promulgated provisions from the Federal Implementation Plan (FIP). EPA is correcting this omission in this rulemaking. This action is being taken pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on February 14, 2012 without further notice, unless EPA receives relevant adverse comment by January 17, 2012. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0867, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2011–0867,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2011–0867.'' 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 EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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

Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn S. 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 by electronic mail address *dominy.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background for This Action

On February 20, 1986, the Commonwealth of Kentucky submitted provisions constituting its plan to address visibility impairment in Federal Class I areas as a revision to Kentucky's SIP. EPA approved Kentucky's February 20, 1986, SIP revision on September 1, 1989, except for the provisions related to the review of new sources in nonattainment areas. In that action, EPA revised 40 CFR 52.936 to expressly reject Kentucky's proposed nonattainment NSR provisions and substitute 40 CFR 52.28 by reference.

On September 2, 2004, and August 23, 2005, the Commonwealth of Kentucky submitted SIP revisions to address visibility in its nonattainment NSR program. EPA fully approved these SIP revisions on July 11, 2006. *See* 71 FR 38990.

The aforementioned SIP revisions provide the necessary changes to Kentucky's plan for visibility impairment prevention for Class I areas from sources in nonattainment areas and satisfy EPA's requirements as set forth in 40 CFR 51.307(b) and (c). These visibility provisions also satisfy the settlement agreement with the Environmental Defense Fund, *et al., Environmental Defense Fund* v. *Gorsuch,* No. C–82–6850 RPA (N.D. Cal.) (Settlement Agreement), described at 49 FR 20647 on May 16, 1984.

The first part of the Settlement Agreement required Kentucky to develop visibility NSR and visibility monitoring provisions to meet the requirements of 40 CFR 51.305 and 51.307 and submit those provisions to EPA by May 6, 1985. This part of the Settlement Agreement further required EPA to approve the state submittal or to promulgate a FIP by January 6, 1986. Since Kentucky had not yet submitted a final visibility SIP, EPA promulgated a Federal program for Kentucky to meet the requirements of 40 CFR 51.305 and 51.307 on February 13, 1986 (51 FR 5504). The Federal program, which is covered by the Federal visibility monitoring strategy (40 CFR 52.26) and visibility NSR program (40 CFR 52.27 and 52.28), was promulgated as part of the Kentucky SIP. The provisions submitted by Kentucky on February 20, 1986, and approved by EPA on September 1, 1989, partially removed the Federal promulgation. *See* 54 FR 36307.

The second part of the Settlement Agreement required EPA to propose and promulgate visibility FIPs addressing the general visibility plan provisions including implementation control strategies (40 CFR 51.302), integral vista protection (40 CFR 51.302 through 51.307), and long-term strategies (40 CFR 51.306) for those states whose SIPs EPA had determined to be inadequate with respect to the above provisions (*see* January 23, 1986, notice of deficiency (51 FR 3046) and March 12, 1987, notice proposing FIPs for deficient state's implementation plans (52 FR 7803)). However, as provided in the Settlement Agreement, a state could avoid the promulgation of said provisions by EPA in a FIP if it submitted a visibility SIP by August 31, 1987. The Commonwealth of Kentucky submitted a plan to satisfy the second part of the Settlement Agreement on August 31, 1987, and EPA approved the visibility SIP submittal for these elements on July 12, 1988. *See* 53 FR 26253.

As mentioned above, the Commonwealth of Kentucky provided a SIP revision on February 20, 1986, constituting its plan to address visibility impairment in Federal Class I areas as a revision to Kentucky's SIP. On September 1, 1989, EPA approved Kentucky's SIP revision (submitted on February 20, 1986) except for those provisions related to the review of new sources in nonattainment areas. As a result of EPA's aforementioned 1988 and 1989 actions, these nonattainment NSR provisions were the only remaining non-approved provisions in Kentucky's plan to address visibility impairment. On September 2, 2004, and August 23, 2005, the Commonwealth of Kentucky submitted rules for addressing visibility in its NSR program in nonattainment areas. EPA fully approved Kentucky's September 2, 2004, and August 23, 2005, SIP revisions on July 11, 2006 (71 FR 38990), but inadvertently did not remove the federally-promulgated provisions in 40 CFR 52.936. Today's action corrects that oversight.

II. Final Action

EPA is taking direct final action to correct an omission related to the visibility requirements for Kentucky. Specifically, EPA is removing the previous federally promulgated provisions in 40 CFR 52.936 for visibility from sources in nonattainment areas for Kentucky because the Commonwealth later submitted, and EPA approved, revisions covering visibility requirements for Kentucky. EPA is approving the aforementioned changes to the Kentucky SIP because they are consistent with the CAA and Agency requirements. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 14, 2012 without further notice unless the Agency receives adverse comments by January 17, 2012.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 14, 2012 and no further action will be taken on the proposed rule.

III. Statutory and Executive Order Reviews

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

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 14, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds, Sulfur dioxide.

Dated: December 8, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

§ 52.936 [Removed and Reserved]

■ 2. Section 52.936 is removed and reserved.

[FR Doc. 2011–32171 Filed 12–15–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8209]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program

regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

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

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

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

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Maryland:				
Calvert County, Unincorporated Areas	240011	July 5, 1973, Emerg; September 28, 1984, Reg; December 16, 2011, Susp.	Dec. 16, 2011 ...	Dec. 16, 2011.
Chesapeake Beach, Town of, Calvert County.	240100	September 15, 1975, Emerg; November 1, 1984, Reg; December 16, 2011, Susp.	.....do*	Do.
North Beach, City of, Calvert County	240012	August 30, 1974, Emerg; September 28, 1984, Reg; December 16, 2011, Susp.	.....do	Do.
Region IV				
Mississippi: New Augusta, City of, Perry County.	280131	September 27, 1974, Emerg; April 2, 1986, Reg; December 16, 2011, Susp.	.....do	Do.
Region V				
Illinois:				
Carrier Mills, Village of, Saline County ..	170786	October 27, 1977, Emerg; July 3, 1985, Reg; December 16, 2011, Susp.	.....do	Do.
Galatia, Village of, Saline County	170597	August 25, 1975, Emerg; June 3, 1986, Reg; December 16, 2011, Susp.	.....do	Do.
Harrisburg, City of, Saline County	170598	N/A, Emerg; May 12, 2008, Reg; December 16, 2011, Susp.	.....do	Do.
Muddy, Village of, Saline County	170599	July 10, 1975, Emerg; December 5, 1989, Reg; December 16, 2011, Susp.	.....do	Do.
Saline County, Unincorporated Areas ...	170988	N/A, Emerg; January 6, 2009, Reg; December 16, 2011, Susp.	.....do	Do.
Mount Carmel, City of, Wabash County	170672	June 25, 1975, Emerg; July 16, 1980, Reg; December 16, 2011, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Michigan:				
Allendale, Charter Township of, Ottawa County.	260490	December 30, 1977, Emerg; July 5, 1982, Reg; December 16, 2011, Susp.	.....do	Do.
Chester, Township of, Ottawa County ..	260829	May 23, 1990, Emerg; November 20, 1991, Reg; December 16, 2011, Susp.	.....do	Do.
Coopersville, City of, Ottawa County	260491	May 28, 1982, Emerg; March 2, 1983, Reg; December 16, 2011, Susp.	.....do	Do.
Crockery, Township of, Ottawa County	260981	December 17, 1996, Emerg; N/A, Reg; December 16, 2011, Susp.	.....do	Do.
Ferrysburg, City of, Ottawa County	260184	April 30, 1973, Emerg; March 1, 1978, Reg; December 16, 2011, Susp.	.....do	Do.
Grand Haven, City of, Ottawa County ..	260269	August 28, 1973, Emerg; February 15, 1978, Reg; December 16, 2011, Susp.	.....do	Do.
Grand Haven, Charter Township of, Ottawa County.	260270	October 9, 1973, Emerg; January 16, 1981, Reg; December 16, 2011, Susp.	.....do	Do.
Holland, City of, Ottawa County	260006	June 21, 1973, Emerg; November 15, 1978, Reg; December 16, 2011, Susp.	.....do	Do.
Holland, Charter Township of, Ottawa County.	260492	September 7, 1976, Emerg; December 1, 1983, Reg; December 16, 2011, Susp.	.....do	Do.
Hudsonville, City of, Ottawa County	260493	March 31, 1982, Emerg; December 4, 1984, Reg; December 16, 2011, Susp.	.....do	Do.
Jamestown, Charter Township of, Ottawa County.	261001	October 27, 1997, Emerg; N/A, Reg; December 16, 2011, Susp.	.....do	Do.
Park, Township of, Ottawa County	260185	August 16, 1974, Emerg; May 15, 1978, Reg; December 16, 2011, Susp.	.....do	Do.
Port Sheldon, Township of, Ottawa County.	260278	August 16, 1974, Emerg; May 15, 1978, Reg; December 16, 2011, Susp.	.....do	Do.
Spring Lake, Township of, Ottawa County.	260281	September 4, 1973, Emerg; February 15, 1978, Reg; December 16, 2011, Susp.	.....do	Do.
Spring Lake, Village of, Ottawa County	260282	June 1, 1973, Emerg; June 1, 1978, Reg; December 16, 2011, Susp.	.....do	Do.
Wright, Township of, Ottawa County	260495	N/A, Emerg; November 12, 1997, Reg; December 16, 2011, Susp.	.....do	Do.
Zeeland, Charter Township of, Ottawa County.	260932	May 12, 1995, Emerg; N/A, Reg; December 16, 2011, Susp.	.....do	Do.
Zeeland, City of, Ottawa County	260983	January 17, 1997, Emerg; N/A, Reg; December 16, 2011, Susp.	.....do	Do.
Wisconsin:				
Bayfield, City of, Bayfield County	550017	September 2, 1976, Emerg; September 18, 1985, Reg; December 16, 2011, Susp.	.....do	Do.
Bayfield County, Unincorporated Areas	550539	June 6, 1974, Emerg; September 1, 1988, Reg; December 16, 2011, Susp.	.....do	Do.
Washburn, City of, Bayfield County	550019	April 30, 1975, Emerg; November 2, 1995, Reg; December 16, 2011, Susp.	.....do	Do.
Crandon, City of, Forest County	550143	June 23, 1975, Emerg; January 2, 1987, Reg; December 16, 2011, Susp.	.....do	Do.
Forest County, Unincorporated Areas ...	550603	May 24, 2001, Emerg; N/A, Reg; December 16, 2011, Susp.	.....do	Do.
Region VI				
Texas:				
Aurora, City of, Wise County	481561	N/A, Emerg; May 4, 2010, Reg; December 16, 2011, Susp.	.....do	Do.
Boyd, City of, Wise County	480676	May 18, 1977, Emerg; September 1, 1987, Reg; December 16, 2011, Susp.	.....do	Do.
Chico, City of, Wise County	481053	March 7, 1983, Emerg; September 1, 1987, Reg; December 16, 2011, Susp.	.....do	Do.
Decatur, City of, Wise County	480678	March 14, 1975, Emerg; August 16, 1977, Reg; December 16, 2011, Susp.	.....do	Do.
Lake Bridgeport, City of, Wise County ..	481616	N/A, Emerg; October 9, 1990, Reg; December 16, 2011, Susp.	.....do	Do.
Rhome, City of, Wise County	481054	N/A, Emerg; March 31, 2010, Reg; December 16, 2011, Susp.	.....do	Do.

*-do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 6, 2011.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–32335 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 76, No. 242
Friday, December 16, 2011

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2011–0007]

RIN 0579–AD42

Importation of Chinese Sand Pears From China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of Chinese sand pears (*Pyrus pyrifolia*) from China into the United States. As a condition of entry, sand pears from areas in China in which the Oriental fruit fly (*Bactrocera dorsalis*) is not known to exist would have to be produced in accordance with a systems approach that would include requirements for registration of places of production and packinghouses, sourcing of pest-free propagative material, inspection for quarantine pests at set intervals by the national plant protection organization of China, bagging of fruit, safeguarding, labeling, and importation in commercial consignments. Sand pears from areas in China in which Oriental fruit fly is known to exist could be imported into the United States if, in addition to these requirements, the places of production and packinghouses have a monitoring system in place for Oriental fruit fly and the pears are treated with cold treatment. All sand pears from China would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that all conditions for the importation of the pears have been met and that the consignment of pears has been inspected and found free of quarantine pests. This action would allow for the importation of sand pears from China into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before February 14, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0007-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0007, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0007* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Mrs. Donna L. West, Senior Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The regulations currently allow for the importation of both Ya pears (*Pyrus bretschneideri*) and fragrant pears (*Pyrus* sp. nr. *communis*) from China. The conditions for importation of Ya pears are found in § 319.56–29 of the regulations; those for fragrant pears are found in § 319.56–39 of the regulations.

The national plant protection organization (NPPO) of China has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to also allow Chinese sand pears (*Pyrus pyrifolia*) from China to be imported into the United States.

As part of our evaluation of China's request, we have prepared a pest risk assessment (PRA), titled ''Importation of Fresh Fruit of Chinese Sand Pear, *Pyrus pyrifolia,* from China, including the Special Administrative Regions of Hong Kong and Macau, into the Entire United States, Including all Territories'' (July 2009). The PRA evaluates the risks associated with the importation of Chinese sand pears into the United States from China. Copies of the PRA may be obtained by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The PRA identifies 16 pests of quarantine significance present in China that could be introduced into the United States through the importation of Chinese sand pears:

- *Acrobasis pyrivorella,* pear fruit moth.
- *Alternaria gaisen* Nagano, black spot of Japanese pear.
- *Amphitetranychus viennensis* (Zacher), Hawthorn spider mite.
- *Aphanostigma iaksuiense* (Kishida), an aphid.
- *Bactrocera dorsalis,* Oriental fruit fly.
- *Caleptrimerus neimongolensis* Kuang and Geng, a mite.
- *Carposina sasakii* Matsumora, peach fruit moth.
- *Ceroplastes japonicus* Green, Japanese wax scale.
- *Ceroplastes rubens* Maskell, red wax scale.
- *Conogothes punctiferalis* (Guenée), yellow peach moth.
- *Grapholita inopinata,* Manchurian fruit moth.
- *Guignardia pyricola* (Nose) W. Yamamoto, a phytopathogenic fungus.
- *Monilinia fructigena* Honey in Whetzel, brown fruit rot.
- *Phenacoccus pergandei* Cockerell, a mealybug.
- *Planococcus kraunhiae* (Kuwana), a mealybug.
- *Venturia nashicola* Tanaka & Yamamoto, pear scab fungus.

The PRA states that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by

these plant pests, and provides a number of potential options for such measures. After consideration of these options, we have prepared a risk management document (RMD) to recommend specific measures to mitigate these risks. Copies of the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site.

Based on the recommendations of the RMD, we are proposing to allow the importation of Chinese sand pears from China into the United States only if they are produced in accordance with a systems approach; we are proposing to add the systems approach to the regulations in a new § 319.56–55 governing the importation of Chinese sand pears from China.

Most of the pests identified by the PRA as being likely to follow the pathway of Chinese sand pears from China were previously identified as likely to follow the pathway of Ya pears or fragrant pears from China. Moreover, since we authorized the importation of Ya pears and fragrant pears from China into the United States, none of the quarantine pests identified for those commodities has been detected during inspections of the pears at ports of first arrival in the United States. The absence of detections over a prolonged period of time—more than 5 years for both Ya pears and fragrant pears—demonstrates the efficacy of the mitigation measures in place for the importation of Ya pears and fragrant pears from China. Hence, many of the mitigation measures in the systems approach would be modeled on existing measures for the importation of Ya pears or fragrant pears from China.

There would, however, be one significant difference. Whereas we limit the origin of Ya pears and fragrant pears grown for export to the United States to areas within China in which Oriental fruit fly is not known to exist and could not survive (areas north of the 33rd parallel), we would authorize the importation into the United States of Chinese sand pears grown in any area of China, including areas south of the 33rd parallel.[1] Pears grown in areas south of the 33rd parallel would, however, be subject to additional mitigation measures necessary to address the risk posed by the Oriental fruit fly.

[1] See ''*Risk Management Document: Removal of fruit fly trappings and cold treatment requirement for importation of Ya Pear* (Pyrus *x* bretschneideri) *fruit from China into the United States (June 15, 2007),*'' pages 2–6. Available at *http://www.regulations.gov/#!documentDetail;D=APHIS-2007-0116-0002.*

Proposed Systems Approach

General Requirements

Paragraph (a) of § 319.56–55 would set out general requirements for the NPPO of China and for growers and packers producing sand pears for export to the United States.

Paragraph (a)(1) of § 319.56–55 would require the NPPO of China to provide an operational workplan to APHIS that details the activities that the NPPO will, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56–55. As described in a notice we published on May 10, 2006, in the **Federal Register** (71 FR 27221–27224, Docket No. APHIS–2005–0085), an operational workplan is an agreement between APHIS' Plant Protection and Quarantine (PPQ) program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Operational workplans establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

Paragraph (a)(2) would require the pears to be grown in places of production that are registered with the NPPO of China.

Paragraph (a)(3) would require the pears to be packed for export to the United States in pest-exclusionary packinghouses that are registered with the NPPO of China.

Paragraph (a)(4) would state that sand pears from China may be imported in commercial consignments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestation because the commodity is often ripe to overripe and is often grown with little to no pest control. Commercial consignments, as defined within the regulations, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. We currently require both Ya pears and fragrant pears from China to be imported in commercial consignments as a mitigation measure against the quarantine pests associated with these species of pear.

Place of Production Requirements

Our systems approach would require certain measures to take place at the registered places of production. Proposed paragraph (b) of § 319.56–55 would contain these measures.

Paragraph (b)(1) would require all propagative material entering a registered place of production to be tested and certified by the NPPO of China as being free of quarantine pests. Propagative material that is not tested and certified presents a risk of introducing quarantine pests into a place of production; since several of the quarantine pathogens have latency periods, this is true even if the material appears asymptomatic.

Paragraph (b)(2) would require the place of production to carry out any phytosanitary measures specified for the place of production under the operational workplan. Depending on the location, size, and plant pest history of the orchard, these measures may include surveying protocols, safeguarding of trees, or application of pesticides and fungicides.

Paragraph (b)(3) would state that, when any sand pears destined for export to the United States are still on the tree and are no more than 2.5 centimeters in diameter, double-layered paper bags must be placed wholly over the pears. The bags would have to remain intact and on the pears until the pears arrive at the packinghouse. This bagging protocol, which is modeled on a similar requirement for Ya pears from China, helps protect the pears against the quarantine moths and fungi.

Paragraph (b)(4) would require the NPPO of China to visit and inspect registered places of production prior to harvest for signs of infestations and would allow APHIS to monitor the inspections. The NPPO would also have to provide records of pest detections and pest detection practices to APHIS, and APHIS would have to approve these practices. This provision is modeled on an existing provision for the importation of fragrant pears from China, and serves a dual purpose: It not only provides for the NPPO of China to inspect the place of production for quarantine pests in a manner that APHIS believes to be sufficiently rigorous, but also affords the NPPO the opportunity to determine whether the orchard has continually maintained the phytosanitary measures

specified for it under the operational workplan.

Paragraph (b)(5) would state that, if any of the listed quarantine pests is detected at a registered place of production, APHIS could reject the consignment or prohibit the importation into the United States of sand pears from the place of production for the remainder of the season. The exportation to the United States of sand pears from the place of production could resume in the next growing season if an investigation is conducted and APHIS and the NPPO conclude that appropriate remedial action has been taken.

Packinghouse Requirements

Paragraph (c) of § 319.56–55 would set forth requirements for mitigation measures that would have to take place at registered packinghouses.

Paragraph (c)(1) would require that, during the time registered packinghouses are in use for packing sand pears for export to the United States, the packinghouses may only accept sand pears that are from registered places of production and that are produced in accordance with the requirements of proposed § 319.56–55. Pears from other places of production may be produced under conditions that are less stringent than those of this proposed rule, and may therefore be a pathway for the introduction of quarantine pests into the packinghouses.

Paragraph (c)(2) would require packinghouses to have a tracking system in place to readily identify all sand pears destined for export to the United States that enter the packinghouse back to their place of production. In the event that quarantine pests are discovered in any consignment, the packinghouse would have to use the tracking system to determine the place of production of the pears, and supply the NPPO of China or officials authorized by the NPPO with this information. The NPPO would then inspect the place of production in order to determine the scope of the outbreak and the remedial actions necessary to address it.

Paragraph (c)(3) would require the NPPO of China or officials authorized by the NPPO to inspect the pears at the packinghouses for signs of pest infestation and would allow APHIS to monitor the inspections. If any of the listed quarantine pests is detected in a consignment at the packinghouse, APHIS may reject the consignment.

Paragraph (c)(4) would state that, following the inspection, the packinghouse must follow a handling procedure for the pears that is mutually agreed upon by APHIS and the NPPO of China. Handling procedures could include such measures as culling damaged pears, removing leaves off of the pears, wiping the pears with a clean cloth, air blasting, or grading.

Paragraph (c)(5) would require the sand pears to be packed in cartons that are labeled with the identity of the place of production and the packinghouse. In the event that quarantine pests are discovered in a consignment of pears after it is exported to the United States, this labeling will facilitate traceback and help the NPPO and APHIS delimit the scope of the outbreak.

Paragraph (c)(6) would require the cartons to be placed in insect-proof containers, and the containers to be sealed. It would also require the containers to be safeguarded during transport to the United States in a manner that will prevent pest infestation. These requirements preclude introduction of pests while the pears are in transit from the packinghouse to the port of export, and from the port of export to the United States.

Shipping Requirements

Proposed paragraph (d) of § 319.56–55 would set forth shipping requirements for sand pears from China. It would require sealed containers of sand pears destined for export to the United States to be held in a cold storage facility while awaiting export. This would help to prevent pest infestation of packed pears, as certain of the quarantine pests for Chinese sand pears from China are averse to cold conditions.

Phytosanitary Certificate

Paragraph (e) of § 319.56–55 would require each consignment of sand pears imported from China into the United States to be accompanied by a phytosanitary certificate issued by the NPPO of China with an additional declaration stating that the requirements of § 319.56–55 have been met and the consignment has been inspected and found free of quarantine pests.

Additional Conditions for Sand Pears From Areas of China South of the 33rd Parallel

The mitigation measures contained in proposed paragraphs (a) through (e) of § 319.56–55 would apply to all Chinese sand pears imported into the United States from China. However, since the Oriental fruit fly is known to exist, in varying population densities, in areas of China south of the 33rd parallel, Chinese sand pears from such areas would be subject to additional mitigation measures designed to prevent infested pears from being exported to the United States. Proposed paragraph (f) of § 319.56–55 would contain these additional mitigations.

Paragraph (f)(1) would require the place of production of the pears and the packinghouse in which they are packed have a trapping system in place for the Oriental fruit fly. At a minimum, the trapping system would have to meet the following requirements:

- All traps would have to use an APHIS-approved lure.
- At least one trap per square kilometer would have to be placed in the place of production or packinghouse.
- Traps would have to be placed in the area with a 2-kilometer radius that surrounds the place of production or packinghouse at a rate of one trap per square kilometer.
- Traps would have to be serviced every 2 weeks.

Paragraph (f)(2) would require the place of production or the packinghouse to retain data regarding the number and location of the traps, as well as any pests other than Oriental fruit fly that have been caught, and make this information available to APHIS upon request.

Paragraph (f)(3) would require the place of production or the packinghouse to notify the NPPO of China, and the NPPO of China to notify APHIS, regarding the detection of a single Oriental fruit fly in a place of production, packinghouse, or surrounding area within 48 hours of the detection. If a single Oriental fruit fly is detected in a registered place of production, APHIS would prohibit the importation into the United States of sand pears from the place of production until any mitigation measures determined by APHIS to be necessary to prevent future infestations are taken. Likewise, if a single Oriental fruit fly is detected in a registered packinghouse, the packinghouse could not be used to pack sand pears for export to the United States until any mitigation measures determined by APHIS to be necessary to prevent future infestations are taken. Mitigation measures that we may require a place of production or packinghouse to take include increasing trap density or treating the entire place of production or packinghouse with an APHIS-approved insecticidal spray.

Paragraph (f)(4) would require the pears to be treated in accordance with 7 CFR part 305. Within part 305, § 305.2 provides that approved treatment schedules are set out in the PPQ Treatment Manual, found online at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/*

downloads/treatment.pdf. (The manual specifies that cold treatment schedule T107 is effective in neutralizing Oriental fruit fly on sand pears.)

Executive Order 12866 and the Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis regarding the economic effects of this proposed rule on small entities. The economic analysis examines pear production in the United States and the amount of Chinese sand pears likely to be imported from China into the United States if this proposed rule is finalized. It identifies U.S. pear producers as the small entities most likely to be impacted by the provisions of the proposed rule, and requests public comment regarding the cost of the rule to such entities.

Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2011–0007. Please send a copy of your comments to: (1) Docket No. APHIS–2011–0007, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the fruits and vegetables regulations to allow the importation of sand pears from China into the United States. As a condition of entry, sand pears from China would have to be produced in accordance with a systems approach that would include requirements for registration and monitoring of places of production and packinghouses; sourcing of all propagative material that enters the place of production; orchard sanitation; inspection for quarantine pests at set intervals by the national plant protection organization of China; bagging of fruit; safeguarding; labeling; and importation of the sand pears in commercial consignments. Implementation of this proposed rule would require persons to fill out various forms and documents. These include: Phytosanitary certificates, workplans, registration and inspection forms, and labels.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.62595 hours per response.

Respondents: The NPPO of China, importers of Chinese sand pears.

Estimated annual number of respondents: 28.

Estimated annual number of responses per respondent: 4.67857.

Estimated annual number of responses: 131.

Estimated total annual burden on respondents: 82 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 319

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

Accordingly, we are proposing to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

2. A new § 319.56–55 is added to read as follows:

§ 319.56–55 Chinese sand pears from China.

Fresh Chinese sand pears (*Pyrus pyrifolia*) from China may be imported into the United States from China only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Acrobasis pyrivorella,* pear fruit moth; *Alternaria gaisen* Nagano, black spot of Japanese pear; *Amphitetranychus viennensis* (Zacher), Hawthorn spider mite; *Aphanostigma iaksuiense* (Kishida), an

aphid; *Bactrocera dorsalis,* Oriental fruit fly; *Caleptrimerus neimongolensis* Kuang and Geng, a mite; *Carposina sasakii* Matsumora, peach fruit moth; *Ceroplastes japonicus* Green, Japanese wax scale; *Ceroplastes rubens* Maskell, red wax scale; *Conogothes punctiferalis* (Guenée), yellow peach moth; *Grapholita inopinata,* Manchurian fruit moth; *Guignardia* pyricola (Nose) W. Yamamoto, a phytopathogenic fungus; *Monilinia fructigena* Honey in Whetzel, brown fruit rot; *Phenacoccus pergandei* Cockerell, a mealybug; *Planococcus kraunhiae* (Kuwana), a mealybug; and *Venturia nashicola* Tanaka and Yamamoto, pear scab fungus. The conditions for importation of all fresh sand pears from China are found in paragraphs (a) through (e) of this section; additional conditions for sand pears imported from areas of China south of the 33rd parallel are found in paragraph (f) of this section.

(a) *General requirements.*

(1) The national plant protection organization (NPPO) of China must provide an operational workplan to APHIS that details the activities that the NPPO of China will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section.

(2) The pears must be grown at places of production that are registered with the NPPO of China.

(3) The pears must be packed for export to the United States in pest-exclusionary packinghouses that are registered with the NPPO of China.

(4) Sand pears from China may be imported in commercial consignments only.

(b) *Place of production requirements.*

(1) All propagative material entering a registered place of production must be tested and certified by the NPPO of China as being free of quarantine pests.

(2) The place of production must carry out any phytosanitary measures specified for the place of production under the operational workplan.

(3) When any sand pears destined for export to the United States are still on the tree and are no more than 2.5 centimeters in diameter, double-layered paper bags must be placed wholly over the pears. The bags must remain intact and on the pears until the pears arrive at the packinghouse.

(4) The NPPO of China must visit and inspect registered places of production prior to harvest for signs of infestations and allow APHIS to monitor the inspections. The NPPO must provide records of pest detections and pest detection practices to APHIS, and APHIS must approve these practices.

(5) If any of the quarantine pests listed in the introductory text of this section is detected at a registered place of production, APHIS may reject the consignment or prohibit the importation into the United States of sand pears from the place of production for the remainder of the season. The exportation to the United States of sand pears from the place of production may resume in the next growing season if an investigation is conducted and APHIS and the NPPO conclude that appropriate remedial action has been taken.

(c) *Packinghouse requirements.*

(1) During the time registered packinghouses are in use for packing sand pears for export to the United States, the packinghouses may only accept sand pears that are from registered places of production and that are produced in accordance with the requirements of this section.

(2) Packinghouses must have a tracking system in place to readily identify all sand pears destined for export to the United States that enter the packinghouse back to their place of production.

(3) The NPPO of China or officials authorized by the NPPO must inspect the pears for signs of pest infestation and allow APHIS to monitor the inspections. If any of the quarantine pests listed in the introductory text of this section is detected in a consignment at the packinghouse, APHIS may reject the consignment.

(4) Following the inspection, the packinghouse must follow a handling procedure for the pears that is mutually agreed upon by APHIS and the NPPO of China.

(5) The pears must be packed in cartons that are labeled with the identity of the place of production and the packinghouse.

(6) The cartons must be placed in insect-proof containers, and the containers sealed. The containers of sand pears must be safeguarded during transport to the United States in a manner that will prevent pest infestation.

(d) *Shipping requirements.* Sealed containers of sand pears destined for export to the United States must be held in a cold storage facility while awaiting export.

(e) *Phytosanitary certificate.* Each consignment of sand pears imported from China into the United States must be accompanied by a phytosanitary certificate issued by the NPPO of China with an additional declaration stating that the requirements of this section have been met and the consignment has been inspected and found free of quarantine pests.

(f) *Additional conditions for Chinese sand pears from areas of China south of the 33rd parallel.* In addition to the conditions in paragraphs (a) through (e) of this section, Chinese sand pears from areas of China south of the 33rd parallel must meet the following conditions for importation into the United States:

(1) The place of production of the pears and the packinghouse in which they are packed must have a trapping system in place for *B. dorsalis.* At a minimum, the trapping system must meet the following requirements:

(i) All traps must use an APHIS-approved lure.

(ii) At least one trap per square kilometer must be placed in the place of production or packinghouse.

(iii) Traps must be placed in the area with a 2-kilometer radius that surrounds the place of production or packinghouse at a rate of one trap per square kilometer.

(iv) Traps must be serviced every 2 weeks.

(2) The place of production or the packinghouse must retain data regarding the number and location of the traps, as well as any pests other than *B. dorsalis* that have been caught, and make this information available to APHIS upon request.

(3)(i) The place of production or packinghouse must notify the NPPO of China, and the NPPO of China must notify APHIS, regarding the detection of a single *B. dorsalis* in a place of production, packinghouse, or surrounding area within 48 hours of the detection.

(ii) If a single *B. dorsalis* is detected in a registered place of production, APHIS will prohibit the importation into the United States of sand pears from the place of production until any mitigation measures determined by APHIS to be necessary to prevent future infestations are taken.

(iii) If a single *B. dorsalis* is detected in a registered packinghouse, the packinghouse may not be used to pack sand pears for export to the United States until any mitigation measures determined by APHIS to be necessary to prevent future infestations are taken.

(4) The pears must be treated in accordance with 7 CFR part 305.

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32320 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2011–0087]

RIN 3150–AI96

Options for Developing the Regulatory Basis for Streamlining Non-Power Reactor License Renewal and Non-Power Reactor Emergency Preparedness

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC or the Commission) will conduct a public meeting with affected stakeholders to discuss the proposed options for developing the regulatory basis for streamlining non-power reactor license renewal and non-power reactor emergency preparedness. This meeting is a follow-up to the NRC's public meeting held September 13, 2011 in Idaho Falls, Idaho, to discuss establishing the technical basis for proposing rulemaking to streamline the non-power reactor license renewal process, options for reorganizing the structure of regulations that pertain to non-power reactors, and potential enhancements to emergency preparedness requirements. This meeting is open to the public.

DATES: Date and Time for Open Session: Monday, December 19, 2011, 1:30 p.m. to 4:30 p.m. (Eastern Standard Time).

ADDRESSES: Public meeting: U.S. Nuclear Regulatory Commission, One White Flint North Building, Room O13–B4, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Duane Hardesty, Project Manager, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. Telephone: (301) 415–3724; fax number: (301) 415–1032; email: *Duane.Hardesty@nrc.gov.*

SUPPLEMENTARY INFORMATION: On December 6, 2011, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML113400015) the NRC published a notice of public meeting (Category 2 Public Meeting to Discuss the Regulatory Basis for Streamlining the Non-power Reactor License Renewal) to be held December 19, 2011. Options being considered in the regulatory basis were provided as an attachment to the meeting notice.

I. Background

In Staff Requirements Memorandum (SRM) SRM–SECY–08–0161 (ADAMS Accession No. ML090850159) the Commission directed the staff to develop and submit for Commission review a long-term plan for an enhanced Research and Test reactor (RTR) license renewal process. The Commission advised that this long term plan should consider elements of the generic analysis approach, generic siting analysis, and the extended license term described in SECY–08–0161 (ADAMS Accession No. ML082550140) to establish a stable and predictable regulatory regime for RTRs.

Based on the Commission's direction and the comments received during the public meeting held on September 13, 2011, (ADAMS Accession No. ML112710285), the staff is hosting the December 19, 2011 meeting to discuss the proposed options being considered in development of the regulatory basis for streamlining the non-power license renewal process. The NRC staff will also discuss possible changes to EP requirements for non-power reactors. The NRC notes that the public, licensees, certificate holders, and other stakeholders will have a future opportunity to comment on the regulatory basis document when it is published in the **Federal Register**.

II. Availability of Documents

You can access publicly available documents related to this notice using the methods below.

Please include Docket ID NRC–2011–0087 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0087. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0087.

III. Availability of Services

The NRC provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this meeting (e.g., sign language), or need this meeting notice or other information from the meeting in another format, please notify the NRC meeting contact, Duane Hardesty at (301) 415–3724 by December 16, 2011, so arrangements can be made.

All expected attendees must register with the NRC meeting contact by close of business on December 16, 2011. All attendees are to use the main One White Flint visitor entrance. The NRC is accessible to the White Flint Metro Station. Visitor parking near the NRC buildings is limited.

Dated at Rockville, Maryland, this 13th day of December, 2011.

For the Nuclear Regulatory Commission.

Jessie F. Quichocho,

Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–32389 Filed 12–15–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2011–BT–NOA–0067]

RIN 1904–AC52

Energy Conservation Program: Test Procedure and Energy Conservation Standard for Set-Top Boxes and Network Equipment

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

ACTION: Request for information (RFI) and request for comments; notice of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) is initiating a rulemaking and data collection process to develop a potential test procedure and energy conservation standard for set-top boxes (STB) and network equipment. To facilitate this process, DOE has gathered data, identifying several issues associated with currently available industry test procedures, efficiency standards and energy use data for STBs on which DOE is particularly interested in receiving comment. DOE welcomes written comments from the public on any subject within the scope of this rulemaking (including topics not raised in this RFI). DOE will hold a public meeting as part of this RFI.

DATES: DOE will hold a public meeting on January 26, 2012 from 9 a.m. to 4 p.m. in Washington, DC. The meeting will also be broadcast as a webinar. See section III, ''Public Participation,'' for webinar information, participation instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding the RFI before and after the public meeting, but no later than February 14, 2012. For details, see section III, ''Public Participation,'' of this RFI.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington DC 20585. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 to initiate the necessary procedures.

Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2011–BT–NOA–0067, by any of the following methods:

- *Email:* to *STB–RFI–2011–NOA–0067@ee.doe.gov*. Include EERE–2011–BT–NOA–0067 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Request for Information for Set-top boxes and Network Equipment, EERE–2011–BT–NOA–0067, 1000 Independence Avenue SW., Washington, DC 20585– 0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

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

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

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information may be sent to:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov*.

In the office of the General Counsel, contact Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov*.

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I. Introduction

Title III of the Energy Policy and Conservation Act (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth various provisions designed to improve energy efficiency. Part A of Title III of EPCA (42 U.S.C. 6291–6309) established the Energy Conservation Program for Consumer Products Other Than Automobiles,'' which covers consumer products and certain commercial products (referred to as ''covered products'').[1] In addition to specifying a list of covered residential and commercial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products.

DOE recently published a Notice of Proposed Determination (76 FR 34914, June 15, 2011) (hereafter referred to as ''proposed determination'') that preliminarily determined that STBs and network equipment meet the criteria for covered products because classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA, and the average U.S. household energy use for STBs and network equipment is likely to exceed 100 kilowatt-hours (kWh) per year.

DOE may prescribe test procedures for any product it classifies as a ''covered product.'' (42 U.S.C. 6293(b)) Further, DOE may consider prescribing energy conservation standards for a type of consumer product it classifies as covered if the product meets certain additional criteria, such as ''average per household energy use within the United States'' in excess of 150 kWh and ''aggregate household energy use'' in excess of 4.2 billion kWh, for any prior 12-month period. (42 U.S.C. 6295(l)(1))

DOE is initiating the rulemaking and data collection process for a test procedure and potential establishment of an energy conservation standard for

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

STBs and network equipment with publication of this RFI. This process will analyze the technological, environmental, employment, and regulatory impact of a test procedure and standard on consumers, manufacturers, utilities, and the nation. During this analysis, DOE will determine the feasibility of establishing a standard that achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified. To support this analysis, DOE will develop a test procedure to measure the energy efficiency of STBs and network equipment that reflects consumer use, ensures repeatability of results and is not unduly burdensome to conduct. DOE is asking interested parties for additional information that will assist DOE in performing its analysis and in developing a test procedure and energy conservation standard for STBs and network equipment.

For reference, DOE has published a Market and Technology Assessment on the DOE Set-Top Box and Network Equipment Appliance Standards Web site, located at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/set_top_boxes.html*, that includes the data currently gathered on STBs.

Note that any comments already provided in response to the proposed determination do not need to be resubmitted. DOE will formally respond to comments already submitted in a final determination for coverage of STBs and network equipment that will be issued at a later stage in the rulemaking process.

II. Discussion

DOE will review existing industry test procedures and standards to develop its own test procedure and efficiency standard for STBs and network equipment. Current industry test procedures and standards for STBs include the Environmental Protection Agency's (EPA) ENERGY STAR® Program Requirements for Set-top Boxes Version 3.0,[2] Canadian Standards Association's (CSA) test procedure C380–08,[3] and Consumer Electronics Association's (CEA) industry standards CEA–2013 [4] and CEA–2022.[5] Additionally, DOE will evaluate the International Electrotechnical Commission's (IEC) industry standard IEC–62087,[6] which includes STBs in its scope. Notably, the ENERGY STAR program defines its own test method for STBs, but does reference the CSA test procedure for test setup and instrumentation. The CEA standards are similar to CSA's test procedure, but they cover fewer functional features as compared to the ENERGY STAR method. These test procedures and industry standards were used as a basis for identifying the below issues for which DOE is specifically seeking feedback.[7]

A. Energy Conservation Standard

1. Product Classes

When necessary, DOE divides covered products into classes by the type of energy used, the capacity of the product, and any other performance-related feature that justifies different standard levels, such as features affecting consumer utility. (42 U.S.C. 6295(q)) As part of this rulemaking proceeding, DOE will evaluate the market for STBs and potentially separate them into product classes based on the criteria outlined above.

The current ENERGY STAR program separates STBs into different base functionalities: Cable, Satellite, Cable Digital Transport Adapter (DTA), Internet Protocol (IP), Terrestrial, and Thin Client/Remote.[8] Each base functionality type has a different energy consumption allowance (i.e., a different efficiency level) for qualification with the ENERGY STAR specification. Differentiating products by functionalities recognizes the fact that different underlying technologies such as Cable and Satellite STBs may require more energy than Thin Clients or Cable DTA STBs. ENERGY STAR also provides for higher energy consumption allowances based on various additional features (e.g. Digital Video Recorder, High Definition Resolution).

As part of DOE's investigation of potential product classes for STBs and network equipment, DOE is considering investigating the definitions of STB base functionality types and the additional features currently employed by the ENERGY STAR program.[9] In particular, DOE is considering defining a separate product class for each combination of functionality type and an additional feature or features. However, in order to make this determination, DOE will have to analyze whether each combination of functionality type and additional features meets DOE's criteria for establishing product classes. Further details concerning the base functionality types and additional features used by the ENERGY STAR program are discussed below.

Functionality Type

- *Cable:* A STB whose primary function is to receive television signals from a broadband, hybrid fiber/coaxial, or community cable distribution system with conditional access and deliver them to a consumer display, thin-client/remote STB, and/or recording device.
- *Satellite:* A STB whose primary function is to receive television signals from satellites and deliver them to a consumer display, thin-client/remote STB, and/or recording device.
- *Cable Digital Transport Adapter (Cable DTA):* A minimally-configured STB whose primary function is to receive television signals from a broadband, hybrid fiber/coaxial, or community cable distribution system and deliver them to a consumer display and/or recording device.
- *Internet Protocol Television (IPTV):* A STB whose primary function is to receive television/video signals encapsulated in Internet Protocol packets and deliver them to a consumer display, thin-client/remote STB, and/or recording device.
- *Terrestrial:* A STB whose primary function is to receive television signals over the air or via community cable distribution system without conditional access and deliver them to a consumer display, thin-client/remote STB, and/or recording device.
- *Thin-client/Remote:* A STB that (1) is designed to interface between a multi-room STB and a TV (or other output device), (2) has no ability to directly interface with a Service Provider, and (3) relies solely on a multi-room STB for content. Any STB that meets the definition of a cable, satellite, IP, or terrestrial STB is not a thin-client/remote STB.

Additional Features

- *Advanced Video Processing (AVP):* The capability to encode, decode, and/or transcode audio/video signals in

[2] ENERGY STAR Program Requirements Product Specification for Set-top Boxes: Test Method Rev. Jan–2011 (2011).

[3] C380–08: Test Procedure for the Measurement of Energy Consumption of Set-Top Boxes (2008).

[4] CEA–2013–A: Digital STB Background Power Consumption (2007).

[5] CEA–2022: Digital STB Active Power Consumption Measurement (2007).

[6] IEC–62087: Methods of measurement for the power consumption of audio, video and related equipment. Edition 3 (2011) Section 8.

[7] DOE will also consider the National Cable & Telecommunications Association's ''CableLabs—Energy Lab'' initiative, which was announced on November 18, 2011 but is as yet preliminary.

[8] ENERGY STAR Program Requirements: Product Specification for Set-top Boxes Eligibility Criteria Version 3.0 (2011) Table 3.

[9] ENERGY STAR Program Requirements: Product Specification for Set-top Boxes Eligibility Criteria Version 3.0 (2011) Sections 1.A and 1.B.2.

accordance with standards H.264/MPEG 4 or SMPTE 421M.

• *CableCARD:* The capability to decrypt premium audio/video content and services and provide other network control functions via a plug-in conditional access module that complies with the ANSI/SCTE 28 2007 HOST–POD Interface Standard.[10]

• *Digital Video Recorder (DVR):* The capability to store video in a digital format to a rewritable disk drive or other non-volatile storage device integrated into a STB. This definition excludes video capture software for personal computers or server-based DVR capabilities.

• *DOCSIS:* The capability to distribute data and audio/video content over cable television infrastructure in accordance with the CableLabs® Data Over Cable Service Interface Specification.

• *High Definition (HD) Resolution:* The capability to transmit or display video signals with resolution greater than or equal to 720p.

• *Standard Definition (SD) Resolution:* The capability to only transmit or display video signals with resolution less than 720p.

• *Home Network Interface (HNI):* The capability to interface with external devices over a high bandwidth network (e.g., IEEE 802.11 (WiFi), MoCA, HPNA). For purposes of this specification, IEEE 802.3 wired Ethernet is not considered a Home Network Interface.

• *Multi-room (MR):* The capability to provide independent audio/video content to multiple devices within a single family dwelling. This definition does not include the capability to manage gateway services for multi-subscriber scenarios.

• *Multi-stream (MS):* The capability to deliver two or more simultaneous audio/video streams to a consumer display, thin-client/remote STB, or recording device. The simultaneous streams may be delivered via a physically separate input or via the primary input. This definition does not include out-of-band tuners.

• *Removable Media Player:* The capability to decode digitized audio/video signals on DVD or Blu-ray Disc optical media.

• *Removable Media Player/Recorder:* The capability to decode and record digitized audio/video signals on DVD or Blu-ray Disc optical media.

DOE welcomes feedback on consideration of the ENERGY STAR® program's identification of base functionality types and additional features in DOE's analysis of product classes for STBs and network equipment. DOE is also seeking feedback on potential methods to combine or reduce the number of product classes, the impact on energy consumption as a result of each of the functionality types and/or features, and market share data on the prevalence of these functionality types and/or features in STBs. Additionally, DOE seeks feedback from interested parties on the following questions:

• Should Cable DTA be a factor in defining a product class? DOE believes this is used for older analog televisions (TVs), which are becoming less common as consumers switch to digital TVs.

• How should tuner types be categorized? Are there significant energy differences between analog and digital tuners?

• Should streaming STBs (e.g., streaming video from a web-based service) be distinguished from service provider IPTV STBs? What, if any, differences are there between those types of STBs? Is the term ''video signals'' sufficient for including streaming STBs in the potential IPTV product classes?

• Should there be additional features defined due to significant differences in functionality (i.e., performance related feature) that affect energy consumption? Note that for ENERGY STAR, Cable DTA and Cable are two separate definitions despite the fact that they both use cable as the transmission medium.

• Is the Cable STB definition sufficient to include stand-alone DVRs (which include a CableCARD slot to interface with an existing service provider) generally purchased through retail? Should a separate product class exist for stand-alone DVRs?

• Should the Cable STB definition include CableCARD and DOCSIS functionality? Does CableCARD functionality consume energy when a CableCARD is installed but not used, or does it also have to be in use? DOE believes this feature only applies if it is actively decrypting video content during testing.

• Should the Advanced Video Processing feature encompass both encoding and decoding of video content? Would encoding or transcoding require more hardware and energy consumption compared to decoding? Does the presence of Advanced Video Processing significantly affect power consumption when viewing MPEG–2 or analog video?

• Can Advanced Video Processing and High Definition be combined into a single functionality?

• Is it sufficient to define HD as any resolution greater than 720p? Should there be a separate definition for even higher video resolutions?

• Does the capability for multi-room increase the energy consumption of the STB when only one output is connected?

• Does the capability for multi-stream increase the energy consumption of the STB when only one stream is being accessed?

• None of the currently qualified ENERGY STAR products take credit for Removable Media Player or Recording. Are there STBs that currently implement removable media support? Does the presence of this feature increase the energy consumption when not in use (e.g. when the STB is accessing live TV content)?

• DOE further requests that interested parties comment on whether there are any features that would impact some potential product classes of STBs and network equipment differently than others? For example, would DVR functionality tend to increase the energy consumption of satellite STBs and cable STBs similarly?

• Lastly, should DOE consider any other additional features that currently exist or are in development that would significantly affect consumer behavior and/or STB energy consumption (e.g., 3D video processing, ultra high definition)?

2. Lower Power Sleep Mode

One potential energy savings feature of STBs is entering a lower power sleep mode when not performing a primary function (such as watching or recording a television program). Currently, many STBs consume nearly the same amount of energy regardless of whether the devices are performing a primary function. DOE realizes that service providers regularly communicate with deployed devices to maintain network and content security, and to ensure that program guides or on-demand offerings are updated. DOE also understands that some consumers may be opposed to long wake-up times when powering on their devices. Given the amount of potential energy savings, however, DOE is interested in methodologies that reduce energy consumption when the device is not in use while ensuring communication and wake-up times are minimally affected. DOE seeks feedback from interested parties on methodologies that reduce STB energy consumption when not performing a primary function. As an example, a STB

[10] ANSI/SCTE 28 2007 HOST–POD Interface Standard (2007) *http://www.scte.org/standards/Standards_Home.aspx.*

could enter a deep sleep mode during off-peak hours (such as the middle of the night) and automatically wake up once every 30 minutes to communicate with the service provider and check for updates. At other times, the device would remain in a light sleep mode when not in use and not require a long wake-up time.

DOE seeks comments, data, and other input into technological, economic, and competitive impacts of using lower power light sleep and deep sleep modes for STBs. DOE also seeks feedback on any other issues related to lower power sleep modes. DOE is particularly interested in technological features that could significantly reduce energy consumption while providing for adequate communication with service providers and minimizing wake-up times when consumers power on their devices.

DOE is also interested in other examples and data of energy-reducing technologies, configurations or product designs, other than sleep modes, that could help improve the efficiency of STBs (e.g., spinning down hard disks, multi-room deployments).

3. Multi-Room Setups

DOE is aware that some service providers offer the use of multi-room setups where a single STB (usually with DVR functionality) is connected to the service provider, and that primary device then feeds video signals to thin-clients in the home through a network connection. This has the ability to save on total household energy consumption by using more efficient thin-clients instead of multiple devices.

In order for DOE to better understand these setups, DOE is seeking more information from interested parties on this topic. In particular:

- DOE is seeking market data on how prevalent multiple STBs are in current homes. For example, how many homes use two STBs? How many homes use three STBs?
- How much more power does a multi-room STB use compared to a thin-client device?
- How much more power does a multi-room STB use compared to a STB without multi-room capability?
- Are generic thin-client STBs capable of connecting to any multi-room STB, or will only specific models of thin-clients work with a given multi-room STB?

4. Typical User Profile

In the development of potential energy conservation standards, it may become necessary to adopt standardized user profiles that estimate the average amount of time each day that STBs are in each of their functional modes (e.g. active, standby, and off). It may also become necessary to develop estimates of the amount of time STBs with DVR functionality are in record or playback modes. This usage profile could then be applied to measurements obtained from a test procedure to estimate the typical daily or annual energy consumption of STBs. The ENERGY STAR program uses this methodology in their program.[11] DOE seeks feedback on whether it should adopt the ENERGY STAR usage profile or if an alternative methodology should be used when considering the metric for potential energy conservation standards, such as wattage requirements for each mode. A time-based metric, similar to the method used in ENERGY STAR, may be reasonable as many of the potential energy savings occur based on the time in each mode, and different product classes may have different opportunities for energy savings that could also help a product meet a standard.

5. Engineering Analysis

As part of analyzing potential energy conservation standards for STBs and network equipment, DOE will develop an engineering analysis, which will characterize the incremental manufacturing cost associated with increasing the efficiency of STBs. As part of this analysis, DOE plans to gather data regarding the efficiency of STBs, run tests on STBs, and perform physical teardowns of STBs. DOE recognizes that there are a variety of functionalities, features, and subscription services that may impact the efficiency of STBs. Therefore, DOE is strongly interested in collecting information from a wide variety of sources on the energy use of different types and configurations of STBs. As part of this analysis, DOE may be required to gain access to a subscription or head-end equipment similar to that of a consumer's access in order to test the STB. DOE is hopeful to gain access to features such as electronic-program-guides, video-on-demand, and pay-per-view for testing.

DOE understands that the nature of subscriptions and leasing agreements make it difficult for DOE to obtain equipment on the commercial market directly for purchase. Consequently, DOE will be reaching out to service providers and STB makers directly to inquire about obtaining the STBs for this analysis and any special equipment necessary for testing.

6. Market Data

DOE seeks additional data on STB markets and technologies, including updated National energy use data[12] on STBs by potential product class. These data include numbers of installed devices, unit energy consumption, efficiency ranges, and usage profiles. Projected energy use data include historical and projected annual shipments of STBs, projected unit energy consumption for future models of STBs, and projected usage profiles based on new studies on consumer behavior.

B. Test Procedure

The following discussion topics on testing primarily reference the ENERGY STAR program, but all of the previously referenced industry test procedures were used to help identify the following questions.

1. Impact of Service Provider Software

Service providers typically install software onto STBs rented to consumers. These STBs are programmed to have security features and constant communication with the service provider and allow customers to access specific content, such as video-on-demand or electronic program guides. Based on initial testing, DOE believes the service provider software can have an impact on the energy consumption of a STB. Thus, DOE is considering that STBs be tested with the appropriate software added. In the event that the same physical STB can be programmed by different service providers, each service provider configuration would be treated as a different device (i.e., a different basic model). DOE would therefore test STBs as deployed in consumers' homes, rather than as shipped by the STB original equipment manufacturers to the service providers. In order to gain a better understanding of the issue, DOE requests feedback on the following:

- What impact does the service provider software have on energy consumption?
- How does service provider software impact idle or sleep behavior?
- How does such software affect any other energy saving features?
- For cable STBs, will there be different energy consumption of a generic STB with CableCARD accessing the digital programming of a service provider versus a programmed device

[11] ENERGY STAR Program Requirements: Product Specification for Set-top Boxes Eligibility Criteria Version 3.0 (2011) Section 3.3.

[12] Set-Top Box Market and Technology Assessment Report, Section 3.1.5, December 2011.

with full two-way communication with the service provider?

2. Live Network Testing

ENERGY STAR program specifications do not specify how the video source signal is to be delivered, and implicitly allow STBs to be tested either through a live network (via subscription service) or with a closed network. A closed network includes testing with head-end equipment provided by the service provider and/or manufacturer. Additionally, the CEA test procedures explicitly state that it is not expected that the STB would be connected to a live network.[13]

Subscription services (i.e., one type of live network) are more typical of how a consumer would be using the STB. Using a subscription would be simpler to setup for testing, and it would require little involvement by the service provider other than providing the subscription itself. However, DOE has concerns that subscriptions would not be available in all test areas, thus some labs would be physically incapable of testing certain STBs. Additionally, STB behavior may be impacted by geographic location, weather (for satellite connection), and time of day. Subscriptions themselves can vary depending on the type chosen for testing as service providers generally have different package choices that could be accessed by the same STB hardware. Finally, video format may not be as controllable through a subscription, which may be required for testing (see Section 0 of this document).

Closed network testing can solve some of the repeatability issues for testing. However, it requires proprietary hardware and software from the service provider. This equipment can be large and costly to use, and may be very difficult to setup and configure. DOE also has concerns that the programmed head-end equipment and physical setup may not be realistic due to the lack of access to certain features, which may impact energy consumption of the STB.

Because of the potential difficulties in using a closed network, DOE is considering that STBs be tested via subscription service only. DOE is also considering allowing closed network testing and may need to specify head-end requirements in this case. DOE would like feedback from interested parties on these two methods. Specifically,

- How will STB behavior compare between closed network testing and live network testing?
- How will STBs with subscription service be affected by geographic location and time of day?
- How will energy usage of the STB be affected by the subscription package selected?
- Are there any obstacles with service providers providing head-end equipment to labs for testing STBs?
- Are there any additional factors that should be considered when deciding between closed network and live network testing methods?
- Are there other potential test setups that should be considered?

3. Video Source

The ENERGY STAR test procedure describes three reference channels to be used for testing STBs. They are as follows:[14]

(1) Reference Channel A: Network television channel, standard definition (SD) format, minimum 480i resolution.

(2) Reference Channel B: Live or recorded sports channel;

a. If the STB is HD-capable, this channel shall be in HD format, minimum 720p resolution.

b. If the STB is not HD-capable, this channel shall be in SD format, minimum 480i resolution.

(3) Reference Channel C: 24-hour news channel, standard definition (SD) format, minimum 480i resolution.

DOE has initial concerns with the ENERGY STAR test procedure's lack of a video signal standard for repeatability, as the video source may impact the STB energy consumption. However, a subscription based testing would not necessarily have control of the video content. Due to differences in video processing, DOE is also concerned that the chosen video format will have an impact on energy consumption of the STB, and that a minimum video resolution would not be sufficient to guarantee a repeatable test. For high definition format, one lab may test at 720p, and another lab may use 1080p, which could result in different recorded energy consumptions. Additionally, some STBs may be preconfigured to output a set video resolution. Thus, any video input source that differed from the output resolution would require additional video processing. For example, using a 720p input signal may require more energy when converting to 1080i compared to a native 1080i input signal.

DOE is also concerned that there are additional parameters that may need to be specified if using a controlled test signal. Frame rate may also need to be specified as there could potentially be differences between 60 frames per second video sources versus 24 frames per second. Video bit rates may also need to be specified as lower bitrates would likely require less energy at the expense of lower quality video. Finally, the video codec should be specified for repeatability. MPEG–4 decoding may require additional hardware compared to MPEG–2.

Because different service providers may provide different video formats to their customers, DOE is considering an alternative method where the tester can randomly choose a video source. The chosen channel and video specifications would need to be reported or measured, and energy consumption would be normalized to make different video formats comparable. For example, it is expected that a STB decoding video at 5 megabits per second would use less energy than a STB decoding video at 10 megabits per second. DOE would attempt to normalize out the bitrate aspect of energy consumption in setting standard levels. DOE is aware that this method may not be as repeatable as creating a specific test signal, but it will ensure some level of control for video content and source while still simulating the consumer experience.

DOE is also considering specifying minimum requirements for video content for testing and/or using a standard test video source if it is technically feasible. DOE seeks feedback from interested parties on this subject. In particular:

- How much modification do service providers make to content providers' signals? Does a specific channel use similar frame rates, encoding, and bit rates across different service providers or locations? DOE does not wish for service providers to lower the quality of video in order to meet potential energy standards.
- For a given service provider, are there any regional differences in video format? For example, would an HD broadcast of a specific channel be delivered at an identical video format across all geographic locations?
- How much variance in energy consumption would be expected based on the video content? Would sports content (more dynamic) have significant differences in energy consumption compared to news content (more static)?
- Is it possible to determine or measure the frame rate, bit rate, and video format being received by the STB? If so, how is this done?
- If labs are able to test with a controlled video source, what parameters most impact energy consumption? DOE has identified

[13] CEA–2022: Digital STB Active Power Consumption Measurement (2007) Section 6.4.d.

[14] ENERGY STAR Program Requirements: Test Method Rev. Jan-2011 (2011) Section 4.H.

resolution, format, frame rate, and bit rate. Are these sufficient, or are there other parameters that should be specified? Are any of these parameters irrelevant to energy consumption?

4. Digital Video Recorder Testing

The ENERGY STAR test procedure includes testing DVR functionality.[15] The DVR alters STB behavior and consumer behavior by allowing the consumer to record content, watch offline content, and pause/rewind/fast-forward live broadcasts. This behavior is significantly different from a standard STB (also known as a receiver), which is primarily used to watch live video. The ENERGY STAR test procedure specifies that live TV testing includes pausing (5% of test time), fast forward (10% of test time), and rewind (10% of test time), and watching video for the remaining 75% of the time. It also specifies energy consumption for recording and playing back stored video.

DOE believes that energy consumption may depend on the order that these operations are performed as well as the number of transitions between modes. Additionally, DVR STBs usually have multiple speeds for fast forwarding and rewinding that may impact energy usage.

DOE is considering that each DVR operation mode be measured in a separate test for fixed test time durations. For example, the tester could measure power for 5 minutes while rewinding video, measure power for 5 minutes while playing video, and measure power for 5 minutes while fast-forwarding video. The weighting for energy consumption can be incorporated into the final efficiency metric. DOE is also considering including multiple speeds for fast-forward and rewind for testing. DOE seeks feedback from interested parties on handling DVR testing.

5. Low Noise Block Power Consumption

A low noise block (LNB) is used in conjunction with a satellite STB to improve signal reception. It can have a separate power supply, but some LNBs draw power from the STB coaxial connection. The ENERGY STAR test procedure explicitly excludes the energy consumption of the LNB,[16] as does the CEA test procedure.[17]

DOE is considering including LNB energy consumption for satellite STBs, as the LNB is providing required functionality, and would like to identify what factors impact LNB energy consumption and whether these factors can be controlled in a lab scenario. Accordingly, DOE seeks feedback from interested parties on this topic or any of the following questions:

- How much power does the LNB consume compared to the STB?
- Does LNB energy consumption vary significantly based on the received signal or noise?
- Is it possible to test the STB with the LNB disabled or disconnected?
- Are there any known methods for accurately measuring the LNB power to exclude it from the STB energy consumption?
- What other factors influence the energy consumption of LNBs?
- Can all satellite STBs use an independently powered LNB as a means to separate LNB power from the STB?

III. Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this RFI. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests To Speak

Any person who has an interest in the topics addressed in this RFI, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Requests should be emailed to Ms. Brenda Edwards at *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include their contact information and an attached file that describes the nature of their interest in this RFI and the topics they wish to discuss. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements by January 19, 2011. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. A court reporter will be present to record the proceedings and prepare a transcript. The public meeting will be conducted in an informal, conference style. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this RFI. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on each specific topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer DOE's and other participants' questions. DOE representatives may also ask participants about other matters relevant to this RFI. The official conducting the public meeting will accept additional comments or questions from those attending as time permits. The presiding official will announce any further procedural rules or modification of these procedures that may be needed for the proper conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the RFI until the end of the comment period. DOE will make the entire record of this proceeding, including the transcript from the public meeting, available on the DOE Web site.

D. Submission of Comments

DOE welcomes comments on all aspects of this RFI and on other relevant issues that participants believe would affect test procedures and energy conservation standards applicable to STBs and network equipment.

After the close of the comment period, DOE will begin collecting data, conducting the analyses, and reviewing the public comments. These actions will be taken to aid in the development of a test procedure notice of proposed rulemaking (NOPR) and energy

[15] ENERGY STAR Program Requirements: Test Method Rev. Jan-2011 (2011) Sections 7.2, 7.3.

[16] ENERGY STAR Program Requirements: Test Method Rev. Jan-2011 (2011) Section 5.D.

[17] CEA–2022: Digital STB Active Power Consumption Measurement (2007) Section 6.1.2.a.

conservation standard NOPR for STBs and network equipment.

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Mr. Jeremy Dommu at (202) 586–9870, or via email at *Jeremy.Dommu@ee.doe.gov.*

Issued in Washington, DC, on December 12, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–32325 Filed 12–15–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1313; Airspace Docket No. 11–AWP–17]

Proposed Modification of Class E Airspace; Douglas, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Bisbee Douglas International Airport, Douglas, AZ. Decommissioning of the Cochise Very High Frequency Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC) has made this action necessary for the safety and management of aircraft operations at the airport. This action would also adjust the geographic coordinates of the airport.

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

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–1313; Airspace Docket No. 11–AWP–17, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–1313 and Airspace Docket No. 11–AWP–17) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1313 and Airspace Docket No. 11–AWP–17''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Douglas, AZ. Additional controlled airspace is necessary to accommodate aircraft using VHF Omni-Directional Radio Range/Distance Measuring Equipment VOR/DME Global Positioning System (GPS) standard instrument approach procedures at the Bisbee Douglas International Airport, Douglas, AZ. Decommissioning of the Cochise VORTAC has made this action necessary and would enhance the safety and management of aircraft operations at airport. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a

routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Bisbee Douglas International Airport, Douglas, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AWP AZ E2 Douglas, AZ [Modified]

Bisbee Douglas International Airport, AZ (Lat. 31°28′08″ N., long. 109°36′14″ W.)

Within a 4.3-mile radius of Bisbee Douglas International Airport and within 1.8 miles each side of the Bisbee Douglas International Airport 332° bearing, extending from the 4.3-mile radius to 7 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

AWP AZ E5 Douglas, AZ [Modified]

Bisbee Douglas International Airport, AZ (Lat. 31°28′08″ N., long. 109°36′14″ W.)

That airspace extending upward from 700 feet above the surface within 3.9 miles northeast and 8.3 miles southwest of the Bisbee Douglas International Airport 333° bearing extending from the airport to 16.1 miles northwest. That airspace extending upward from 1,200 feet above the surface within a 7.8-mile radius of the Bisbee Douglas International Airport and within a 20-mile radius of the Bisbee Douglas International Airport extending clockwise from the 288° bearing to the 076° bearing of the airport and within 4.3 miles east and 7.4 miles west of the Bisbee Douglas International Airport 347° bearing extending from the airport to 34.5 miles north.

Issued in Seattle, Washington, on December 8, 2011.

Lori Andriesen,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–32209 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 34–65942; File No. S7–38–11]

RIN 3235–AL04

Prohibition Against Conflicts of Interest in Certain Securitizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the comment period for a release proposing a new rule to implement Section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') on material conflicts of interest in connection with certain securitizations (the ''ABS Conflicts Proposal''). The original comment period for the ABS Conflicts Proposal is scheduled to end on December 19, 2011. The Commission is extending the time period in which to provide the Commission with comments on the ABS Conflicts Proposal until January 13, 2012. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: Comments should be received on or before January 13, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);

- Send an email to *rule-comments@sec.gov.* Please include File Number S7–38–11 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–38–11. This file number should be included on the subject line if email is used. To help us 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/proposed.shtml*). Comments are also 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sandoe, Senior Special Counsel, Anthony Kelly, Special Counsel, or Barry O'Connell, Attorney Advisor, Office of Trading Practices, Division of Trading and Markets, at (202) 551–5720, and David Beaning, Special Counsel and Katherine Hsu, Chief, Office of Structured Finance, Division of Corporation Finance, at (202) 551–3850.

SUPPLEMENTARY INFORMATION: The Commission has requested comment on Proposed Rule 127B under the Securities Act of 1933 (''Securities Act'') in the ABS Conflicts Proposal to implement Section 621 of the Dodd-

Frank Act.[1] Proposed Rule 127B under the Securities Act would prohibit certain persons who create and distribute an asset-backed security, including a synthetic asset-backed security, from engaging in transactions, within one year after the date of the first closing of the sale of the asset-backed security, that would involve or result in a material conflict of interest with respect to any investor in the asset-backed security. The proposed rule also would provide exceptions from this prohibition for certain risk-mitigating hedging activities, liquidity commitments, and bona fide market-making. The ABS Conflicts Proposal was published in the **Federal Register** on September 28, 2011.

The Commission originally requested that comments on the ABS Conflicts Proposal be received by December 19, 2011, including comment about any potential interplay[2] between Proposed Rule 127B and the ''Volcker Rule Proposal.''[3] The Volcker Rule Proposal would implement Section 619 of the Dodd-Frank Act concerning prohibitions and restrictions on proprietary trading and certain interests in, and relationships with, hedge funds and private equity funds. The Volcker Rule Proposal was published in the **Federal Register** on November 7, 2011 and the comment period for that proposal ends on January 13, 2012.

In an effort to provide the public with a better opportunity to consider any potential interplay between the ABS Conflicts and Volcker Rule Proposals, the Commission has determined to provide the public additional time to consider simultaneously the ABS Conflicts Proposal and the Volcker Rule Proposal. This extended opportunity to submit comprehensive comments regarding the ABS Conflicts Proposal and any potential interplay with the Volcker Rule Proposal would benefit the Commission in its consideration of any final rules. Therefore, the Commission is extending the comment period for the ABS Conflicts Proposal to January 13, 2012, to coincide with the end of the Volcker Rule Proposal's comment period. The Commission would consider a further extension of the ABS Conflicts Proposal comment period if the Volcker Rule Proposal comment period were extended beyond January 13, 2012.

Dated: December 13, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–32228 Filed 12–15–11; 8:45 am]

BILLING CODE 8011–01–P

[1] Exchange Act Release No. 34–65355 (September 19, 2011), 76 FR 60320 (September 28, 2011).

[2] *See, e.g.,* 76 FR 60320, 60341.

[3] Exchange Act Release No. 34–65545 (October 12, 2011), 76 FR 68846 (November 7, 2011).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149625–10]

RIN 1545–BK03

Application of the Segregation Rules to Small Shareholders; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to notice of proposed rulemaking (REG–149625–10) that was published in the **Federal Register** on Wednesday, November 23, 2011 (76 FR 72362) providing guidance regarding the application of the segregation rules to public groups under section 382 of the Internal Revenue Code (Code).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stephen R. Cleary, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 382 of the Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–149625–10) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of notice of proposed rulemaking (REG–149625–10), which was the subject of FR Doc. 2011–30290, is corrected as follows:

1. On page 72364, column 3, in the preamble, under the paragraph heading ''D. Clarification of § 1.382–2T(j)(3)'', eleventh line, the language ''regard to § 1.382–2T(h)(i)(A)) or a first'' is corrected to read ''regard to § 1.382–2T(h)(2)(i)(A)) or a first''.

2. On page 72364, column 3, in the preamble, under the paragraph heading ''D. Clarification of § 1.382–2T(j)(3)'', last line of the paragraph, the language ''2T(h)(i)(A).'' is corrected to read ''2T(h)(2)(i)(A).''.

LaNita Van Dyke,

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

[FR Doc. 2011–32313 Filed 12–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102988–11]

RIN 1545–BK05

Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a correction to a notice of proposed rulemaking and notice of public hearing (REG–102988–11) that was published in the **Federal Register** on Friday, November 25, 2011 (76 FR 72652) relating to reporting by brokers for transactions related to debt instruments and options.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Lew of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 6045, 6045A and 6045B of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG–102988–11) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking and notice of public hearing (REG–102988–11)), which was the subject of FR Doc. 2011–30383, is corrected as follows:

§ 1.6045–1 [Corrected]

On page 72658, column 1, § 1.6045–1(d)(2)(ii), lines 6 and 7, the language

''or securities described in paragraphs (a)(14)(ii) and (a)(14)(iii) of this section'' is corrected to read ''or securities described in paragraph (a)(14)(ii) or (a)(14)(iii) of this section''.

LaNita Van Dyke,

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

[FR Doc. 2011–32316 Filed 12–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128224–06]

RIN 1545–BF80

Section 67 Limitations on Estates or Trusts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a correction to a cancellation of notice of public hearing on proposed rulemaking (REG–128224–06) providing guidance on which costs incurred by estates or trusts other than grantor trusts (non-grantor trusts) are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a) of the Internal Revenue Code (Code). The document was published in the **Federal Register** on Tuesday, December 13, 2011 (76 FR 77454).

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 67 of the Code.

Need for Correction

As published, a cancellation of notice of public hearing on proposed rulemaking (REG–128224–06) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of cancellation of notice of public hearing on proposed rulemaking (REG–128224–06), which was the subject of FR Doc. 2011–31855, is corrected as follows:

On page 77454, column 3, in the preamble, under the subject of the headings, the title ''New Markets Tax Credit Non-Real Estate Investments; Hearing Cancellation'' is corrected to read ''Section 67 Limitations on Estates or Trusts; Hearing Cancellation''.

LaNita Van Dyke,

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

[FR Doc. 2011–32280 Filed 12–15–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC–2011–01]

Preliminary Plan for Retrospective Review Under E.O. 13579

AGENCY: United States Parole Commission, Justice.

ACTION: Request for comments.

SUMMARY: The U.S. Parole Commission is asking for comments on its preliminary plan for the retrospective review of its regulations to determine whether any of the regulations should be repealed, modified or expanded. The Commission is undertaking the review to comply with Executive Order 13579, ''Regulation and Independent Regulatory Agencies,'' issued by the President on July 11, 2011. The purpose of the review is to ensure that the Commission's regulations fulfill the Commission's mission and are effective, cost-efficient and understandable.

Comment Date: Written comments must be postmarked and electronic comments must be submitted by February 17, 2012. Please note that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: You may mail comments to the United States Parole Commission, attn: USPC Rules Group, 90 K Street NE., 3d Flr., Washington, DC 20530. You may also submit comments electronically or view an electronic version of this notice and of the plan at *http://www.regulations.gov,* at Docket No. USPC–2011–01.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, General Counsel, U.S. Parole Commission, 90 K Street NE., 3d Flr., Washington, DC 20530; Telephone (202) 346–7030.

SUPPLEMENTARY INFORMATION: *Posting of Public Comments.* All comments received are part of the public record and available for public inspection online at *http://www.regulations.gov.* Comments may include personal identifying information voluntarily submitted by the commenter. When found, personal identifying information will not be posted online but will be maintained in the agency's public docket file.

Overview and Background

On July 11, 2011 the President issued Executive Order 13579 ''Regulation and Independent Regulatory Agencies.'' The order states that each independent regulatory agency should prepare a plan for the periodic review of its existing significant regulations to determine those regulations that are outdated, unnecessary or ineffective. The review enables the agency to modify or repeal a rule to increase the effectiveness of the regulatory program or lessen unnecessary burdens caused by the rule. This order highlights the importance of maintaining a culture of retrospective review of an agency's regulations.

Pursuant to Executive Order 13579, the Parole Commission has developed a preliminary plan for a review of its regulations. The Commission primarily performs law-enforcement functions in releasing an offender from a prison term imposed by a sentencing judge, setting conditions of release, revoking the release if the offender violates the release conditions or terminating the sentence early for good conduct on parole supervision. The Commission's rules define the procedures and standards used to carry out the functions described above. Many of the rules incorporate statutory requirements. Other rules, such as the paroling policy guidelines, reflect policy choices made by the Commission members within the broad grant of authority given by Congress on executing the Commission's functions. The application of the rules may affect the lives of individual persons and the general public welfare, but the Commission's rulemaking and actions do not have a significant impact on economic entities and businesses.

Over the last ten years, the Commission has issued 13 publications of final rules and 5 publications of interim rules that have yet to be promulgated as final rules. The majority of this rulemaking pertained to: Implementing new legislation and court decisions; adopting procedural rules on internal voting requirements and using new technology in conducting hearings; streamlining the revocation process for

parole violators who have committed non-criminal violations of release; and eliminating or clarifying rules that are outdated or confusing.

Scope of the Plan and Previous Agency Efforts

The Commission's preliminary plan for the regulatory review includes all rules promulgated by the Commission and all notes and procedures in its Rules and Procedures Manual (June 30, 2010 edition). The ambitious scope of this effort may have to be adjusted depending on the workload of those staff members who are charged with carrying out the review. The Commission's review will extend to proposed rules and interim rules that have not been made final rules.

In 2004 a Commission working group, headed by the former chief of staff, undertook a project to rewrite the Commission's Rules and Procedures Manual. The purpose of the project was to simplify the rules and instructions in the manual, eliminate obsolete provisions and make the manual easier to use. Had this effort been pursued to its completion, the Commission would have engaged in significant rulemaking. But, as often happens, the press of agency business and the setting of other priorities overtook the effort. Nonetheless, this working group achieved significant progress in redrafting a large portion of the manual and its work will be the foundation for the preliminary plan of regulatory review that the Commission announces with this publication.

Preliminary Plan for Regulatory Review

The Commission Chairman has appointed an agency working group that will execute the review of the Commission's rules. Every Commission section is represented on the working group, which is monitored by Commissioner J. Patricia Smoot, and chaired by the Commission's General Counsel, Rockne Chickinell. The group's task is to determine whether a rule is outmoded, ineffective or imposes costs that are disproportionate to the benefits of the rule, and make recommendations to the Commission on the modification, addition or removal of rules. The group will also review the rules for clarity and readability.

The review will begin with those rules and procedures that pertain to imposing conditions of release for an offender. Congress instructed the Commission that the release conditions ''be sufficiently specific to serve as a guide to supervision and conduct.'' 18 U.S.C. 4209(b). So it is particularly important that the release conditions are clear and understandable to the offender under supervision. Also, unduly burdensome release conditions may be counterproductive to the offender's success on supervision. The Commission substantially revised its standard release conditions through an interim rule in 2003. 68 FR 41696–41714 (July 15, 2003). The retrospective review will include an analysis of whether the revisions of 2003 need to be updated and whether the manual should provide guidance as to the parsimonious application of release conditions that are not required by law.

The review will proceed to the rules and procedures that govern the parole and supervised release revocation process. Most of the Commission's workload consists of responding to reports of violations, issuing violator warrants and conducting revocation proceedings. Carrying out the revocation function involves a significant number of participants outside the Commission, including supervision officers, deputy U.S. Marshals, police officers, private attorneys and public defenders, witnesses from the general public and the offenders. The retrospective review of revocation rules and procedures should benefit a broad range of the persons who participate in the Commission's activities. The Commission also recognizes that the parolee who is facing possible revocation has a substantial interest in a process that reduces the incidence of error that may be caused by confusing or ambiguous rules and instructions.

The review will end with an analysis of the rules and procedures covering parole release determinations and internal procedures such as voting requirements by hearing examiners and Commission members.

In its examination the working group will pay particular attention to those rules and procedures that: Place high costs or burdens on the public, require outdated reporting practices, affect a large group of persons or entities, overlap with or duplicate other rules, are obsolete given changes in laws or other circumstances or have been the subject of requests for rulemaking.

Public Participation in the Review and Rulemaking

In addition to this request for comment, the Commission will send out notices to interested organizations seeking the views and comments on the continued relevance and effectiveness of the Commission's rules. Interested organizations included in this outreach effort are correctional and parole supervision entities such as the Federal Bureau of Prisons, the District of Columbia Court Services and Offender Supervision Agency, the U.S. Probation Service and organizations frequently representing the interests of federal and District of Columbia offenders such as Federal Defender's offices in Philadelphia, Pennsylvania and Oklahoma City, Oklahoma, the DC Public Defender Service, and CURE, Inc.. At any time during the review period, the public may provide their views and recommendations to the working group by writing the Commission at U.S. Parole Commission, attn: USPC Rules Group, 90 K Street, 3rd Flr., Washington, DC 20530 or sending an email to *USPCRulesGroup@usdoj.gov.* If the Commission decides to proceed with rulemaking at any stage of the retrospective review, the Commission will follow the normal rulemaking process, usually with a 60-day notice and public comment period for proposed rules. The working group will analyze the public comment for the Commission's review and recommend responses to the comments submitted. The working group will then forward their recommendation on final rulemaking to the Commission for a vote at the open session of a Commission business meeting. Any interested person or organization may observe the Commission's discussion of a rule change at the open business meeting.

As the working group conducts its review, the Commission will report its progress on the agency's Web site, including any rulemaking initiatives taken by the Commission in response to the working group's review. The Commission's goal is to complete its retrospective review by September 30, 2013.

Maintaining the Review Process

The Commission's effort to sustain a culture of review and analysis of its rules and procedures will not end with the completion of the retrospective review required by the executive order. During the retrospective review, the Commission will rely on the working group to review any new regulatory initiative for issues such as the need for the rule, the burden placed on the public and criminal justice agencies by the rule, any alternatives to the rule and the clarity of the proposed wording of the rule. Even after the retrospective review ends, the Commission intends to maintain the working group for the periodic review of its rules and manual provisions and to analyze new proposed rules and procedures.

Dated: December 5, 2011.

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. 2011–31758 Filed 12–15–11; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2010–0929]

RIN 1625–AA01

Anchorage Regulations: Subpart A—Special Anchorage Regulations, Newport Bay Harbor, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to expand the boundaries of the special anchorage areas in Newport Bay Harbor, California, to encompass and replace temporary anchorage grounds C–1 and C–2, and anchorage ground C–3. This proposal would realign anchorage boundaries in order to reflect the way the harbor currently is used. This proposed rule also would update the description of the existing special anchorage areas to use geographic coordinates.

DATES: Comments and related material must be received by the Coast Guard on or before March 15, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0929 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 ENS Matt Sanders, U.S. Coast Guard Sector Los Angeles—Long Beach, Assistant Waterways Chief, telephone (310) 521–3860, email *Stephen.M.Sanders@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–2010–0929), 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 (via *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 telephone 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 Rule'' and insert ''USCG–2010–0929'' 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 comments 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–2010–0929'' 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 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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

The legal basis for the proposed rule is 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define anchorage grounds.

This proposed rule would expand the designated special anchorage areas in Newport Bay Harbor, and remove other anchorage grounds, to align with the actual placement of existing mooring areas and reflect the way the harbor is currently used.

Discussion of Proposed Rule

Due to enhanced anchorage population over the years, the mooring areas being used in Newport Bay Harbor are nominally larger than the special anchorage areas originally charted in 33

CFR 110.95. As moorings were added or overhauled, the new moorings would fall outside the existing boundaries, resulting in moorings lying outside the charted areas. Similarly, the anchorage grounds designated in 33 CFR 110.212 were originally used as temporary overflow anchorages, but are now used regularly. Harbor users have been accustomed to this placement for the last 10 years.

The Mooring Master Plan Subcommittee of the City of Newport Harbor Commission led an outreach campaign involving a series of public meetings about aligning the anchorage regulations with actual harbor use patterns, and we understand that the subcommittee did not receive any opposition from the waterway users. After these public meetings, the City of Newport asked the Coast Guard to amend its anchorage regulations.

The Coast Guard proposes to realign the boundaries in order to reflect the way the harbor currently is used. The proposed rule would remove § 110.212 and the three anchorage grounds found therein (anchorages C–1, C–2, C–3). The area covered by those anchorages would be incorporated into the special anchorage area regulations at § 110.95. Anchorage C–1 would be incorporated into area B–1 under revised § 110.95(m), and anchorages C–2 and C–3 would be incorporated into area A–11 under revised § 110.95(k). An image of the proposed anchorage areas is available in the docket.

The enlargement of the special anchorage areas does not pose any waterway or navigational hazard, or restrict harbor use in any way. The Army Corps of Engineers has been consulted and did not have any opposition. We anticipate that this proposed rule would have no impact on fishing or boating because the proposed amendment would adjust the lines to fit the current layout of moorings in Newport Harbor. Small craft are not restricted in the harbor.

Berthing and anchoring in Newport Harbor also is regulated by Orange County ordinance and the City of Newport's municipal code. The enlargement of the special anchorages does not impact these laws; for the convenience of the reader we have included a note in the proposed rule referencing local municipal codes. This note consolidates the multiple notes currently in the section. Finally, this proposed rule would update the other provisions of § 110.95 to designate anchorage areas using geographic coordinates rather than channel lights and other points in the harbor.

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard proposes to realign anchorage boundaries in order to reflect the way the harbor currently is used. The enlargement of the anchorages does not restrict harbor use in any way.

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 commercial and recreational vessels intending to transit or anchor in the affected area. The impact to these entities will not, however, be significant since this area will encompass only a small portion of the waterway and vessels can safely navigate around the anchored vessels.

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.

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 would 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 guide 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 that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves changing the size of special anchorage areas. 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 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.95 to read as follows:

§ 110.95 Newport Bay Harbor, Calif.

(a) Area A–1. The entire water area within beginning at latitude 33°36′09.3″ N., longitude 117°53′52.6″ W.; thence to latitude 33°36′11.4″ N., longitude 117°53′51.2″ W.; thence to latitude 33°36′04.0″ N., longitude 117°53′33.4″ W.; thence to latitude 33°36′03.9″ N., longitude 117°53′20.4″ W.; thence to 33°36′01.1″ N., longitude 117°53′09.9″ W.; thence to 33°36′01.1″ N., longitude 117°53′32.7″ W.; thence to 33°36′03.9 N., longitude 117°53′41.9″ W.; returning to latitude 33°36′09.3″ N., longitude 117°53′52.6″ W.

(b) Area A–2. The entire water area within beginning at latitude 33°36′12.9″ N., longitude 117°53′44.2″ W.; thence to latitude 33°36′14.2″ N., longitude 117°53′44.3″ W.; thence to latitude 33°36′14.2″ N., longitude 117°53′20.6″ W.; thence to latitude 33°36′10.8″ N., longitude 117°53′20.5 W.; thence to latitude 33°36′12.7″ N., longitude 117°53′29.9″ W.; thence to latitude 33°36′12.7″ N., longitude 117°53′35.4″ W.; thence to latitude 33°36′12.9″ N., longitude 117°53′37.0″ W.; returning to latitude 33°36′12.9″ N., longitude 117°53′44.2″ W.

(c) Area A–3. The entire water area within beginning at latitude 33°36′22.7″ N., longitude 117°54′12.6″ W.; thence to latitude 33°36′24.9″ N., longitude 117°54′12.6″ W.; thence to latitude 33°36′26.2″ N., longitude 117°54′11.3″ W.; thence to latitude 33°36′18.7″ N., longitude 117°54′00.5″ W.; thence to latitude 33°36′16.2″ N., longitude 117°54′02.9″ W.; returning to latitude 33°36′22.7″ N., longitude 117°54′12.6″ W.

(d) Area A–4. The entire water area within beginning at latitude 33°36′32.7″ N., longitude 117°53′56.6″ W.; thence to latitude 33°36′33.6″ N., longitude 117°53′56.6″ W.; thence to latitude 33°36′33.5″ N., longitude 117°53′26.2″ W.; thence to latitude 33°36′32.9″ N., longitude 117°53′26.2 W.; thence to latitude 33°36′32.6″ N., longitude 117°53′33.8″ W.; thence to latitude 33°36′32.4″ N., longitude 117°53′36.7″ W.; thence to latitude 33°36′31.7″ N., longitude 117°53′40.9″ W.; thence to 33°36′31.7″ N., longitude 117°53′46.3″ W.; thence to latitude 33°36′32.6″ N., longitude 117°53′50.9″ W.; returning to latitude 33°36′32.7″ N., longitude 117°53′56.6″ W.

(e) Area A–5. The entire water area within beginning at latitude 33°36′29.1″ N., longitude 117°54′55.3″ W.; thence to latitude 33°36′27.8″ N., longitude 117°54′55.8″ W.; thence to latitude 33°36′24.1″ N., longitude 117°54′41.8″ W.; thence to latitude 33°36′26.7″ N., longitude 117°54′40.8″ W.; thence to latitude 33°36′26.7″ N., longitude 117°54′46.3″ W.; returning to latitude 33°36′29.1″ N., longitude 117°54′55.3″ W.

(f) Area A–6. The entire water area within beginning at latitude 33°36′43.3″ N., longitude 117°54′26.4″ W.; thence to latitude 33°36′51.7″ N., longitude 117°54′22.8″ W.; thence to latitude 33°36′51.4″ N., longitude 117°54′21.5″ W.; thence to latitude 33°36′42.9″ N., longitude 117°54′25.2″ W.; returning to latitude 33°36′43.3″ N., longitude 117°54′26.4″ W.

(g) Area A–7. The entire water area within beginning at latitude 33°36′32.1″ N., longitude 117°55′12.5″ W.; thence to latitude 33°36′37.7″ N., longitude 117°55′11.0″ W.; thence to latitude 33°36′35.1″ N., longitude 117°55′01.3″ W.; thence to latitude 33°36′30.4″ N., longitude 117°55′02.6″ W.; thence to latitude 33°36′31.2″ N., longitude 117°55′06.7″ W.; returning to latitude 33°36′32.1″ N., longitude 117°55′12.5″ W.

(h) Area A–8. The entire water area within beginning at latitude 33°36′34.2″ N.; longitude 117°55′27.3″ W.; thence to latitude 33°36′36.2″ N., longitude 117°55′26.7″ W.; thence to latitude 33°36′39.5″ N., longitude 117°55′20.9″ W.; thence to latitude 33°36′38.9″ N., longitude 117°55′15.4″ W.; thence to latitude 33°36′37.9″ N., longitude 117°55′11.7″ W.; thence to latitude 33°36′32.1″ N., longitude 117°55′13.3″ W.; returning to latitude 33°36′34.2″ N.; longitude 117°55′27.3″ W.

(i) Area A–9. The entire water area within beginning at latitude 33°36′53.5″ N., longitude 117°55′28.2″ W.; thence to latitude 33°36′54.0″ N., longitude 117°55′27.0″ W.; thence to latitude 33°36′43.4″ N., longitude 117°55′20.4″ W.; thence to latitude 33°36′42.9″ N., longitude 117°55′21.6″ W.; returning to latitude 33°36′53.5″ N., longitude 117°55′28.2″ W.

(j) Area A–10. The entire water area within beginning at latitude 33°36′07.4″ N., longitude 117°53′19.2″ W.; thence to latitude 33°36′14.2″ N., longitude 117°53′19.4″ W.; thence to latitude 33°36′14.2″ N., longitude 117°53′06.9″ W.; thence to latitude 33°36′08.1″ N., longitude 117°53′04.9″ W.; thence to latitude 33°36′06.5″ N., longitude 117°53′08.9 ″ W.; thence to latitude

33°36′06.5″ N., longitude 117°53′16.3″ W.; returning to latitude 33°36′07.4″ N., longitude 117°53′19.2″ W.

(k) Area A–11. The entire water area within beginning at latitude 33°36′04.7″ N., longitude 117°53′01.9″ W.; thence to latitude 33°36′06.1″ N., longitude 117°53′00.5″ W.; thence to latitude 33°36′06.2″ N., longitude 117°52′59.0″ W.; thence to latitude 33°35′59.4″ N., longitude 117°52′51.1″ W.; thence to latitude 33°35′57.5″ N., longitude 117°52′50.9″ W.; thence to latitude 33°36′01.9″ N., longitude 117°52′57.3″ W.; thence to latitude 33°36′03.0″ N., longitude 117°53′00.4″ W.; returning to latitude 33°36′04.7″ N., longitude 117°53′01.9″ W.

(l) Area A–12. The entire water area within beginning at latitude 33°36′27.9″ N., longitude 117°54′40.4″ W.; thence to latitude 33°36′23.9″ N., longitude 117°54′41.8″ W.; thence to latitude 33°36′20.8″ N., longitude 117°54′29.9″ W.; thence to latitude 33°36′28.5″ N., longitude 117°54′20.2″ W.; returning to latitude 33°36′27.9″ N., longitude 117°54′40.4″ W.

(m) Area B–1. The entire water area within beginning at latitude 33°36′35.1″ N., longitude 117°54′28.8″ W.; thence to latitude 33°36′32.1″ N., longitude 117°54′22.1″ W.; thence to latitude 33°36′30.6″ N., longitude 117°54′22.8″ W; thence to latitude 33°36′30.5″ N., longitude 117°54′30.9″ W.; returning to latitude 33°36′35.1″ N., longitude 117°54′28.8″ W.

Note: These anchorage areas are reserved for recreational and other small craft. Local law, including the City of Newport Beach Municipal Code 17.25.020, may provide for fore and aft moorings for recreational and small craft of such size and alignment as permitted by the harbor master.

§ 110.212 [Removed and Reserved]

3. Remove and reserve § 110.212.

Dated: December 2, 2011.

J.R. Castillo,

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

[FR Doc. 2011–32253 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 127

[Docket No. USCG–2011–0227]

RIN 1625–AB67

Reconsideration of Letters of Recommendation for Waterfront Facilities Handling LNG and LHG

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would clarify the role and purpose of the Letter of Recommendation (LOR) issued by the Coast Guard Captain of the Port regarding the suitability of a waterway for liquefied natural gas (LNG) or liquefied hazardous gas (LHG) marine traffic. It also proposes a separate process for reconsideration of LORs by the Coast Guard. The proposed process, if finalized, would apply only to LORs issued after the effective date of the rule.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before March 15, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0227 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 Ken Smith (CG–5222), U.S. Coast Guard; telephone (202) 372–1413, email *Ken.A.Smith@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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I. 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.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0227), 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 or by fax, mail, or hand delivery, but please use only one of these means. 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,* and type ''USCG–2011–0227'' in the ''Keyword'' box. If you submit comments 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 this proposed rule based on your comments.

B. Viewing Comments and Documents

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C. 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).

D. Public Meeting

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

II. Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
LHG Liquefied hazardous gas
LNG Liquefied natural gas
LOR Letter of Recommendation
PWSA Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221 *et seq.*)
§ Section symbol
U.S.C. United States Code

III. Background

Under existing regulations contained in 33 CFR part 127, an owner or operator intending to build a new waterfront facility handling liquefied natural gas (LNG) or liquefied hazardous gas (LHG), or planning new construction to expand or modify marine terminal operations in an existing facility that would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with the proposed facility or modification to an existing facility, must submit a letter of intent to the Captain of the Port (COTP) of the zone in which the facility is or will be located. The COTP then issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic related to the facility.

The LOR is intended to provide an expert, unbiased recommendation as to whether the waterway and port infrastructure can safely and securely support the anticipated increase in maritime traffic associated with the new or modified facility. Prior to May 2010, the COTP issued the LOR to the owner or operator of the facility as well as to the State and local government agencies with jurisdiction, but the Coast Guard changed that process in a rule updating the letter of intent and LOR regulations (75 FR 29420, Revision of LNG and LHG Waterfront Facility General Requirements). Currently, the Coast Guard issues the LOR to the Federal, State, or local government agency having jurisdiction for siting, construction, and operation of the waterfront facility (referred to in this document as the ''jurisdictional agency''), and sends a copy to the owner or operator of the proposed facility.

Several issued LORs have invited the recipient to request reconsideration of the LOR pursuant to 33 CFR 127.015, which provides that ''[a]ny person directly affected by an action taken under this part may request reconsideration by the Coast Guard officer responsible for that action.'' The process set forth in § 127.015 is the same that an owner or operator would use to appeal agency actions described elsewhere in Part 127, such as a COTP's Order to suspend operations. The use of § 127.015 to request reconsideration of LORs, however, has led to confusion about the nature and proper role of the LOR. This is in part because the words ''action'' and ''final agency action'' in § 127.015 create confusion as to whether the LOR is an agency action for purposes of the Administrative Procedure Act (5 U.S.C. 551 et seq.). While we believe LORs should be subject to intra-agency review, we did not intend to suggest that an LOR is an agency action or that it conveys a right or obligation.

The LOR is not an agency action as that term is defined by the Administrative Procedure Act or understood in the context of enforceable legal actions. To constitute agency action for purposes of the Administrative Procedure Act, an activity must constitute, in whole or in part, an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act (5 U.S.C. 551(13)). The LOR is none of these. The LOR neither entitles nor forbids an owner or operator to construct or modify an LNG or LHG facility—the Coast Guard has no authority to site or license waterfront facilities handling LNG or LHG. Rather, the Coast Guard provides its LOR to an agency that does have that authority—the jurisdictional agency—to inform that agency's review of the siting, construction, or operation of a facility. The LOR is a recommendation, and is not legally enforceable on or by any agency or person, including the Coast Guard.

The Coast Guard does take agency action with respect to LNG and LHG facilities when it enforces its rules addressing the operation, maintenance, personnel training, firefighting, and security of the marine transfer area of waterfront facilities that handle LNG or LHG cargos. The Coast Guard COTP also may issue a COTP Order directing vessel operations, and although such an Order would be directed to the vessel's owner or operator, it could impact the operation of an LNG or LHG facility. Enforcement of these Coast Guard regulations constitutes agency action, follows administrative processes set out in Coast Guard regulations, and may be appealed in court at the completion of the administrative processes. For example, a Coast Guard action enforcing § 127.013, ''Suspension of transfer operations,'' may be appealed under § 127.015, and a COTP Order directing vessel operations under 33 CFR 160.111 may be appealed under 33 CFR 160.7. An LOR is unrelated to the enforcement described above. It is not a precursor to or a basis for COTP Orders or Part 127 enforcement. The LOR is only a recommendation providing the jurisdictional agency with the benefit of the Coast Guard's expertise on waterway safety and security; it documents the COTP's recommendation within another agency's permitting or approval process. The authority to approve or disapprove the siting, construction, or modification of an LNG or LHG facility lies with the jurisdictional agency, and not with the Coast Guard.[1]

As discussed above, we believe that some of the past confusion regarding the

[1] Similarly, the LOR may inform the analysis undertaken by the jurisdictional agency pursuant to the National Environmental Policy Act (NEPA), but issuing the LOR is not a major Federal action under NEPA because it is not the adoption of an official policy, formal plan, or program or the approval of a specific project. (See 40 CFR 1508.18.)

nature of LORs stems from the Coast Guard's use of 33 CFR 127.015 for LOR reconsiderations. The process in § 127.015 is designed for appeals of agency actions taken under the authority of Part 127, and using that same process for internal reconsideration of LORs inadvertently caused confusion between the two. In particular, § 127.015 applies to ''[a]ny person directly affected by an action taken under this part,'' and using that language in reference to an unenforceable recommendation is inapt. The Coast Guard seeks to resolve the resulting confusion and, further, believes the process in § 127.015 is inappropriately complicated and lengthy in light of the LOR's role as a recommendation to another agency in the context of that agency's permitting process. The LOR is intended to inform the jurisdictional agency's process, and therefore should be available early in that process. A reconsideration process that results in revisions to the LOR after the jurisdictional agency's decision does not serve the purpose of the LOR.

The purpose of the LOR is to assist the agencies having jurisdiction over the siting, construction, and operation of LNG and LHG facilities. The Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221 et seq.) (PWSA) authorizes the Secretary of the Department in which the Coast Guard is operating to implement regulations to, among other things, reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment. See 33 U.S.C. 1231. The Secretary of Homeland Security delegated this authority to the Coast Guard (Department of Homeland Security Delegation 0170.1). Issuing LORs with regard to proposed new or modified LNG or LHG facilities is one of many methods by which the Coast Guard furthers its missions under the PWSA. To improve the existing process, we propose to clarify the purpose of LORs and revise procedures by which facility owners or operators and State or local governments in the vicinity of a facility may request reconsideration of an issued LOR. The proposed reconsideration procedures, if finalized, would apply only to LORs issued after the effective date of the rule.

IV. Discussion of Proposed Rule

We considered eliminating reconsideration of the LOR in order to avoid the confusion described above and eliminate procedural delay. We believe, however, that consistency and governmental transparency are best served if a defined set of stakeholders has the ability to ask the Coast Guard to reconsider its recommendation. This is in keeping with past and current process under § 127.015, in which the Coast Guard has responded to requests for reconsideration from facility owners and operators, and State or local governments, as the practical analogue to ''persons directly affected.''

As discussed above, the existing process for reconsideration can create confusion and delay. We therefore propose to add a new § 127.010 to 33 CFR part 127 to provide a separate process for the reconsideration of LORs issued after the effective date of this rule. To facilitate the use of this new section, we also propose to revise § 127.009 to clarify the scope of the LOR and the persons who may request reconsideration.

A. Proposed Revisions to § 127.009

We propose to renumber the existing text of § 127.009, such that all of the existing text would be contained in paragraph (a). We propose to then add a paragraph to § 127.009 explaining that an LOR is only a recommendation from the COTP to the jurisdictional agency, and does not constitute agency action for the purposes of § 127.015 or the Administrative Procedure Act.

We also propose to indicate in this section that reconsideration of LORs would follow the process set forth in proposed § 127.010. To avoid disrupting any reconsiderations now in progress, and to prevent any perceived disadvantage to those who were issued an LOR indicating that reconsideration under § 127.015 was available, the Coast Guard would continue to process the reconsiderations of issued LORs under § 127.015. Only LORs issued after the effective date of any resulting final rule would follow the new process set out in proposed § 127.010. Processing issued LORs under § 127.015, however, does not alter the fact that all LORs are mere recommendations to the jurisdictional agency, and none are agency actions as outlined in the Administrative Procedure Act.

As set forth in the proposed revision to § 127.009, the facility owner or operator could request reconsideration of the LOR, as could a State or local government in the vicinity of the facility. Other interested persons would submit comments and relevant information to the jurisdictional agency for that agency's consideration during its permitting process. This is consistent both with the Coast Guard's submission of its own recommendation to the jurisdictional agency for that agency's consideration, and with the Coast Guard's past and current practice of receiving requests for reconsideration from a limited set of persons under § 127.015.

In general, those interested in expressing their agreement or disagreement with the Coast Guard's recommendation would submit their own comments and information to the jurisdictional agency, so that the agency can weigh all the information before it makes a decision. We believe, however, that it is important to provide for additional discussion with the facility owner or operator and the State or local governments in the vicinity of the facility. These entities possess unique information regarding safety and security issues affecting the facility and waterway. The facility owner or operator often is aware of, or even the source of, anticipated changes in vessel traffic, navigation obstructions, and other factors the Coast Guard considers in issuing the LOR. State and local governments play an important role in protecting public safety, and are essential in helping the Federal government plan and prepare for emergencies; they also may be aware of safety and security resources and challenges. Therefore, the proposed rule would provide an avenue for these entities to request that the Coast Guard reconsider its LOR. We invite the public to comment on the scope of this exception, and specifically on whether it should be extended in the final rule to additional categories of persons. If you provide comments on this topic, please explain the reasons for your comments.

In addition to the above changes related to new § 127.010, we propose revising § 127.009(a)(5), the last item in the list of considerations the COTP takes into account when developing the LOR. The proposed revision is more specific than the current phrase, ''[o]ther safety and security issues identified,'' and more accurately reflects the COTP's ability to consider a broad range of safety and security issues that may vary from waterway to waterway.

B. Proposed Addition of § 127.010

As proposed in this new section, the reconsideration of an LOR would begin with the submission of a written request to the COTP who issued the LOR, describing why the COTP should reconsider his or her recommendation. The explanation would focus on the waterway safety and security topics set forth in §§ 127.007 and 127.009, as these describe the limited scope of the LOR. The person requesting reconsideration would send a copy of the request to the agency to which the LOR was issued, to inform the agency with jurisdiction for siting, construction, or operation of the

facility that the COTP has been asked to reconsider the LOR.

The COTP would review the request and the LOR, and either confirm or revise the recommendation. The COTP would send either a written confirmation or a revised LOR to the jurisdictional agency, with copies to the requester and to the facility owner or operator. This would ensure that all those who received the original LOR, and the copy of the request for reconsideration, also receive the written confirmation or revised LOR. A facility owner or operator, or State or local government in the vicinity of the facility, who wished to request reconsideration of the revised LOR, could do so by following the same procedures for requesting reconsideration of the original LOR.

Documents the Coast Guard provides to jurisdictional agencies concerning LOR requests for reconsideration and appeals are normally made available to the public through the jurisdictional agency's docket management system.

If the COTP confirms the recommendation after reconsideration, the person who requested reconsideration could seek the opinion of the COTP's District Commander. The request would have to explain why the District Commander should review the COTP's recommendation, and the requester must also send a copy to the jurisdictional agency to which the LOR was issued.

The District Commander would review the LOR and associated documents, and either confirm the LOR or instruct the COTP to reconsider the LOR. As in the earlier stage, the District Commander would send a written notification to the jurisdictional agency, with copies to the requester and the facility owner or operator. The District Commander's written confirmation would end the reconsideration process; the requester could not request review by another officer in the chain of command. We propose to limit reconsideration to the District Commander level because the COTP and the District Commander have the most expertise with the specific local waterway.

If the District Commander instructed the COTP to reconsider the LOR, and that reconsideration resulted in a revised LOR, then a facility owner or operator, or State or local government in the vicinity of the facility, could request reconsideration of the revised LOR by following the same procedures for requesting the reconsideration of the original LOR.

The proposed rule could result in more than one person requesting reconsideration of an LOR, such that multiple reconsiderations would be ''in progress'' at one time. The Coast Guard would consolidate multiple requests when appropriate.

We do not propose a specific timeline for submitting or processing requests, but in general we would expect to receive requests for reconsideration, if any, soon after issuing the LOR, and we would expect to resolve them as promptly as possible. The Coast Guard would not expect to continue to reconsider an LOR after the jurisdictional agency has reached its decision, even if the process described above has not run its course. As stated above, the LOR is intended to inform the jurisdictional agency's decision, and a reconsideration resulting in revisions to the LOR after the jurisdictional agency's decision would not serve the purpose of the LOR. We strongly recommend that any requests for reconsideration be submitted as soon as possible after the LOR is issued, to allow adequate time for Coast Guard reconsideration and for the jurisdictional agency's consideration of any revised LOR.

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the 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 NPRM has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB). A draft regulatory assessment follows:

This proposed rule would clarify the role and purpose of the LORs issued by the Coast Guard COTP regarding the suitability of a waterway for LNG or LHG marine traffic. It would also provide a separate process for LOR reconsideration for facility owners or operators and State or local government in the vicinity of the facility. If an LNG/LHG owner or operator or State or local government were to seek reconsideration of an LOR, a written request would be sent to the COTP who issued the LOR, and a copy would be sent to the jurisdictional agency. The proposed process, if finalized, would apply only to LORs issued after the effective date of the rule.

We do not expect this proposed rule to impose new regulatory costs on the LNG/LHG industry because an LNG/LHG facility owner or operator and State or local government in the vicinity of the facility will only request reconsideration if it does not agree with the recommendation. The option to request reconsideration of an LOR has been an industry practice for several years. Since 2007, there has been an average of about three requests for reconsiderations annually. As previously discussed, this proposed rule would replace the existing process for reconsideration with the process in proposed § 127.010, and would apply to new LORs issued after the effective date of the rule, not LORs already issued. As such, no change in either the frequency of request or burden is projected as a result of this rulemaking. Although market conditions may change in the future, the Coast Guard does not have any data to indicate the receipt of new requests for reconsideration of LORs within the foreseeable future.

B. 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.

Large corporations own the existing waterfront LNG facilities, and we expect this type of ownership to continue in the future. This type of ownership also exists for the approximately 159 LHG facilities operating in the United States. In addition, as stated above, the Coast Guard does not expect a change in either the frequency of request or burden as a result of this rulemaking. Therefore, we certify under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 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 to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. 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 the entities can better evaluate its effects on them and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult with the Coast Guard personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. We will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA). Under OMB regulations implementing the PRA, ''Controlling Paperwork Burdens on the Public'' (5 CFR 1320), collection of information means the obtaining, soliciting, or requiring the disclosure to an agency of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons. ''Ten or more persons'' refers to the number of respondents to whom a collection of information is addressed by the agency within any 12-month period and does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government. Collections of information affecting ten or more respondents within any 12-month period require OMB review and approval.

This proposed rule articulates a separate process for reconsideration of LORs by the Coast Guard. As stated in Section V.A, there has been an average of about three requests for reconsideration annually since 2007, and the Coast Guard does not have any data to indicate the receipt of new requests for reconsideration of LORs within the foreseeable future. We therefore expect to receive fewer than ten requests per year. This figure is less than the threshold of ten respondents per 12-month period for collection of information reporting purposes under the PRA.

E. 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.

F. 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. 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.

H. 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.

I. 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.

J. 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.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We 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.

L. 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.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule involves creating a separate process for reconsideration of LORs and falls under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction, which includes regulations which are editorial or procedural, such as those updating addresses or establishing application procedures. 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 127

Fire prevention, Harbors, Hazardous substances, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements, and Security measures.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 127 as follows:

PART 127—WATERFRONT FACILITIES HANDLING LIQUEFIED NATURAL GAS AND LIQUEFIED HAZARDOUS GAS

1. The authority citation for part 127 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 127.009 to read as follows:

§ 127.009 Letter of Recommendation.

(a) After the COTP receives the Letter of Intent under § 127.007(a) or (b), the COTP issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic to the Federal, State, or local government agencies having jurisdiction for siting, construction, and operation, and, at the same time, sends a copy to the owner or operator, based on the—

(1) Information submitted under § 127.007;

(2) Density and character of marine traffic in the waterway;

(3) Locks, bridges, or other man-made obstructions in the waterway;

(4) Following factors adjacent to the facility such as—

(i) Depths of the water;

(ii) Tidal range;

(iii) Protection from high seas;

(iv) Natural hazards, including reefs, rocks, and sandbars;

(v) Underwater pipelines and cables;

(vi) Distance of berthed vessel from the channel and the width of the channel; and

(5) Any other issues affecting the safety and security of the waterway and considered relevant by the Captain of the Port.

(b) An LOR issued under this section is a recommendation from the COTP to the agency having jurisdiction as described in paragraph (a), and does not constitute agency action for the purposes of § 127.015 or the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(c) The owner or operator, or a State or local government in the vicinity of the facility, may request reconsideration as set forth in § 127.010.

(d) Persons other than the owner or operator, or State or local government in the vicinity of the facility, may comment on the LOR by submitting comments and relevant information to the agency having jurisdiction, as described in paragraph (a), for that agency's consideration in its permitting process.

(e) Paragraphs (c) and (d) of this section apply to LORs issued after (EFFECTIVE DATE OF FINAL RULE). For LORs issued prior to that date, persons requesting reconsideration must follow the process set forth in § 127.015.

3. Add § 127.010 to read as follows:

§ 127.010 Reconsideration of the Letter of Recommendation.

(a) A person requesting reconsideration pursuant to § 127.009(c) must submit a written request to the Captain of the Port (COTP) who issued the Letter of Recommendation (LOR), and send a copy of the request to the agency to which the LOR was issued. The request must explain why the COTP should reconsider his or her recommendation.

(b) In response to a request described in paragraph (a) of this section, the COTP will do one of the following—

(1) Send a written confirmation of the LOR to the agency to which the LOR was issued, with copies to the person making the request and the owner or operator; or

(2) Revise the LOR, and send the revised LOR to the agency to which the original LOR was issued, with copies to the person making the request and the owner or operator.

(c) A person whose request for reconsideration results in a confirmation as described in paragraph (b)(1) of this section, and who is not satisfied with that outcome, may request, in writing, the opinion of the District Commander of the district in which the LOR was issued.

(1) The request must explain why the person believes the COTP should reconsider his or her recommendation.

(2) A person making a request under paragraph (c) of this section must send a copy of the request to the agency to which the LOR was issued.

(3) In response to the request described in paragraph (c) of this section, the District Commander will do one of the following—

(i) Send a written confirmation of the LOR to the agency to which the LOR was issued, with copies to the person making the request, the owner or operator, and the COTP; or

(ii) Instruct the COTP to reconsider the LOR, and send written notification of that instruction to the agency to which the original LOR was issued, with copies to the person making the request and the owner or operator.

(d) The District Commander's written confirmation described in paragraph (c)(3)(i) of this section ends the reconsideration process with respect to that specific request for reconsideration. If the COTP issues an LOR pursuant to paragraph (b)(2) or (c)(3)(ii) of this section, persons described in § 127.009(c) may request reconsideration of that revised LOR using the process beginning in paragraph (a) of this section.

Dated: December 9, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2011–32257 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0867–201157(b); FRL–9507–2]

Approval and Promulgation of Implementation Plans: Kentucky; Visibility Impairment Prevention for Federal Class I Areas; Removal of Federally Promulgated Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to rescind the federally promulgated provisions regarding visibility in the Kentucky State Implementation Plan (SIP). EPA approved Kentucky's visibility rules addressing new source review for sources in nonattainment areas on July 11, 2006. EPA's approval of these rules neglected to remove the previous federally promulgated provisions from the Federal Implementation Plan. EPA is proposing to correct this omission in this rulemaking. This action is being taken pursuant to the Clean Air Act. In the Rules section of this **Federal Register**, EPA is approving Kentucky's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments.

DATES: Written comments must be received on or before January 17, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0867 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2011–0867,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Madolyn S. 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 by electronic mail address at *dominy.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: December 8, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–32170 Filed 12–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0783–201034, FRL–9507–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Kentucky; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and a limited disapproval of two revisions to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Kentucky Energy and Environment Cabinet, Division of Air Quality (KYDAQ), on June 25, 2008, and May 28, 2010, that address regional haze for the first implementation period. These revisions address the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of these SIP revisions to implement the regional haze requirements for Kentucky on the basis that the revisions, as a whole, strengthen the Kentucky SIP. Also in this action, EPA is proposing a limited disapproval of these same SIP revisions because of the deficiencies in the Commonwealth's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) to EPA of the Clean Air Interstate Rule (CAIR).

DATES: Comments must be received on or before January 17, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0783, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2009–0783, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2009–0783.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through

www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Waterson or Michele Notarianni, 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. Sara Waterson can be reached at telephone number (404) 562–9061 and by electronic mail at *waterson.sara@epa.gov.* Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov.*

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I. What action is EPA proposing to take?

EPA is proposing a limited approval of Kentucky's June 25, 2008, and May 28, 2010, SIP revisions addressing regional haze under CAA sections 301(a) and 110(k)(3) because the revisions as a whole strengthen the Kentucky SIP. However, the Kentucky SIP relies on CAIR, an EPA rule, to satisfy key elements of the regional haze requirements. Due to the remand of CAIR, *see North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. 2008), the revisions do not meet all of the applicable requirements of the CAA and EPA's regulations as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308. As a result, EPA is concurrently proposing a limited disapproval of Kentucky's SIP revisions. The revisions nevertheless represent an improvement over the current SIP, and make considerable progress in fulfilling the applicable CAA regional haze program requirements. This proposed rulemaking and the accompanying Technical Support Document[1] (TSD) explain the basis for EPA's proposed limited approval and limited disapproval actions.

Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.* The deficiencies that EPA has identified as preventing a full approval of this SIP revision relate to the status and impact of CAIR on certain interrelated and required elements of the regional haze program. At the time the Kentucky regional haze SIP was being developed, the Commonwealth's reliance on CAIR was fully consistent with EPA's regulations, *see* 70 FR 39104, 39142 (July 6, 2005). CAIR, as originally promulgated, requires significant reductions in emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) to limit the interstate transport of these pollutants, and the reliance on CAIR by affected states as an alternative to requiring BART for electric generating units (EGUs) had specifically been upheld in *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (DC Cir. 2006). In 2008, however, the DC Circuit

[1] EPA's TSD to this action, entitled, ''*Technical Support Document for Kentucky's Regional Haze Submittal,*'' is included in the public docket for this action.

remanded CAIR back to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008). The Court found CAIR to be inconsistent with the requirements of the CAA, *see North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008), but ultimately remanded the rule to EPA without vacatur because it found that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR.'' *North Carolina* v. *EPA,* 550 F.3d at 1178. In response to the court's decision, EPA has issued a new rule to address interstate transport of NO_X and SO_2 in the eastern United States (i.e., the Transport Rule, also known as the Cross-State Air Pollution Rule). *See* 76 FR 48208 (August 8, 2011). EPA explained in that action that EPA is promulgating the Transport Rule as a replacement for (not a successor to) CAIR's SO_2 and NO_X emissions reduction and trading programs. In other words, the CAIR and CAIR Federal Implementation Plan (FIP) requirements only remain in force to address emissions through the 2011 control periods. As part of the Transport Rule, EPA finalized regulatory changes to sunset the CAIR and CAIR FIPs for control periods in 2012 and beyond. *See* 76 FR 48322.

EPA also stated in that final action that EPA has not conducted a technical analysis to determine whether compliance with the Transport Rule would satisfy the requirements of the RHR addressing alternatives to BART. For that reason, EPA did not make a determination or establish a presumption that compliance with the Transport Rule satisfies BART-related requirements for EGUs. EPA is now in the process of determining whether compliance with the Transport Rule will provide for greater reasonable progress toward improving visibility than source-specific BART controls for EGUs but no such determination has yet been proposed.

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

A. The Regional Haze Problem

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 fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, 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 [2] in many Class I areas [3] (i.e., national parks and 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. 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. *See* 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

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 which impairment results from manmade air pollution.'' On December 2, 1980, EPA 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., ''reasonably attributable visibility impairment.'' *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA 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 were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established 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 EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[4] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. 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. As noted above, 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, EPA has encouraged the states and

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

[3] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See* 42 U.S.C. 7472(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. *See* 42 U.S.C. 7472(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 a ''Federal Land Manager.'' *See* 42 U.S.C. 7602(i). When the term ''Class I area'' is used in this action, it means a ''mandatory Class I Federal area.''

[4] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed 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 Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

III. What are the requirements for regional haze SIPs?

A. The CAA and the RHR

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 EPA's 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 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 RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[5]

The deciview is used in expressing 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 anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic 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, i.e., midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 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. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*) (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*) (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

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.

C. Determination of Reasonable Progress Goals (RPGs)

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 RPGs (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. The RHR 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 RPGs, 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.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR 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

[5] The preamble to the RHR provides additional details about the deciview. *See* 64 FR 35714, 35725 (July 1, 1999).

considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, 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 the ''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. In setting RPGs, 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 Class I state's areas. *See* 40 CFR 51.308(d)(1)(iv).

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 in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA 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 the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, 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, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (hereinafter referred to as the ''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. 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.

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. EPA has 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 deciview.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. 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. States are free to determine the weight and significance to be assigned to each factor.

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 EPA approval of the regional haze SIP. *See* CAA section 169(g)(4); *see* 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, 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.

As noted above, the RHR 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. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. *See* 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR cap-and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

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 RHR requires that states include a 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 RPGs. 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. *See* 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a

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

Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. *See* 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums 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) Emissions reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (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. *See* 40 CFR 51.308(d)(3)(v).

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

As part of the RHR, EPA 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's, and periodic progress reports evaluating progress towards RPGs, 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 impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR 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 RPGs will be met.

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;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- 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 RHR 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), as noted above. 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 RHR requires that states consult with FLMs before adopting and submitting their SIPs. *See* 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 RPGs 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.

IV. What is the relationship of CAIR and the transport rule to the regional haze requirements?

A. Overview of EPA's CAIR

CAIR, as originally promulgated, required 28 states and the District of Columbia to reduce emissions of SO_2 and NO_X that significantly contributed to, or interfered with maintenance of, the 1997 national ambient air quality standards (NAAQS) for fine particulates and/or the 1997 NAAQS for 8-hour ozone in any downwind state. *See* 70 FR 25162 (May 12, 2005). CAIR established emissions budgets for SO_2 and NO_X for states found to contribute significantly to nonattainment in downwind states and required these states to submit SIP revisions that implemented these budgets. States had the flexibility to choose which control measures to adopt

to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X-annual, and NO_X-ozone season emissions. In 2006, EPA promulgated FIPs for all states covered by CAIR to ensure the reductions were achieved in a timely manner.

B. Remand of CAIR

On July 11, 2008, the D.C. Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *See North Carolina* v. *EPA,* 531 F.3d 836 (D.C. Cir. 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. The Court thereby left the EPA CAIR rule and CAIR SIPs and FIPs in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the court's opinion. *See North Carolina* v. *EPA,* 550 F.3d at 1178. The Court directed EPA to ''remedy CAIR's flaws'' consistent with its July 11, 2008, opinion but declined to impose a schedule on EPA for completing that action. EPA subsequently promulgated the Transport Rule to replace CAIR. 76 FR 48208 (August 8, 2011).

C. Regional Haze SIP Elements Potentially Affected by the CAIR Remand and Promulgation of the Transport Rule

The following is a summary of the elements of the regional haze SIPs that are potentially affected by the remand of CAIR. As described above, EPA determined in 2005 that states opting to participate in the CAIR cap-and-trade program need not require BART for SO_2 and NO_X at BART-eligible EGUs. 70 FR at 39142–39143. Many states relied on CAIR as an alternative to BART for SO_2 and NO_X for subject EGUs, as allowed under the BART provisions at 40 CFR 51.308(e)(4). Additionally, several states established RPGs that reflect the improvement in visibility expected to result from controls planned for or already installed on sources within the state to meet the CAIR provisions for this implementation period for specified pollutants. Many states relied upon their own CAIR SIPs or the CAIR FIPs for their states to provide the legal requirements which lead to these planned controls, and did not include enforceable measures in the LTS in the regional haze SIP submission to ensure these reductions. States also submitted demonstrations showing that no additional controls on EGUs beyond CAIR would be reasonable for this implementation period. Because of the deficiencies identified in CAIR by the court and the impact of the Transport Rule on CAIR, it is inappropriate to fully approve states' LTSs that rely upon the emissions reductions predicted to result from CAIR to meet the BART requirement for EGUs or to meet the RPGs in the states' regional haze SIPs. For this reason, EPA cannot fully approve regional haze SIP revisions that rely on CAIR for emission reduction measures. However, as discussed in section IV.D, EPA still believes it is appropriate to propose a limited approval of Kentucky's regional haze SIP revisions as these revisions provide an improvement over the current SIP, and make progress in fulfilling the applicable CAA regional haze program requirements. EPA therefore proposes to grant limited approval and limited disapproval of the two Kentucky regional haze SIP revisions. The next section discusses how the Agency proposes to address these deficiencies.

In the Transport Rule, EPA did not substantively address the question of whether the emissions reductions from the Transport Rule will provide for greater reasonable progress than BART. EPA explained in that rulemaking that the Agency had not yet conducted any technical analysis to determine whether compliance with the Transport Rule would satisfy the requirements for a BART alternative program. Given the lack of any analysis at that time, EPA made no determinations as to whether the Transport Rule would provide sufficient emissions reductions and concomitant improvements in visibility to be considered to provide for greater reasonable progress than BART. Although EPA is now in the process of undertaking such an analysis, no action has been proposed. As a result, today's proposal action on Kentucky's regional haze SIP is affected by the issuance of the Transport Rule only insofar as the Transport Rule provides for the sunsetting of CAIR. Future analyses involving the Transport Rule and BART will determine appropriate subsequent Agency action on Kentucky's regional haze SIP revisions.

D. Rationale and Scope of Proposed Limited Approval

EPA is intending to propose to issue limited approvals of those regional haze SIP revisions that rely on CAIR to address the impact of emissions from a state's own EGUs. Limited approval results in approval of the entire regional haze submission and all its elements. EPA is taking this approach because an affected state's SIP will be stronger and more protective of the environment with the implementation of those measures by the state and having Federal approval and enforceability than it would without those measures being included in the state's SIP.

EPA also intends to propose to issue limited disapprovals for regional haze SIP revisions that rely on CAIR. As explained in the 1992 Calcagni Memorandum, ''[t]hrough a limited approval, EPA [will] concurrently, or within a reasonable period of time thereafter, disapprove the rule * * * for not meeting all of the applicable requirements of the Act. * * * [T]he limited disapproval is a rulemaking action, and it is subject to notice and comment.'' Final limited disapproval of a SIP submittal does not affect the Federal enforceability of the measures in the subject SIP revision nor prevent state implementation of these measures. The legal effects of the final limited disapproval are to provide EPA the authority to issue a FIP at any time, and to obligate the Agency to take such action no more than two years after the effective date of the final limited disapproval action.

V. What is EPA's analysis of Kentucky's regional haze submittal?

On June 25, 2008, and May 28, 2010, KYDAQ submitted revisions to the Kentucky SIP to address regional haze in the Commonwealth's Class I area as required by EPA's RHR. Throughout this document, references to Kentucky's (or KYDAQ's or the Commonwealth's) ''regional haze SIP'' refer to Kentucky's original June 25, 2008, regional haze SIP submittal, as later amended in a SIP revision submitted May 28, 2010.

A. Affected Class I Area

Kentucky has one Class I area within its borders: Mammoth Cave National Park. Kentucky is responsible for developing a regional haze SIP that addresses this Class I area and for consulting with other states that impact the area.

The June 25, 2008, Kentucky regional haze SIP, as later amended on May 28, 2010, establishes RPGs for visibility improvement at Mammoth Cave National Park and a LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the LTS for the area, Kentucky considered both emission sources inside and outside of Kentucky that may cause or contribute to visibility impairment in Kentucky's Class I area. The Commonwealth also identified and considered emission sources within Kentucky that may cause or contribute to visibility impairment in Class I areas in neighboring states as

required by 40 CFR 51.308(d)(3). The VISTAS RPO worked with the Commonwealth in developing the technical analyses used to make these determinations, including state-by-state contributions to visibility impairment in specific Class I areas, which included the Class I area in Kentucky and those areas affected by emissions from Kentucky.

B. Determination of Baseline, Natural, and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, Kentucky calculated baseline/current and natural visibility conditions for its Class I area, as summarized below (and as further described in sections III.B.1 and III.B.2 of EPA's TSD to this **Federal Register** action).

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 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). As documented in EPA's 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to 2003 EPA guidance to estimate the values that characterize the natural visibility conditions of the 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.[7] 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. Kentucky opted to use this refined approach, referred to as the ''new IMPROVE equation,'' for its Class I area.

Natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by VISTAS. Natural background visibility, as defined in EPA's 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.

The new IMPROVE equation takes into account the most recent review of the science[8] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Conditions

KYDAQ estimated baseline visibility conditions at the Kentucky Class I area using available monitoring data from an IMPROVE monitoring site in Mammoth Cave National Park. As explained in section III.B, baseline visibility conditions are the same as current conditions for the first regional haze SIP. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days at the Kentucky Class I area. IMPROVE data records for Mammoth Cave National Park for the period 2000 to 2004 meet the EPA requirements for data completeness. See page 2–8 of EPA's 2003 Tracking Progress Guidance. Table 3.3–1 from Appendix G of the Kentucky regional haze SIP, also provided in section III.B.3 of EPA's TSD to this action, lists the 20 percent best and worst days for the baseline period of 2000–2004 for Mammoth Cave National Park. This data is also provided at the following Web site: *http://www.metro4-sesarm.org/vistas/SesarmBext_20BW.htm.*

3. Summary of Baseline and Natural Conditions

For the Kentucky Class I area, baseline visibility on the 20 percent worst days is approximately 31 deciviews. Natural visibility in the area is predicted to be approximately 11 deciviews on the 20 percent worst days. The natural and baseline conditions for Kentucky's Class I area for both the 20 percent worst and best days are presented in Table 1 below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR THE KENTUCKY CLASS I AREA

Class I area	Average for 20 percent worst days (dv[9])	Average for 20 percent best days (dv)
Natural Background Conditions:		
Mammoth Cave National Park	11.1	5.0
Baseline Visibility Conditions (2000–2004):		
Mammoth Cave National Park	31.4	16.5

[7] 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.

[8] The science behind the revised IMPROVE equation is summarized in Appendix B.2 of the Kentucky regional haze submittal 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 Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado. *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm;* and 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 *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

4. Uniform Rate of Progress

In setting the RPGs, Kentucky considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glidepath.

The Commonwealth's implementation plan presents two sets of graphs, one for the 20 percent best days, and one for the 20 percent worst days, for its Class I area. Kentucky constructed the graph for the worst days (i.e., the glidepath) in accordance with EPA's 2003 Tracking Progress Guidance 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 its area. For the best days, the graph includes a horizontal, straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. Kentucky's SIP shows that the Commonwealth's RPGs for its area provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best days over the same period, in accordance with 40 CFR 51.308(d)(1).

For the Kentucky Class I area, the overall visibility improvement necessary to reach natural conditions is the difference between baseline visibility of 31.37 deciviews for the 20 percent worst days and natural conditions of 11.08 deciviews, i.e., 20.29 deciviews. Over the 60-year period from 2004 to 2064, this would require an average improvement of 0.338 deciviews per year to reach natural conditions. Hence, for the 14-year period from 2004 to 2018, in order to achieve visibility improvements at least equivalent to the uniform rate of progress for the 20 percent worst days at Mammoth Cave National Park, Kentucky would need to project at least 4.73 deciviews over the first implementation period (i.e., 0.338 deciviews × 14 years = 4.732 deciviews) of visibility improvement from the 31.37 deciviews baseline in 2004, resulting in visibility levels at or below 26.64 deciviews in 2018. As discussed below in section V.C.7, Kentucky projects a 5.81 deciview improvement to visibility from the 31.37 deciview baseline to 25.56 deciviews in 2018 for the 20 percent most impaired days, and a 0.94 deciview improvement to 15.57 deciviews from the baseline visibility of 16.51 deciviews for the 20 percent least impaired days.

C. Long-Term Strategy/Strategies

As described in section III.E of this action, the LTS is a compilation of state-specific control measures relied on by the state for achieving its RPGs. Kentucky's LTS for the first implementation period addresses the emissions reductions from Federal, state, and local controls that take effect in the Commonwealth from the end of the baseline period starting in 2004 until 2018. The Kentucky LTS was developed by the Commonwealth, in coordination with the VISTAS RPO, through an evaluation of the following components: (1) Identification of the emissions units within Kentucky and in surrounding states that likely have the largest impacts currently on visibility at the Commonwealth's Class I area; (2) estimation of emissions reductions for 2018 based on all controls required or expected under Federal and state regulations for the 2004–2018 period (including BART); (3) comparison of projected visibility improvement with the uniform rate of progress for the Commonwealth's Class I area; and (4) application of the four statutory factors in the reasonable progress analysis for the identified emissions units to determine if additional reasonable controls were required.

CAIR is also an element of Kentucky's LTS. CAIR rule revisions were approved into the Kentucky SIP in 2007. *See* 72 FR 56623. Kentucky opted to rely on CAIR emission reduction requirements to satisfy the BART requirements for SO_2 and NO_X from EGUs. *See* 40 CFR 51.308(e)(4). Therefore, Kentucky only required its BART-eligible EGUs to evaluate PM emissions for determining whether they are subject to BART, and, if applicable, for performing a BART control assessment. See section III.D of this action for further details. Additionally, as discussed below in section V.C.5, Kentucky concluded that no additional controls beyond CAIR are reasonable for reasonable progress for its EGUs for this first implementation period. Prior to the remand of CAIR, EPA believed the Commonwealth's reliance on CAIR for specific BART and reasonable progress provisions affecting its EGUs was adequate, as detailed later in this action. As explained in section IV of this action, the Agency proposes today to issue a limited approval and a proposed limited disapproval of the Commonwealth's regional haze SIP revisions.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by VISTAS with assistance from Kentucky. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from Federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM, and SO_2. The BART Guidelines direct states to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in section V.C.3, VISTAS performed modeling sensitivity analyses, which demonstrated that anthropogenic emissions of VOC and NH_3 do not significantly impair visibility in the VISTAS region. Thus, while emissions inventories were also developed for NH_3 and VOC, and applicable Federal VOC reductions were incorporated into Kentucky's regional haze analyses, Kentucky did not further evaluate NH_3 and VOC emissions sources for potential controls under BART or reasonable progress.

VISTAS developed emissions for five inventory source classifications: stationary point and area sources, off-road and on-road mobile sources, and biogenic sources. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. VISTAS estimated emissions on a countywide level for the inventory categories of: (a) Stationary area sources; (b) off-road (or non-road) mobile sources (i.e., equipment that can move but does not use the roadways); and (c) biogenic sources (which are natural sources of emissions, such as trees). On-road mobile source emissions are estimated by vehicle type and road type, and are summed to the countywide level.

There are many Federal and state control programs being implemented that VISTAS and Kentucky anticipate will reduce emissions between the end of the baseline period and 2018. Emissions reductions from these control programs are projected to achieve

[9] The term, ''dv,'' is the abbreviation for ''deciview.''

substantial visibility improvement by 2018 in the Kentucky Class I area. The control programs relied upon by Kentucky include CAIR; EPA's NO_X SIP Call; North Carolina's Clean Smokestacks Act; Georgia multi-pollutant rule; consent decrees for Tampa Electric, Virginia Electric and Power Company, Gulf Power-Plant Crist, East Kentucky Power Cooperative (EKPC)—Cooper and Spurlock stations, and American Electric Power (AEP); NO_X and/or VOC reductions from the control rules in 1-hour ozone SIPs for Atlanta, Birmingham, and Northern Kentucky; North Carolina's NO_X Reasonably Available Control Technology; state rule for Philip Morris USA and Norandal USA in the Charlotte/Gastonia/Rock Hill 1997 8-hour ozone nonattainment area; Federal 2007 heavy duty diesel engine standards for on-road trucks and buses; Federal Tier 2 tailpipe controls for on-road vehicles; Federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules. Controls from various Federal Maximum Achievable Control Technology (MACT) rules were also utilized in the development of the 2018 emission inventory projections. These MACT rules include the industrial boiler/process heater MACT (referred to as ''Industrial Boiler MACT''), the combustion turbine and reciprocating internal combustion engines MACTs, and the VOC 2-, 4-, 7-, and 10-year MACT standards.

On June 8, 2007, and effective July 30, 2007, the DC Circuit mandated the vacatur and remand of the Industrial Boiler MACT Rule.[10] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator Definition Rule. Notwithstanding the vacatur of the Industrial Boiler MACT Rule, the VISTAS states, including Kentucky, decided to leave these controls in the modeling for their regional haze SIPs since it is believed that by 2018, EPA will have re-promulgated an industrial boiler MACT rule or the states will have addressed the issue through state-level case-by-case MACT reviews in accordance with section 112(j) of the CAA. EPA finds this approach acceptable for the following reasons. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010 (75 FR 32006), and issued a final rule on March 21, 2011 (76 FR 15608), giving Kentucky time to assure the required controls are in place prior to the end of the first implementation period in 2018. In the absence of an established MACT rule for boilers and process heaters, the statutory language in section 112(j) of the CAA specifies a schedule for the incorporation of enforceable MACT-equivalent limits into the title V operating permits of affected sources. Should circumstances warrant the need to implement section 112(j) of the CAA for industrial boilers, EPA would expect, in this case, that compliance with case-by-case MACT limits for industrial boilers would occur no later than January 2015, which is well before the 2018 RPGs for regional haze. In addition, the RHR requires that any resulting differences between emissions projections and actual emissions reductions that may occur will be addressed during the five-year review prior to the next 2018 regional haze SIP. The expected reductions due to the original, vacated Industrial Boiler MACT rule were relatively small compared to the Commonwealth's total SO_2, $PM_{2.5}$, and coarse particulate matter (PM_{10}) emissions in 2018 (i.e., 0.1 to 0.2 percent, depending on the pollutant, of the projected 2018 SO_2, $PM_{2.5}$, and PM_{10} inventory), and not likely to affect any of Kentucky's modeling conclusions. Thus, if there is a need to address discrepancies such that projected emissions reductions from the vacated Industrial Boiler MACT were greater than actual reductions achieved by the replacement MACT, EPA would not expect that this would affect the adequacy of the existing Kentucky regional haze SIP.

Below in Tables 2 and 3 are summaries of the 2002 baseline and 2018 estimated emission inventories for Kentucky.

TABLE 2—2002 EMISSIONS INVENTORY SUMMARY FOR KENTUCKY

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	46,315	240,362	14,219	21,421	995	529,182
Area	98,713	40,966	51,763	240,226	51,246	41,941
On-Road Mobile	103,503	156,417	2,697	3,723	5,055	6,308
Off-Road Mobile	44,805	104,571	6,046	6,425	31	14,043
Total	293,336	542,316	74,725	271,795	57,327	591,474

TABLE 3—2018 EMISSIONS INVENTORY SUMMARY FOR KENTUCKY

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	57,287	105,411	18,172	26,848	1,377	266,745
Area	106,827	45,806	53,955	262,719	55,321	44,322
On-Road Mobile	47,066	52,263	1,272	2,580	7,811	763
Off-Road Mobile	30,920	79,392	4,256	4,556	40	8,592
Total	242,100	282,872	77,655	296,703	64,549	320,422

[10] *See NRDC* v. *EPA,* 489 F.3d 1250 (DC Cir. 2007).

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

VISTAS performed modeling for the regional haze LTS for the 10 southeastern states, including Kentucky. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. VISTAS used the following modeling system:

- Meteorological Model: The Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model is a nonhydrostatic, prognostic, meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.
- Emissions Model: The Sparse Matrix Operator Kernel Emissions modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.
- Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, PM, visibility, and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ version 4.5. It was modified through VISTAS with a module for Secondary Organics Aerosols in an open and transparent manner that was also subjected to outside peer review.

CMAQ modeling of regional haze in the VISTAS region for 2002 and 2018 was carried out on a grid of 12x12 kilometer cells that covers the 10 VISTAS states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia) and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 kilometer grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. VISTAS conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The VISTAS states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone,* $PM_{2.5}$, and Regional Haze, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf,* (EPA–454/B–07–002), April 2007, and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html,* EPA–454/R–05–001, August 2005, updated November 2005 (''EPA's Modeling Guidance'').

VISTAS 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 modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. VISTAS used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once VISTAS determined the model performance to be acceptable, VISTAS used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the Commonwealth of Kentucky provided the appropriate supporting documentation for all required analyses used to determine the Commonwealth's LTS. The technical analyses and modeling used to develop the glidepath and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA accepts the VISTAS technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and simulated according to EPA Modeling Guidance. EPA agrees with the VISTAS model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the Kentucky LTS and regional haze SIP.

3. Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, source sectors, and geographic areas, VISTAS developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the VISTAS region, VISTAS' contribution assessment, based on IMPROVE monitoring data, demonstrated that ammonium sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the VISTAS and neighboring states. On the 20 percent worst visibility days in 2000–2004, ammonium sulfate accounted for 75 to 87 percent of the calculated light extinction at the inland Class I areas in VISTAS, and 69 to 74 percent of the calculated light extinction for all but one of the coastal Class I areas in the VISTAS states. In particular, for Mammoth Cave National Park, sulfate particles resulting from SO_2 emissions contribute roughly 82 percent to the calculated light extinction on the haziest days. In contrast, ammonium nitrate contributed less than five percent of the calculated light extinction at the VISTAS Class I areas on the 20 percent worst visibility days. Particulate organic matter (organic carbon) accounted for 20 percent or less of the light extinction on the 20 percent worst visibility days at the VISTAS Class I areas.

VISTAS grouped its 18 Class I areas into two types, either ''coastal'' or ''inland'' (sometimes referred to as ''mountain'') sites, based on common/similar characteristics (e.g., terrain, geography, meteorology), to better represent variations in model sensitivity and performance within the VISTAS region, and to describe the common factors influencing visibility conditions in the two types of Class I areas. Kentucky's Class I area is an ''inland'' area.

Results from VISTAS' emission sensitivity analyses indicate that sulfate particles resulting from SO_2 emissions are the dominant contributor to visibility impairment on the 20 percent worst days at all Class I areas in

VISTAS, including the Kentucky area. Kentucky concluded that reducing SO_2 emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits for the Kentucky Class I area. Because ammonium nitrate is a small contributor to $PM_{2.5}$ mass and visibility impairment on the 20 percent worst days at the inland Class I areas in VISTAS, which include Mammoth Cave National Park, the benefits of reducing NO_X and NH_3 emissions at these sites are small.

The VISTAS sensitivity analyses show that VOC emissions from biogenic sources such as vegetation also contribute to visibility impairment. However, control of these biogenic sources of VOC would be extremely difficult, if not impossible. The anthropogenic sources of VOC emissions are minor compared to the biogenic sources. Therefore, controlling anthropogenic sources of VOC emissions would have little if any visibility benefits at the Class I areas in the VISTAS region, including Kentucky. The sensitivity analyses also show that reducing primary carbon from point sources, ground level sources, or fires is projected to have small to no visibility benefit at the VISTAS Class I areas.

Kentucky considered the factors listed in under 40 CFR 51.308(d)(3)(v) and in section III.E of this action to develop its LTS as described below. Kentucky, in conjunction with VISTAS, demonstrated in its SIP that elemental carbon (a product of highway and non-road diesel engines, agricultural burning, prescribed fires, and wildfires), fine soils (a product of construction activities and activities that generate fugitive dust), and ammonia are relatively minor contributors to visibility impairment at the Class I area in Kentucky. Kentucky considered agricultural and forestry smoke management techniques to address visibility impacts from elemental carbon. KYDAQ has an open burning regulation (401 KAR 63:005) which addresses the issues laid out in the EPA's 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* available at: *http://www.epa.gov/ttncaaa1/t1/memoranda/firefnl.pdf.* With regard to fine soils, the Commonwealth considered those activities that generate fugitive dust, including construction activities. With regard to construction activities, KYDAQ has a fugitive emissions regulation (401 KAR 63:010) which addresses fugitive dust emissions. The Kentucky regulations, 401 KAR 63:005 and 401 KAR 63:010, are both approved regulations incorporated into the Kentucky SIP, and provide additional support to aid the Commonwealth with meeting its RPGs for this first implementation period. With regard to ammonia, the Commonwealth has chosen not to develop controls for ammonia emissions from Kentucky sources in this first implementation period because of its relatively minor contribution to visibility impairment. EPA concurs with the Commonwealth's technical demonstration showing that elemental carbon, fine soils, and ammonia are not significant contributors to visibility in the Commonwealth's Class I area, and therefore, finds that Kentucky has adequately satisfied 40 CFR 51.308(d)(3)(v). EPA's TSD to this **Federal Register** action and Kentucky's SIP provide more details on the Commonwealth's consideration of these factors for Kentucky's LTS.

The emissions sensitivity analyses conducted by VISTAS predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the VISTAS region, more than any other visibility-impairing pollutant. Specific to Kentucky, the VISTAS sensitivity analysis projects visibility benefits in Mammoth Cave National Park from SO_2 reductions from EGUs in nearby VISTAS states. Additional, smaller benefits are projected from SO_2 emissions reductions from non-utility industrial point sources. SO_2 emissions contributions to visibility impairment from other RPO regions are comparatively small in contrast to the VISTAS states' contributions, and, thus, controlling sources outside of the VISTAS region is predicted to provide less significant improvements in visibility in the Class I areas in VISTAS.

Taking the VISTAS sensitivity analyses results into consideration, Kentucky concluded that reducing SO_2 emissions from EGU and non-EGU point sources in certain VISTAS states, states in the Midwest Regional Planning Organization and Mid-Atlantic/Northeast Visibility Union (MANE–VU) regions, and outside the modeling domain would have the greatest visibility benefits for the Kentucky Class I area. The Commonwealth chose to focus solely on evaluating certain SO_2 sources contributing to visibility impairment to the Commonwealth's Class I area for additional emissions reductions for reasonable progress in this first implementation period (described in sections V.C.4 and V.C.5 of this notice). EPA agrees with the Commonwealth's analyses and conclusions used to determine the pollutants and source categories that most contribute to visibility impairment in the Class I area, and finds the Commonwealth's approach to focus on developing a LTS that includes largely additional measures for point sources of SO_2 emissions to be appropriate.

SO_2 sources for which it is demonstrated that no additional controls are reasonable in this current implementation period will not be exempted from future assessments for controls in subsequent implementation periods or, when appropriate, from the five-year periodic SIP reviews. In future implementation periods, additional controls on these SO_2 sources evaluated in the first implementation period may be determined to be reasonable, based on a reasonable progress control evaluation, for continued progress toward natural conditions for the 20 percent worst days and to avoid further degradation of the 20 percent best days. Similarly, in subsequent implementation periods, the Commonwealth may use different criteria for identifying sources for evaluation and may consider other pollutants as visibility conditions change over time.

4. Procedure for Identifying Sources To Evaluate for Reasonable Progress Controls in Kentucky and Surrounding Areas

As discussed in section V.C.3 of this action, through comprehensive evaluations by VISTAS and the Southern Appalachian Mountains Initiative (SAMI),[11] the VISTAS states concluded that sulfate particles resulting from SO_2 emissions account for the greatest portion of the regional haze affecting the Class I areas in VISTAS states, including those in Kentucky. Utility and non-utility boilers are the main sources of SO_2 emissions within the southeastern United States. VISTAS developed a methodology for Kentucky, which enables the Commonwealth to focus its reasonable progress analysis on those geographic regions and source categories that impact visibility at its Class I area. Recognizing that there was neither sufficient time nor adequate resources available to evaluate all emissions units

[11] Prior to VISTAS, the southern states cooperated in a voluntary regional partnership ''to identify and recommend reasonable measures to remedy existing and prevent future adverse effects from human-induced air pollution on the air quality related values of the Southern Appalachian Mountains.'' States cooperated with FLMs, the EPA, industry, environmental organizations, and academia to complete a technical assessment of the impacts of acid deposition, ozone, and fine particles on sensitive resources in the Southern Appalachians. The SAMI Final Report was delivered in August 2002.

within a given area of influence (AOI) around each Class I area that Kentucky's sources impact, the Commonwealth established a threshold to determine which emissions units would be evaluated for reasonable progress control. In applying this methodology, KYDAQ first calculated the fractional contribution to visibility impairment from all emissions units within the SO_2 AOI for its Class I area, and those surrounding areas in other states potentially impacted by emissions from emissions units in Kentucky. The Commonwealth then identified those emissions units with a contribution of one percent or more to the visibility impairment at that particular Class I area, and evaluated each of these units for control measures for reasonable progress, using the following four ''reasonable progress factors'' as required under 40 CFR 51.308(d)(1)(i)(A): (i) Cost of compliance; (ii) time necessary for compliance; (iii) energy and non-air quality environmental impacts of compliance; and (iv) remaining useful life of the emissions unit.

Kentucky's SO_2 AOI methodology captured greater than 50 percent of the total point source SO_2 contribution to visibility impairment in the Mammoth Cave Class I area, and required an evaluation of 19 emissions units (10 of which are located in Kentucky). Capturing a significantly greater percentage of the total contribution would involve an evaluation of many more emissions units that have substantially less impact. EPA believes the approach developed by VISTAS and implemented for the Class I area in Kentucky is a reasonable methodology to prioritize the most significant contributors to regional haze and to identify sources to assess for reasonable progress control in the Commonwealth's Class I area. The approach is consistent with EPA's Reasonable Progress Guidance. The technical approach of VISTAS and Kentucky was objective and based on several analyses, which included a large universe of emissions units within and surrounding the Commonwealth of Kentucky and all of the 18 VISTAS Class I areas. It also included an analysis of the VISTAS emissions units affecting nearby Class I areas surrounding the VISTAS states that are located in other RPOs' Class I areas.

5. Application of the Four CAA factors in the Reasonable Progress Analysis

KYDAQ identified 10 emissions units at five facilities in Kentucky (see Table 4) with SO_2 emissions that were above the Commonwealth's minimum threshold for reasonable progress evaluation because they were modeled to fall within the sulfate AOI of any Class I area and have a one percent or greater contribution to the sulfate visibility impairment to at least one Class I area.[12]

Nine of these 10 emissions units were already subject to CAIR. The reasonable progress analyses for these units are discussed in section V.C.5.B. KYDAQ determined that the only unit not subject to CAIR that falls within the sulfate AOI of any Class I area and contributes one percent or more to visibility impairment is located at Century Aluminum of KY LLC.

TABLE 4—KENTUCKY FACILITIES SUBJECT TO REASONABLE PROGRESS ANALYSIS

Facilities With a Unit Subject to Reasonable Progress Analysis
Century Aluminum of KY LLC, Potlines 1–4.
Facilities With Unit(s) Subject to CAIR Within AOI of Any Class I Area
Kentucky Utilities Co Green River Station Units 003, 004.
Louisville Gas & Electric, Mill Creek Units 02, 03, 04.
Tennessee Valley Authority (TVA) Paradise Steam Plant Units 001, 002, 003.
Western KY Energy Corp Wilson Station Unit 001.

A. Facilities With an Emissions Unit Subject to Reasonable Progress Analysis

KYDAQ analyzed whether SO_2 controls should be required for one unit at one facility, Century Aluminum, based on a consideration of the four factors set out in the CAA and EPA's regulations. For the limited purpose of evaluating the cost of compliance for the reasonable progress assessment in this first regional haze SIP for the non-EGUs, KYDAQ concluded that it was not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy. Using CAIR as a guide, KYDAQ used a cost of $2,000 per ton of SO_2 controlled or reduced as a threshold for cost effectiveness.

The Century Aluminum facility in Hawesville, Kentucky, has four potlines with 2002 base year emissions of 4,985 tons per year of SO_2 which were identified as having a significant contribution at the Mammoth Cave Class I area. VISTAS evaluated control options and costs for sources within the AOI for the Class I areas of concern. VISTAS used EPA's AirControlNet software to evaluate control options and costs for controls. The cost effectiveness of SO_2 control suggested by the VISTAS control cost spreadsheet for potlines 1–4 at Century Aluminum is $14,207 per ton of SO_2 removed. Since the cost of compliance for the control option is over seven times greater than the Commonwealth's cost-effectiveness threshold for reasonable progress, KYDAQ concludes that there are no cost-effective controls available for these Century Aluminum units at this time within the cost threshold established for this reasonable progress assessment for the first implementation period.

KYDAQ deemed the three remaining statutory factors (i.e., time necessary for compliance, energy and non-air quality environmental impacts of compliance, and remaining useful life of the emissions unit) as not applicable since there were no cost-effective controls to evaluate. KYDAQ concluded, based on its evaluation of the Century Aluminum facility, that no further controls are warranted at this time. After reviewing KYDAQ's methodology and analyses, EPA finds Kentucky's conclusion that no further controls are necessary at this time acceptable. EPA finds that Kentucky adequately evaluated the control technologies available at the time of its analysis and applicable to this type of facility and consistently applied its criteria for reasonable compliance costs. The Commonwealth also included appropriate documentation in its SIP of the technical analysis it used to assess the need for and implementation of reasonable progress controls. Although the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement, EPA believes that the Kentucky SIP still ensures reasonable progress. In proposing to approve Kentucky's reasonable progress analysis, EPA is placing great weight on the fact that there is no indication in the SIP submittal that Kentucky, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I area. EPA notes that given the emissions reductions resulting from CAIR, Kentucky's BART determinations, and the measures in nearby states, the visibility improvements projected for the affected Class I area are in excess of that needed to be on the uniform rate of progress glidepath.

[12] See also EPA's TSD, section III.C.2, fractional contribution analysis tables for each Class I area, excerpted from the Kentucky SIP, Appendix H.

B. Emissions Units Subject to CAIR Within AOI of Any Class I Area

Nine of the 10 emissions units identified for a reasonable progress control analysis are EGUs. These nine EGUs, located at four facilities, are: Kentucky Utilities Co. Green River Station, units 003 and 004; Louisville Gas & Electric, Mill Creek, units 02, 03, and 04; TVA Paradise Steam Plant, units 001, 002, 003; and Western KY Energy Corp, Wilson Station, unit 001.

To determine whether any additional controls beyond those required by CAIR would be considered reasonable for Kentucky's EGUs for this first implementation period, KYDAQ evaluated the SO_2 reductions expected from the EGU sector based upon results of the Integrated Planning Model (IPM) as applied by VISTAS to estimate the impacts region-wide of all the anticipated EGU controls, including CAIR. The EGUs located in Kentucky are expected to reduce their 2002 SO_2 emissions by approximately 54 percent by 2018.

To further evaluate whether CAIR requirements will satisfy reasonable progress for SO_2 for EGUs, KYDAQ considered the four reasonable progress factors set forth in EPA's RHR as they apply to the Commonwealth's entire EGU sector in sections 7.7 and 7.8 of the Kentucky SIP. The Commonwealth also reviewed CAIR requirements that include 2015 as the ''earliest reasonable deadline for compliance'' for EGUs installing retrofits. *See* 70 FR 25162, 25197–25198 (May 12, 2005). This is a particularly relevant consideration because CAIR addresses the reasonable progress factors of cost and time necessary for compliance. In the preamble to CAIR, EPA recognized there are a number of factors that influence compliance with the emission reduction requirements set forth in CAIR, which make the 2015 compliance date reasonable. For example, each EGU retrofit requires a large pool of specialized labor resources, which exist in limited quantities. Retrofitting an EGU can be a capital-intensive venture. Allowing retrofits to be installed over time enables the industry to learn from early installations. Lastly, EGU retrofits over time minimize disruption of the power grid by enabling industry to take advantage of planned outages.

Since EPA made the determination in CAIR that the earliest reasonable deadline for compliance for reducing emissions was 2015, KYDAQ concluded that the emissions reductions required by CAIR constitute reasonable measures for Kentucky EGUs during this first assessment period (between baseline and 2018) based on a consideration of the reasonable progress statutory factors and EPA's determination in CAIR that the earliest reasonable deadline for compliance with CAIR is 2015. This conclusion is bolstered by the fact that, as discussed in section V.C.7, visibility improvement at Mammoth Cave National Park is projected to exceed the uniform rate of progress in this first implementation period. KYDAQ stated in its SIP that the Commonwealth intends to re-evaluate the IPM predictions of SO_2 reductions for CAIR at the time of the next periodic report to ensure that the reductions predicted by IPM for CAIR are taking place where expected and needed. If KYDAQ's assessment for the periodic report indicates that its emissions are likely to exceed the 2018 projections, then the Commonwealth may re-evaluate the four factors to re-assess the LTS, as KYDAQ noted in its SIP.

Prior to the CAIR remand by the DC Circuit, EPA believed the Commonwealth's demonstration that no additional controls beyond CAIR are reasonable for SO_2 for affected Kentucky EGUs for the first implementation period to be acceptable. In this instance, EPA considered the visibility improvement at Class I areas in Kentucky and affected nearby states, the time necessary for compliance, the cost of compliance, and available reasonable controls, and EPA's belief that the CAIR requirements reflected the most cost-effective controls that can be achieved over the CAIR SO_2 compliance timeframe, which spans out to 2015 and overlaps most of the first regional haze implementation period. However, as explained in section IV of this action, the Commonwealth's demonstration regarding CAIR and reasonable progress for EGUs, and other provisions in this SIP revision, are based on CAIR and thus, the Agency proposes today to issue a limited approval and a limited disapproval of the Commonwealth's regional haze SIP revision.

6. BART

BART is an element of Kentucky's LTS for the first implementation period. The BART evaluation process consists of three components: (a) An identification of all the BART-eligible sources, (b) an assessment of whether the BART-eligible sources are subject to BART, and (c) a determination of the BART controls. These components, as addressed by KYDAQ and KYDAQ's findings, are discussed as follows.

A. BART-Eligible Sources

The first phase of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. KYDAQ identified the BART-eligible sources in Kentucky by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and EPA's regulations (40 CFR 51.301): (1) One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emissions units were not in operation prior to August 7, 1962, and were in existence on August 7, 1977; and (3) these units have the potential to emit 250 tons or more per year of any visibility-impairing pollutant.

The BART Guidelines also direct states to address SO_2, NO_X and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairment pollutants, and to exercise judgment in determining whether VOC or ammonia emissions from a source impair visibility in an area. 70 FR 39160. VISTAS modeling demonstrated that VOC from anthropogenic sources and ammonia from point sources are not significant visibility-impairing pollutants in Kentucky, as discussed in section V.C.3 of this action. KYDAQ has determined, based on the VISTAS modeling, that ammonia emissions from the Commonwealth's point sources are not anticipated to cause or contribute significantly to any impairment of visibility in Class I areas and should be exempt for BART purposes.

B. BART-Subject Sources

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to 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. Consistent with the BART Guidelines, Kentucky required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

1. Modeling Methodology

The BART Guidelines allow states to use the CALPUFF [13] modeling system

[13] 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

Continued

(CALPUFF) or another appropriate model to predict the visibility impacts from a single source on a Class I area, and therefore, to 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 Guidelines state that EPA believes that CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162). Kentucky, in coordination with VISTAS, used the CALPUFF modeling system to determine whether individual sources in Kentucky were subject to or exempt from BART.

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 EPA and their RPO to address any issues prior to modeling. The VISTAS states, including Kentucky, developed a ''Protocol for the Application of CALPUFF for BART Analyses.'' Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the VISTAS protocol.

VISTAS developed a post-processing approach to use the new IMPROVE equation with the CALPUFF model results so that the BART analyses could consider both the old and new IMPROVE equations. KYDAQ sent a letter to EPA justifying the need for this post-processing approach, and the EPA Region 4 Regional Administrator sent the Commonwealth a letter of approval dated January 17, 2008. Kentucky's justification included a method to process the CALPUFF output and a rationale on the benefits of using the new IMPROVE equation. The Commonwealth and Region 4 letters are located in Appendix L.9 of the June 25, 2008, Kentucky regional haze SIP submittal and can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2009–0783.

2. 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.'' 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.'' 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 of a Class I area justifies this approach.

Kentucky used a contribution threshold of 0.5 deciview for determining which sources are subject to BART. Kentucky concluded that, considering the results of the visibility impacts modeling conducted, a 0.5 deciview threshold was appropriate and a lower threshold was not warranted since the majority of the visibility impacts were well below 0.5 deciview and the sources are distributed across the Commonwealth. Also, even though several sources impacted each Class I area, the overall visibility impacts were low from the sources. As stated in the BART Guidelines, where a state concludes that a large number of these BART-eligible sources within proximity of a Class I area justify a lower threshold, it may warrant establishing a lower contribution threshold. *See* 70 FR 39161–39162 (July 6, 2005). EPA is proposing to agree with Kentucky that the overall impacts of these sources are not sufficient to warrant a lower contribution threshold and that a 0.5 deciview threshold was appropriate in this instance.

3. Identification of Sources Subject to BART

Kentucky initially identified 31 facilities with BART-eligible sources. The Commonwealth subsequently determined that five of these sources are exempt from being considered BART-eligible. Arkema requested and KYDAQ established an enforceable permit emission limit (title V permit number V 04–044, (R–02) as revised January 11, 2007), to limit its potential to emit to lower than 250 tons per year of any pollutant and thus, the source no longer meets the BART eligibility criteria. E.I. Dupont Inc, Cc Metals & Alloys Inc., and ISP Chemicals Inc., submitted information, which KYDAQ corroborated, documenting that the facilities did not meet the BART eligibility criteria discussed in section V.C.6.A. Kingsford Manufacturing Co. provided documentation that the unit that was BART-eligible had been reconstructed in 2002 (consistent with EPA's definition of ''reconstruction'' in 40 CFR 51.301) and was subject to a Best Available Control Technology Analysis at that time. (EPA's BART Guidelines address reconstructed sources in the context of BART eligibility on pages 70 FR 39159–39160.) Table 5 identifies the remaining 26 BART-eligible sources located in Kentucky, and of these, lists the five sources subject to BART.

TABLE 5—KENTUCKY BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES

Facilities With Unit(s) Subject to BART Analysis
AEP Big Sandy Plant.
E.ON U.S Mill Creek Station.
EKPC Cooper Station.
EKPC Spurlock Station.
TVA Paradise Plant.
Facilities With Unit(s) Found Not Subject to BART
EGU CAIR and BART Modeling (PM only)
Exempt Sources:[14]
Duke Energy East Bend Station.
E.ON U.S. Brown Station.
E.ON U.S. Cane Run Station.
E.ON U.S. Ghent Station.
Henderson Power and Light.
Owensboro Municipal Utilities.
Western Kentucky Energy Coleman Station.
Western Kentucky Energy Green Station.
Western Kentucky Energy Reid/Henderson Station.
Non-EGU BART Modeling.
AK Steel Corporation—Coke Manufacturing Plant.
AK Steel Corporation—Steel Plant.
Alcan Primary Products Corporation.
Arch Chemicals Inc.
Calgon Carbon Corporation.
Century Aluminum.
Commonwealth Aluminum Lewisport LLC.
Marathon Petroleum Company Refinery.
Martin County Coal Corporation.
NewPage Corporation Wickliffe Paper Company.
Pinnacle Processing Inc.
Westlake Vinyls Inc.

All 12 of the non-EGU sources demonstrated that they are exempt from being subject to BART by modeling less

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 on the following Web site: *http://www.src.com/verio/download/download.htm.*

[14] EGUs were only evaluated for PM emissions. The Commonwealth relied on CAIR to satisfy BART for SO_2 and NO_X for its EGUs subject to CAIR, in accordance with 40 CFR 51.308(e)(4). Thus, SO_2 and NO_X were not analyzed.

than a 0.5 deciview visibility impact at the affected Class I areas. This modeling involved assessing the visibility impact of emissions of NO_X, SO_2, and PM_{10} as applicable to individual facilities.

The 14 BART-eligible EGUs relied on Kentucky's decision to rely upon CAIR emission limits for SO_2 and NO_X to satisfy their obligation to comply with BART requirements in accordance with 40 CFR 51.308(e)(4). Therefore, EGU sources only modeled PM_{10} emissions. Nine of the 14 EGUs demonstrated that their PM_{10} emissions do not contribute to visibility impairment in any Class I area. Modeling for five of the 14 EGUs demonstrated that their PM_{10} emissions exceeded the 0.5 deciview contribution threshold and thus, required a BART analysis. The five sources found subject to BART are EGUs that are subject to BART because of the modeled impacts on visibility of their inorganic condensable particulate emissions (i.e., sulfite (SO_3)/sulfuric acid (H_2SO_4)). These BART-subject sources were required to complete BART determination modeling, which included an analysis of the five CAA BART factors, to determine appropriate BART controls for PM.

Prior to the CAIR remand, the Commonwealth's reliance on CAIR to satisfy BART for NO_X and SO_2 for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). However, as explained in section IV of this action, the BART assessments for CAIR EGUs for NO_X and SO_2 and other provisions in the regional haze SIP revision are based on CAIR, and thus, the Agency proposes today to issue a limited approval and a limited disapproval of the Commonwealth's regional haze SIP revision.

C. BART Determinations

Five BART-eligible EGU sources (i.e., AEP Big Sandy Plant, E.ON U.S Mill Creek Station, EKPC Cooper Station, EKPC Spurlock Station, and TVA Paradise Plant) had modeled visibility impacts of more than the 0.5 deciview threshold for BART exemption. These five facilities are therefore considered to be subject to BART. Consequently, they each submitted permit applications to the Commonwealth that included their proposed BART determinations.

In accordance with the BART Guidelines, to determine the level of control that represents BART for each source, the Commonwealth first reviewed existing controls on these units to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. The Commonwealth's evaluations and conclusions, and EPA's assessment, are summarized below.

1. AEP Big Sandy Plant

AEP Big Sandy plant is a coal-fired power station located near Louisa, Kentucky, with two EGUs, units 1 and 2, with nominal generating capacities of 281 and 816 MW, respectively. KYDAQ determined that units 1 and 2 and an auxiliary boiler are BART-eligible sources. Subsequently, the auxiliary boiler at the Big Sandy Plant was removed from the analysis since it is only operated for short periods of time during startup operations and for periodic mandated emissions tests that cannot be coordinated with startup operations, as confirmed in AEP's BART submittal to Kentucky. AEP performed a full analysis of BART for particulates, with its primary focus on the condensable fraction due to the minimal impact from the primary particulates since both units are currently equipped with electrostatic precipitators (ESPs) for primary particulate control.

AEP evaluated five combinations of condensable particulate control options for the two units. For unit 1, AEP only considered injecting ammonia or injecting trona, a mineral composed primarily of sodium and carbonate, for the reduction of inorganic condensables. For unit 2, AEP considered injecting ammonia, injecting trona, or installing a wet flue gas desulfurization (FGD) system. AEP determined that unit 1 was not a viable candidate for installation of a wet FGD system due to its age. This unit will be 50 years old in 2013. While a specific retirement date has not yet been established for this unit, the likelihood of this unit continuing operations in its present form for 15 to 20 years is low.[15] Unit 2 is currently expected to run until at least the 2033–2035 timeframe, so retrofit controls are considered a viable option for this unit. In addition, AEP determined that the options involving injecting trona on either unit at the Big Sandy Plant were technically infeasible. Based on the experience of AEP at units where sorbents are injected for the reduction of inorganic condensables, the presently installed ESPs at both Big Sandy units are unsuitable for trona injection.

For AEP Big Sandy Plant units 1 and 2, the company agreed to install ammonia injection controls on unit 1 and a FGD on unit 2. KYDAQ reviewed the source's BART modeling determination, the available data, and considering the statutory factors, KYDAQ has determined that the controls proposed by AEP are reasonable and appropriate for addressing condensable particulates and their impacts on nearby Class I areas.

2. E.ON U.S. Mill Creek Station

E.ON U.S. Mill Creek Station consists of four pulverized coal-fired boilers, combusting high sulfur bituminous coal. The source evaluated installing a pulse jet fabric filter (PJFF) to increase primary particulate control and sorbent injection and a wet ESP to improve SO_3/H_2SO_4 control. The existing cold-side ESPs at all four units at the Mill Creek Station are already demonstrating high removal efficiencies of 99 percent and all four units are already equipped with wet FGD systems for SO_2 removal, limiting the additional available options for SO_3 condensable particulate control. The incremental cost effectiveness of PJFF and a wet ESP ranged from $20,380 to $52,190 per ton of PM reduced and these options were not considered further. Sorbent injection was more cost effective, ranging from $4,293 to $5,017 per ton of PM reduced. As indicated in the September 24, 2007, E.ON U.S. Mill Creek proposed BART determination submittal to KYDAQ, the average cost effectiveness for installing sorbent controls on all four Mill Creek units is about the same as that for only units 3 and 4 (an estimated $5.1 million per deciview). However, sorbent injection at all four units would require an additional total capital investment of $8.8 million above the $10.5 million total capital investment for controls only on the larger units 3 and 4, and the BART modeling demonstrated that controlling units 3 and 4 alone can achieve an estimated 70 percent of the total deciview improvement that would result from controlling all four units (0.85 deciview for controlling units 3 and 4 compared to 1.18 deciviews from controlling all four units). After completing the BART analysis for PM, E.ON U.S. therefore recommended sorbent injection for the reduction of SO_3 emissions in the flue gas for units 3 and 4. The control scenario also included continued utilization of the existing ESPs to control PM emissions. Given the extra cost for the lesser additional deciview improvement for units 1 and 2 (approximately $8.8 million for an additional 0.3 deciview improvement), KYDAQ agreed that BART for PM for the Mill Creek Station is the installation of sorbent injection controls on the larger units 3 and 4.

[15] On June 9, 2011, AEP announced that Big Sandy unit 1 would be retired by December 31, 2014, and rebuilt as a natural gas-fired plant by December 31, 2015.

In its May 28, 2010, amendment to its June 25, 2008, regional haze SIP submittal, Kentucky modified the emission limits for E.ON U.S. Mill Creek units 3 and 4. This change modifies the SIP and the BART title V permit emission limits to 64.3 pounds per hour (lb/hr) and 76.5 lb/hr, respectively, for H_2SO_4 in place of a 0.015 lb/million British Thermal Units per hour (MMBtu/hr) limit. This change was made for the E.ON U.S. Mill Creek facility because the company clarified that the 0.015 lb/MMBtu limits in its September 24, 2007, submittal to KYDAQ were converted to lb/MMBtu values in the submittal for illustrative purposes only and were not intended to be included in the SIP. The lb/hr values were the primary model input values utilized in the CALPUFF modeling and thus, Kentucky agreed that these values are appropriate for incorporation into Mill Creek Station's title V permit.

3. EKPC Cooper Station and Spurlock Station

EKPC operates two pulverized coal-fired EGUs at Cooper Station with maximum rated heat inputs of 1,080 and 2,089 MMBtu/hr and two pulverized coal-fired EGUs at Spurlock Station with maximum rated heat inputs of 3,500 and 4,850 MMBtu/hr. EKPC evaluated fabric filtration and an ESP with and without FGD for PM. Since the company agreed to install the most stringent option at both facilities, it did not further develop the BART five-factor control analysis. Per a consent decree and for BART, EKPC agreed to install a wet FGD and a wet ESP at EKPC Spurlock units 1 and 2 and also at Cooper units 1 and 2 that will address condensable particulate emissions and other visibility-impairing pollutants. A July 2, 2007, EKPC consent decree provides a filterable PM emission rate of 0.030 lb/MMBtu, which was utilized to demonstrate modeled visibility improvement.

In the May 28, 2010, amendment to its June 25, 2008, regional haze SIP submittal, Kentucky modified the requirements for Cooper Station units 1 and 2 in response to a March 18, 2009, request from EKPC. EKPC submitted revised BART determination modeling that substituted dry FGD and PJFF emission controls for the wet FGD and wet ESP controls. EKPC determined that the use of a dry FGD system combined with a PJFF for Cooper units 1 and 2 meets or exceeds the performance of the wet FGD/wet ESP system previously proposed as BART. The anticipated total PM emission control achieved by the dry FGD/PJFF control train is higher than the previously approved wet FGD/wet ESP, and the predicted PM visibility impacts are comparable. Accordingly, EKPC submitted a revised BART analysis in support of its request that KYDAQ amend the regional haze SIP to allow for the substitution of the dry FGD/PJFF control train in place of the wet FGD/wet ESP. KYDAQ concurred with EKPC's request. There is no change in the BART emission limits for EKPC.

4. TVA Paradise Plant

The TVA Paradise Fossil Plant, located in Muhlenberg County, Kentucky, has three cyclone steam generators burning pulverized coal that are considered subject to BART. Units 1 and 2 are nominally rated at approximately 704 MW each, and unit 3 is nominally rated at approximately 1,150 MW. Units 1 and 2 use wet venturi scrubbers to control PM emissions, and unit 3 uses an ESP.

Because all three units at TVA Paradise are subject to CAIR, the BART analysis only considers PM_{10} emissions. The modeling analysis also demonstrates that approximately 90 percent of the visibility impacts at the affected Class I areas can be attributed to condensable PM_{10} emissions (i.e., SO_3/H_2SO_4). Thus, the engineering evaluation for TVA Paradise focused on control of SO_3/H_2SO_4 emissions. The total capital investment for a wet ESP ranges from about $100 million for unit 1 or 2 to almost $156 million for unit 3. Total annual costs range from about $29 million to $44 million per year. The corresponding total cost effectiveness ranges from $27,594 to $39,263 per ton of SO_3/H_2SO_4. TVA determined that a wet ESP is economically infeasible for TVA Paradise and should, therefore, be eliminated from consideration as a basis for BART. The total capital investment for hydrated lime injection ranges from $4.2 million for unit 1 or 2 to $8.4 million for unit 3. Total annual costs range from about $2.3 million to $4.4 million per year. The corresponding cost effectiveness ranges from $3,265 to $6,776 per ton of SO_3/H_2SO_4. Although considerably less expensive than a wet ESP, TVA considered the cost effectiveness values for lime injection as still too high to be considered as an acceptable cost of compliance for BART. However, TVA plans to install lime injection on all three units at TVA Paradise to mitigate stack opacity. These controls are already required to be in place.[16]

Since TVA had previously indicated to KYDAQ its plans to install hydrated lime injection controls on TVA Paradise units 1–3 to mitigate opacity due to SO_3 emissions and that additional controls are not cost-effective at this time, KYDAQ has determined BART to be no additional control for TVA Paradise units 1–3 since the hydrated lime injection controls for TVA Paradise units 1–3 are already required as a Federally enforceable provision of the SIP, will achieve the reduction in visibility impacts listed in the Kentucky regional haze SIP, and are now included in TVA Paradise's title V permit. Specifically, the schedule for the installation of hydrated lime injection controls for TVA Paradise units 1–3 required construction to begin in mid-2009 on unit 3 with construction for unit 1 and 2 to follow; and for controls to be operating on all three TVA Paradise units possibly by the fall of 2010. For these reasons, KYDAQ chose to concur with the TVA Paradise plant BART assessment and concluded that BART is no additional control.

5. EPA Assessment

EPA agrees with Kentucky's analyses and conclusions for these five BART-subject EGU sources described above: AEP Big Sandy Plant, E.ON U.S Mill Creek Station, EKPC Cooper Station, EKPC Spurlock Station, and TVA Paradise Plant. EPA has reviewed the Commonwealth's analyses and concluded they were conducted in a manner that is consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* (*http://www.epa.gov/ttncatc1/products.html#cccinfo*). With regard to AEP's decision not to evaluate installation of a wet FGD on unit 1 because of its age, EPA would generally not rely on an assertion that the unit would shut down without a legally enforceable condition requiring shutdown of the unit at issue. Also, as the unit has now established a firm date for closure and a decision has been made to repower the unit to burn natural gas, requiring additional analysis would not likely change the conclusions of the BART analysis. Therefore, the conclusions reflect a reasonable application of EPA's guidance to these sources.

Prior to the CAIR remand, EPA believed the Commonwealth's demonstration that CAIR satisfies BART for SO_2 and NO_X for affected EGUs for the first implementation period to be approvable and in accordance with 40

[16] On December 15, 2009, KYDAQ issued permit #V–07–01 8 R 1 pursuant to Kentucky's Administrative Regulations (KAR) at 401 KAR 52:020 (title V regulations). The December 15, 2009, permit incorporated the requirement for the installation of pollution controls for the reduction of sulfuric acid mist at the TVA Paradise Fossil Fuel Plant.

CFR 51.308(e)(4). However, as explained in section IV of this action, the Commonwealth's demonstration regarding CAIR and BART for EGUs, and other provisions in its regional haze SIP revision, are based on CAIR and thus, the Agency proposes today to issue a limited approval and a limited disapproval of the Commonwealth's regional haze SIP revision.

6. Enforceability of Limits

The BART determinations for each of the facilities discussed above and the resulting emission limits are adopted by Kentucky into the Commonwealth's regional haze SIP submittal, in consent decrees, and will be included in the facilities' title V permits as follows:

AEP Big Sandy unit 1 and unit 2 will install ammonia injection controls on unit 1 and a FGD on unit 2. Inorganic condensable particulate emission limits (modeled as sulfates) will be limited to 101.0 lb/hr H_2SO_4 and 127.0 lb/hr H_2SO_4. Emission limits and controls will be included in the source's title V permit as appropriate or on renewal. Compliance is to be as expeditiously as practicable, but no later than five years after EPA approves Kentucky's regional haze SIP.

E.ON U.S. Mill Creek will install sorbent injection controls on unit 3 and unit 4 to control SO_3 emissions and will continue to utilize existing ESPs to control PM emissions for units 1 through 4. Inorganic condensable particulate emission limits (modeled as sulfates) are 64.3 lb/hr H_2SO_4 and 76.5 lb/hr H_2SO_4. Emission limits and controls will be included in the source's title V permit as appropriate or on renewal. Compliance shall be as expeditiously as practicable, but no later than five years after EPA approves Kentucky's regional haze SIP.

EKPC will install wet FGD and wet ESP on Spurlock units 1 and 2 and a dry FGD and fabric filtration on Cooper units 1 and 2. A July 2, 2007, EKPC consent decree provides for a filterable PM emission rate of 0.030 lb/MMBtu, which was utilized to demonstrate modeled visibility improvement. Emission limits and controls will be included in the source's title V permit as appropriate or on renewal. Compliance will be as expeditiously as practicable, but no later than five years after EPA approves Kentucky's regional haze SIP.

Although not for BART, TVA previously indicated to KYDAQ its plans to install hydrated lime injection controls on TVA Paradise units 1–3 to mitigate opacity due to SO_3 emissions. TVA has incorporated the requirement for SO_3 controls for Paradise Units 1–3 in its title V permit #V–07–01 8 R 1 issued December 15, 2009. In its proposed BART determination submittal to Kentucky, TVA noted its expectation to have hydrated lime injection controls operating on all three TVA Paradise units by the fall of 2010.

7. RPGs

The RHR at 40 CFR 51.308(d)(1) requires states to establish RPGs for each Class I area within the state (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility. VISTAS modeled visibility improvements under existing Federal and state regulations for the period 2004–2018, and additional control measures which the VISTAS states planned to implement in the first implementation period. At the time of VISTAS modeling, some of the other states with sources potentially impacting visibility at the Kentucky Class I area had not yet made final control determinations for BART and/or reasonable progress, and thus, these controls were not included in the modeling submitted by Kentucky. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, which give further assurances that Kentucky will achieve its RPGs. This modeling demonstrates that the 2018 base control scenario provides for an improvement in visibility better than the uniform rate of progress for the Kentucky Class I area for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

As shown in Table 6 below, Kentucky's 2018 RPG for the 20 percent worst days provides greater visibility improvement by 2018 than the uniform rate of progress for the Commonwealth's Class I area (i.e., 26.64 deciviews in 2018). Also, the RPG for the 20 percent best days provides greater visibility improvement by 2018 than current best day conditions. The modeling supporting the analysis of these RPGs is consistent with EPA guidance prior to the CAIR remand. The regional haze provisions specify that a state may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. 40 CFR 51.308(d)(1)(vi). Therefore, the CAIR states with Class I areas, like Kentucky, took into account emissions reductions anticipated from CAIR in determining their 2018 RPGs.[17]

TABLE 6—KENTUCKY 2018 RPGS

[In deciviews]

Class I area	Baseline visibility—20% worst days	2018 RPG—20% worst days (improvement from baseline)	Uniform rate of progress at 2018—20% worst days (improvement from baseline)	Baseline visibility—20% best days	2018 RPG—20% best days (improvement from baseline)
Mammoth Cave National Park	31.37	25.56 (5.81)	26.64 (4.73)	16.51	15.57 (0.94)

The RPGs for the Class I area in Kentucky are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. These projections can be expected to change as additional information regarding future conditions becomes available. For example, new sources may be built, existing sources may shut down or modify production in response to changed economic circumstances,

[17] Many of the CAIR states without Class I areas similarly relied on CAIR emission reductions within the state to address some or all of their contribution to visibility impairment in other states' Class I areas, which the impacted Class I area state(s) used to set the RPGs for their Class I area(s). Certain surrounding non-CAIR states also relied on reductions due to CAIR in nearby states to develop their regional haze SIP submittals.

and facilities may change their emission characteristics as they install control equipment to comply with new rules. It would be both impractical and resource-intensive to require a state to continually revise its RPGs every time an event affecting these future projections changed.

EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions, and addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a mandatory standard which must be achieved by a particular date. *See* 64 FR at 35733. At the same time, EPA established a requirement for a midcourse review and, if necessary, correction of the states' regional haze plans. *See* 40 CFR 52.308(g). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emission management strategies in meeting the RPG and to provide an assessment of whether current implementation strategies are sufficient for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. *See* 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the state's conclusion that the current strategies are insufficient to meet the RPGs. Kentucky specifically committed to follow this process in the LTS portion of its submittal.

EPA anticipates that the Transport Rule will result in similar or better improvements in visibility than predicted from CAIR. EPA has not yet assessed how the Transport Rule will affect any individual Class I area and has not modeled future conditions based on its implementation. By the time Kentucky is required to undertake its five-year progress review, however, it is likely that the impact of the Transport Rule and other measures on visibility can be meaningfully assessed. If, in particular Class I areas, the Transport Rule does not provide similar or greater benefits than CAIR and meeting the RPGs at its Class I Federal area is in jeopardy, the Commonwealth will be required to address this circumstance in its five-year review. Accordingly, EPA proposes to approve Kentucky's RPGs for the Mammoth Cave National Park.

D. Coordination of RAVI and Regional Haze Requirements

EPA's visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in sections III.F and III.G of this action. Under EPA's RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. 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 Kentucky. In addition, the Class I area in Kentucky is neither experiencing RAVI, nor are any of its sources affected by the RAVI provisions. Thus, the June 25, 2008, Kentucky regional haze SIP submittal does not explicitly address the two requirements regarding coordination of the regional haze with the RAVI LTS and monitoring provisions. However, Kentucky previously made a commitment to address RAVI should the FLM certify visibility impairment from an individual source.[18] EPA finds that this regional haze submittal appropriately supplements and augments Kentucky's RAVI visibility provisions to address regional haze by updating the monitoring and LTS provisions as summarized below in this section.

In the June 25, 2008, submittal, KYDAQ updated its visibility monitoring program and developed a LTS to address regional haze. Also in this submittal, KYDAQ affirmed its commitment to complete items required in the future under EPA's RHR. Specifically, KYDAQ made a commitment to review and revise its regional haze implementation plan and submit a plan revision to EPA by July 31, 2018, and every 10 years thereafter. *See* 40 CFR 51.308(f). In accordance with the requirements listed in 40 CFR 51.308(g) of EPA's regional haze regulations and 40 CFR 51.306(c) of the RAVI LTS regulations, KYDAQ made a commitment to submit a report to EPA on progress towards the RPGs for each mandatory Class I area located within Kentucky and in each mandatory Class I area located outside Kentucky which may be affected by emissions from within Kentucky. The progress report is required to be in the form of a SIP revision and is due every five years following the initial submittal of the regional haze SIP. Consistent with EPA's monitoring regulations for RAVI and regional haze, Kentucky will rely on the IMPROVE network for compliance purposes, in addition to any RAVI monitoring that may be needed in the future. *See* 40 CFR 51.305, 40 CFR 51.308(d)(4). Also, the Kentucky new source review (NSR) rules, previously approved in the Commonwealth's SIP, continue to provide a framework for review and coordination with the FLMs on new sources which may have an adverse impact on visibility in either form (i.e., RAVI and/or regional haze) in any Class I Federal area. The Kentucky SIP contains a plan addressing the associated monitoring and reporting requirements. *See* 53 FR 26256 (July 12, 1988). Although EPA's approval of this plan neglected to remove the Federally promulgated provisions set forth in 40 CFR 52.936, EPA intends to correct this omission in a separate future rulemaking.

E. Monitoring Strategy and Other Implementation Plan Requirements

The primary monitoring network for regional haze in Kentucky is the IMPROVE network. As discussed in section V.B.2 of this action, there is currently one IMPROVE site in Kentucky, which serves as the monitoring site for Mammoth Cave National Park in Kentucky.

IMPROVE monitoring data from 2000–2004 serves as the baseline for the regional haze program, and is relied upon in the Kentucky regional haze submittal. In the submittal, Kentucky states its intention to rely on the IMPROVE network for complying with the regional haze monitoring requirement in EPA's RHR for the current and future regional haze implementation periods.

Data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the five-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data. The Visibility Information Exchange Web System (VIEWS) Web site has been maintained by VISTAS and the other RPOs to provide ready access to the IMPROVE data and data analysis tools. Kentucky is encouraging VISTAS and the other RPOs to maintain the VIEWS or a similar data

[18] The Kentucky visibility SIP revisions to address Prevention of Significant Deterioration (PSD) provisions were submitted to EPA on February 20, 1986, and approved by EPA September 1, 1989 (54 FR 36311). The Commonwealth's visibility plan provisions were submitted on August 31, 1987, and approved July 12, 1988 (53 FR 26256). The nonattainment NSR provisions were submitted July 14, 2004, and approved July 11, 2006 (71 FR 38990).

management system to facilitate analysis of the IMPROVE data.

In addition to the IMPROVE measurements, the FLMs perform long-term limited monitoring that provides additional insight into progress toward regional haze goals. Such measurements include web cameras operated by the National Park Service at Mammoth Cave National Park. Also, Kentucky and the local air agencies in the Commonwealth operate a comprehensive $PM_{2.5}$ network of filter-based Federal reference method monitors, continuous mass monitors, and filter-based speciated monitors.

F. Consultation With States and FLMs

1. Consultation With Other States

In December 2006 and in May 2007, the State Air Directors from the VISTAS states held formal interstate consultation meetings. The purpose of the meetings was to discuss the methodology proposed by VISTAS for identifying sources to evaluate for reasonable progress. The states invited FLM and EPA representatives to participate and to provide additional feedback. The Directors discussed the results of analyses showing contributions to visibility impairment from states to each of the Class I areas in the VISTAS region.

KYDAQ has evaluated the impact of sources on Class I areas in neighboring states. The state in which a Class I area is located is responsible for determining which sources, both inside and outside of that state, to evaluate for reasonable progress controls. Because many of these states had not yet defined their criteria for identifying sources to evaluate for reasonable progress, KYDAQ applied its AOI methodology to identify sources in the Commonwealth that have emissions units with impacts large enough to potentially warrant further evaluation and analysis. The Commonwealth identified no emissions units in Kentucky with a contribution of one percent or more to the visibility impairment at Class I areas in neighboring states. Additionally, KYDAQ sent letters to the other states in the VISTAS region documenting its analysis using the Commonwealth's AOI methodology that no SO_2 emissions units in Kentucky contribute at least one percent to the visibility impairment at the Class I areas in those states. The documentation for these formal consultations is provided in Appendix J of Kentucky's SIP.

Regarding the impact of sources outside of the Commonwealth on the Class I area in Kentucky, KYDAQ sent letters to Indiana and Tennessee pertaining to emissions units within these states that the Commonwealth believes contributed one percent or higher to visibility impairment in the Kentucky Class I area. Kentucky identified six EGUs in Indiana and two EGUs in Tennessee as meeting its SO_2 AOI contribution threshold. Because the eight EGUs in these states are subject to CAIR, and Mammoth Cave National Park is projected to exceed the uniform rate of progress during the first implementation period, KYDAQ opted not to request any additional emissions reductions for reasonable progress for this implementation period. Additionally, at that time, these neighboring states were still in the process of evaluating BART and reasonable progress for their sources. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, which gives further assurances that Kentucky will achieve its RPGs. Therefore, to be conservative, Kentucky opted not to rely on any additional emissions reductions from sources located outside the Commonwealth's boundaries beyond those already identified in Kentucky's regional haze SIP submittal and as discussed in section V.C.1 (Federal and state controls in place by 2018) of this action.

Kentucky received letters from the MANE–VU RPO States of Maine, New Jersey, New Hampshire, and Vermont in the spring of 2007, stating that based on MANE–VU's analysis of 2002 emissions data, Kentucky contributed to visibility impairment to Class I areas in those states. The MANE–VU states identified 14 EGU stacks in Kentucky that they would like to see controlled to 90 percent efficiency for SO_2. They also requested a control strategy to provide a 28 percent reduction in SO_2 emissions from sources other than EGUs that would be equivalent to MANE–VU's proposed low sulfur fuel oil strategy. Of the 14 Kentucky EGUs identified by MANE–VU, 93 percent of those sources have existing SO_2 controls or will have SO_2 controls by 2015 or sooner. KYDAQ believes that these emissions reductions satisfy MANE–VU's request.

EPA finds that Kentucky has adequately addressed the consultation requirements in the RHR and appropriately documented its consultation with other states in its SIP submittal.

2. Consultation With the FLMs

Through the VISTAS RPO, Kentucky and the nine other member states worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the VISTAS states. The proposed regional haze plan for Kentucky was out for public comment during the March to April 2008 time period. KYDAQ also provided a draft plan dated December 17, 2007, to the FLMs (and EPA) for review. Appendix N of the Kentucky regional haze SIP submittal includes the comment letters from the FLMs, which indicate that the FLMs appear to be generally supportive of the Commonwealth's regional haze SIP, and were pleased with the technical information summarized in the regional haze SIP narrative. The FLM comments mainly suggested that Kentucky insert language to further expand and/or clarify certain information. For example, the FLMs requested that KYDAQ discuss the linkage between the LTS and the Commonwealth's NSR/PSD program in the SIP narrative. Additionally, the FLMs asked KYDAQ to reiterate statements in the appendices regarding the conclusions of interstate consultation discussions in the SIP narrative. The FLMs also suggested that emission inventory data from 2002 in the SIP narrative be put with the projection data for 2009 and 2018 to aid the reader with understanding the anticipated effects of Kentucky's LTS. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), KYDAQ made a commitment in the SIP to ongoing consultation with the FLMs on regional haze issues throughout implementation of its plan, including annual discussions. KYDAQ also affirms in the SIP that FLM consultation is required for those sources subject to the Commonwealth's NSR regulations.

G. Periodic SIP Revisions and Five-Year Progress Reports

As also summarized in section V.D of this action, consistent with 40 CFR 51.308(g), KYDAQ affirmed its commitment to submitting a progress report in the form of a SIP revision to EPA every five years following this initial submittal of the Kentucky regional haze SIP. The report will evaluate the progress made towards the RPGs for the mandatory Class I area located within Kentucky and in each mandatory Class I area located outside Kentucky which may be affected by emissions from within Kentucky. Kentucky also offered recommendations for several technical improvements that, as funding allows, can support the Commonwealth's next LTS. These recommendations are discussed in

detail in the Kentucky submittal in Appendix K.

If another state's regional haze SIP identifies that Kentucky's SIP needs to be supplemented or modified, and if, after appropriate consultation Kentucky agrees, today's action may be revisited, or additional information and/or changes will be addressed in the five-year progress report SIP revision.

VI. What action is EPA taking?

EPA is proposing a limited approval and a limited disapproval of revisions to the Kentucky SIP submitted by the Commonwealth of Kentucky on June 25, 2008, and May 28, 2010, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, as described previously in this action.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's proposal does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, 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. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

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.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the NTTAA of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: December 8, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–32272 Filed 12–15–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

[Docket Number CDC–2011–0012]

RIN 0920–AA34

Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review; Proposed Rule

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On October 3, 2011, the Centers for Disease Control (CDC), located within the Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (76 FR 61206) requesting public comment on the appropriateness of the current HHS and Overlap list of select agents and toxins including whether there are other agents or toxins that should be added to the HHS or Overlap list or whether agents or toxins currently on the HHS or Overlap list should be deleted from the list; the appropriateness of the proposed tiering of the select agents and toxins list; whether minimum standards for personnel reliability, physical and cyber security should be prescribed for identified Tier 1 agents; and any other aspect of the proposed amendments to the select agent regulations. The comment period closed on December 2, 2011. Since we would like to allow interested persons additional time to prepare and submit comments, we are reopening the comment period for the NPRM.

DATES: Written comments must be received on or before January 17, 2012.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN), 0920–AA34 in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Centers for Disease Control and Prevention, Select Agent Program, 1600 Clifton Road NE., Mailstop A–46, Atlanta, Georgia 30333, *Attn:* RIN 0920–AA34.

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

Docket Access: For access to the docket to read background documents or comments received or to download an electronic version of the NPRM, go to *http://www.regulations.gov.* Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road NE., Atlanta, GA 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Select Agents and Toxins to schedule your visit. Our general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet as they are received and without change.

FOR FURTHER INFORMATION CONTACT: Robbin Weyant, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS A–46, Atlanta, Georgia 30333. *Telephone:* (404) 718–2000.

SUPPLEMENTARY INFORMATION: On October 3, 2011, the Centers for Disease Control (CDC), located within the Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (76 FR 61206) requesting public comment on (1) The appropriateness of the current HHS and Overlap list of select agents and toxins including whether there are other agents or toxins that should be added to the HHS or Overlap list or whether agents or toxins currently on the HHS or Overlap list should be deleted from the list; (2) the appropriateness of the proposed tiering of the select agents and toxins list; (3) whether minimum standards for personnel reliability, physical and cyber security should be prescribed for identified Tier 1 agents; and (4) any other aspect of the proposed amendments to the select agent regulations. The comment period closed on December 2, 2011. Since we would like to allow interested persons additional time to prepare and submit comments, we are reopening the comment period for its NPRM. We will also consider all comments we receive between December 2, 2011 and the date of this notice.

Dated: December 13, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–32361 Filed 12–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 121

RIN 0906–AA73

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking sets forth the Secretary's proposal to include vascularized composite allografts, described below, within the definition of organs covered by the rules governing the operation of the Organ Procurement and Transplantation Network. The Secretary further proposes a corresponding change to the definition of human organs covered by section 301 of the National Organ Transplant Act of 1984, as amended.

DATES: To be considered, comments on this proposed rule must be submitted by February 14, 2012. Subject to consideration of the comments submitted, the Department intends to publish final regulations.

ADDRESSES: You may submit comments, identified by RIN 0906–AA73, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.hrsa.gov/.* Follow the instructions for submitting comments on the Agency Web site.
- *Email: VCATransplantation@hrsa.gov.* Include RIN 0906–AA73 in the subject line of the message.
- *Fax:* (301) 594–6095.
- *Mail:* James Bowman, M.D., Medical Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857.
- *Hand Delivery/Courier:* James Bowman, M.D., Medical Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857.

Instructions: All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.hrsa.gov/,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857 weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m. To schedule an appointment to view public comments, phone (301) 443–7757.

FOR FURTHER INFORMATION CONTACT: James Bowman, M.D., at the above address; telephone number (301) 443–4861.

SUPPLEMENTARY INFORMATION: The transplant community has performed transplants of hands and various body parts using the term composite tissue allograft; however, for the purposes of rulemaking, the Health Resources and Services Administration (HRSA) has defined a subset of such body parts as vascularized composite allografts (VCA), which share certain characteristics.

Based upon a review of VCA, the Secretary believes that VCA should now be included within the definition of organs covered by the rules governing the operation of the Organ Procurement and Transplantation Network (OPTN) (hereinafter the OPTN final rule) (42 CFR part 121). This notice sets forth the history of VCA transplants, the factors that have persuaded the Department of the advisability of including VCA within the authority of the regulations governing the operation of the OPTN, the Secretary's oversight of VCA, and the anticipated consequences of this proposal. The notice also discusses the Department's proposal to include VCA within the definition of human organs covered by section 301 of the National Organ Transplant Act of 1984, as amended (hereinafter section 301 of NOTA).

Public Participation

Through this notice, the Secretary seeks comments from the public on the proposals made. Additional information on the submission of comments and/or the rulemaking process can be obtained from the Director, Division of Policy Review and Coordination, Health Resources and Services Administration, 5600 Fishers Lane, Room 14A–11, Rockville, Maryland 20857.

Background

VCA transplantation comprises transplants of a variety of body parts (all of which contain similar characteristics, described later) that are not currently regulated under the OPTN final rule. Perhaps the two most notable types to date have been hand and face transplants. The first successful hand transplant in the United States was performed in 1999 and the first face transplant in the U.S. was performed in 2008. Worldwide, there have been over three dozen limb transplants, at least a dozen transplants of portions of the face, and a small number of transplants of other such anatomical parts (*e.g.,* abdominal wall, vascularized skeletal muscle, and digits). Accurate data about the actual number of such transplants have been difficult to obtain because there is no requirement for reporting these procedures in the U.S. Most of the available information has been obtained from published news accounts in the popular press and anecdotal reports in the medical literature.

Although the body parts involved vary significantly, among their shared characteristics is the fact that they are susceptible to ischemia (damage or death from lack of blood flow) and that they need revascularization, done through a surgical reconnection of blood vessels to accomplish the transplant, as opposed to secondary ingrowth of vessels. In viable vascularized transplants, immunosuppression is necessary to prevent or treat rejection. This immunosuppression has risks, which have been justified in patients needing organs as presently defined in the OPTN final rule because of their lifesaving potential. In the past, the risks of immunosuppression have inhibited transplantation of VCA because the risks associated with the prolonged use of immunosuppressive drugs were thought to exceed the expected benefits of the transplants. However, the powerful impact these transplants can have to improve the quality of life for individuals with grievous disabilities has become increasingly apparent. Immunosuppressive management for these transplants has also improved so that risks associated with immunosuppression, such as cancer, infection, or other morbidities in recipients, are lessened considerably. (F Schuind, Hand transplantation and vascularized composite tissue allografts in orthopaedics and traumatology, Orthopaedics & Traumatology: Surgery & Research (2010) 96, 283–290, and Armed Forces Institute of Regenerative Medicine Annual Report, 2009, pp II–1 and II–62 and II–63). In recent years, the

Departments of Defense and Veterans Affairs have initiated substantial funding of clinical research programs for limb and face transplantation anticipating the reconstruction needs of wounded service members returning from the conflicts in Iraq and Afghanistan. More than 1,000 military men and women have lost an arm or leg in these conflicts and 20 percent have lost two or more limbs. As of mid-summer 2010, it was estimated that as many as 200 wounded troops might be eligible for face transplantation and about 50 for hand/forearm transplants. Most of the funding for limb and face transplantation research in the U.S. currently comes from the Departments of Defense and Veterans Affairs (Armed Forces Institute of Regenerative Medicine Annual Report, 2009, pp I–1 and I–2). For these reasons, it is likely that the numbers of VCA transplanted will increase in the future.

Human cells or tissue intended for implantation, transplantation, infusion, or transfer into a human recipient are regulated as a human cells, tissues, and cellular and tissue-based products or HCT/Ps. The Food and Drug Administration (FDA) regulates HCT/Ps under 21 CFR parts 1270 and 1271. Examples of such tissues are bone, skin, corneas, ligaments, tendons, dura mater, heart valves, hematopoietic stem/progenitor cells derived from peripheral and cord blood, oocytes, and semen. Face and hand allografts, and other body parts meeting the proposed definition of VCA in this notice are currently not explicitly excluded from the definition of HCT/Ps under FDA regulations and are therefore subject to FDA oversight. The FDA has no statutory or regulatory authority to mandate VCA allocation policies, direct coordination of procurement efforts, require consistent application of recovery and logistics processes, or establish mandatory outcomes reporting and provide oversight of VCA transplant programs. FDA does not regulate the transplantation of vascularized human organ transplants such as kidney, liver, heart, lung, or pancreas. The Health Resources Services Administration oversees the transplantation of vascularized human organs.

Given the anticipated increase in VCA transplants, HRSA published a Request for Information (RFI) on March 3, 2008, in the **Federal Register** for the purpose of soliciting feedback from stakeholders and the public as to whether VCA should be included within the definition of organs covered by the OPTN final rule and/or added to the definition of human organs covered by section 301 of NOTA. (73 FR 11420.) HRSA also sought feedback on the optimal way to define VCA if either definitional change was pursued.

Through the RFI, HRSA invited the public to attend a meeting on April 4, 2008 to discuss the issues described above. The meeting was well attended and provided a venue for discussion on VCA issues. Participants were instructed to provide written comments and the deadline for these comments to be received by HRSA was extended to July 2, 2008.

In response to its RFI, HRSA received 11 written comments about whether VCA should be included within the definition of organs covered by the OPTN final rule.

Eight of the written comments received supported including VCA within the definition of organs covered under the OPTN final rule. Many of these comments included similar supporting statements for OPTN oversight. The commenters agreed that the use of the existing solid organ transplant infrastructure would ensure rapid and equitable placement of VCA; allow allocation of VCA over a wide geographic area; facilitate identification of appropriate VCA donor and recipient pairs; provide assurance that all VCA programs are following similar rules, ensuring uniform and appropriate clinical and ethical standards on both the donation and transplantation side; facilitate the development of expertise and a body of knowledge that would be a valuable resource to address questions from the government or the public, and in the development of future policy and procedures in the field of VCA transplantation; enhance public transparency, increasing public acceptance of donation of VCA; and facilitate the protection of public health and safety in the context of VCA transplantation. Commenters also stated that the structure and goals of the OPTN are well aligned with the types of clinical and ethical concerns raised by VCA transplantation such as contingency treatment plan for complete face graft loss and fear of loss of facial identity due to transfer of donor facial characteristics (AJ Alexander *et al*, Arguing the Ethics of Facial Transplantation, Arch Facial Plast Surg. 2010;12(1):60–63) and with the types of entities that would be carrying out these activities, *e.g.,* organ procurement organizations (OPOs) and transplant centers.

Of the three remaining comments, two supported partial inclusion of VCA within the OPTN final rule's definition of organs and the third comment did not support having VCA included within the OPTN final rule's definition of organs. Of the two comments advocating partial inclusion of VCA under the OPTN final rule's definition of organs, one stated that VCA should be classified as either ''life extending'' or ''not life extending.'' Life extending VCA were described as those involving: (a) Vascularized tissue, such as the use of abdominal wall transplanted to close a ruptured wound in a small bowel transplant recipient; and (b) non-vascularized tissue, such as a heart valve. Not life extending VCA were described as those involving: (c) vascularized tissue, such as a hand transplant; and (d) non-vascularized tissue, such as an anterior cruci, bone, or nerve grafts. The commenter supported including ''life extending'' VCA (a and b in the above examples) under the definition of organs under the OPTN final rule. According to this commenter, all life-saving VCA should follow the same rigorous testing and screening of donors and the procurement that is currently conducted by the OPTN contractor for organs currently covered under the OPTN final rule. However, the responder strongly opposed regulating ''not life extending'' VCA (c and d in the above examples), which are not conventional organ grafts, under the OPTN final rule. The responder suggested that although the OPTN should regulate control of distribution of the grafts, these two ''not life extending'' types (c and d) should be subject to less oversight. The commenter recommended new oversight legislation that would not hamper the innovation and utilization of these novel types of VCA. The Secretary wishes to make clear that certain of the body parts discussed by this commenter (*e.g.,* non-vascularized tissues, such as heart valves and anterior cruci, bone, or nerve grafts, regardless of whether they would be considered life-saving or life-enhancing) are regulated by the Food and Drug Administration (FDA) as HCT/Ps. (21 CFR part 1271).

The second comment supported limited oversight of VCA by the OPTN at this time. The commenter supported OPTN oversight with respect to designation of VCA transplant programs, data submission regarding transplant procedures, and donor screening. However, the commenter does not support allocation policies for VCA at this time due to the unknown clinical demand and overall future of these transplants. As noted above, clinical demand for VCA transplantation appears to be increasing now that immunosuppression protocols have proven safer and support for

military and veterans VCA transplantation programs continues to expand. The issues concerning allocation, recipient safety, and outcomes reporting are similar for VCA and for organs currently under the OPTN's auspices. The VCA transplant community has clearly indicated its support for Federal oversight of VCA as organs through the OPTN in a letter of request from the Association of Organ Procurement Organizations to the Assistant Secretary of Health (December 9, 2010) and a publication of recommendations by the American Society of Transplant Surgeons in 2011 (Implementation of Vascularized Composite Allografts in the United States, American Journal of Transplantation (2011) 11:13–17),

The third comment did not support including VCA within the OPTN final rule's definition of organs. The comment stated that VCA do not fit as organs under HRSA oversight due to differences between solid organs procured for transplantation with the intent to save lives and VCA that are not used in life-saving applications. It also stated that the regulations that govern organ donation and transplantation are designed to maximize donation and to provide organs to as many waiting-list recipients as possible to avoid death due to their medical illness. According to the commenter, VCA recipients should not be subject to the same risks of donor transmissible diseases as recipients of traditional solid organs (*e.g.,* heart, lung, liver, and kidney). The commenter suggests that human-derived graft materials which enhance lives can be designated by Federal regulations under oversight of FDA as either an HCT/P, a biologic, or a medical device. However, both traditional organs and VCA originate from the same pool of potential donors and therefore subject all of these transplant recipients to similar risks of donor transmissible diseases. As described elsewhere, VCA share anatomic, clinical, allocation-logistical characteristics more closely related to those of traditional organs than biologics or medical devices. Therefore, in the Secretary's view, the appropriate way to distinguish those body parts that should be regulated as organs under the OPTN final rule and those that should not be similarly defined is based upon the properties of the body parts themselves rather than whether the intent is considered life-saving or life-enhancing. The OPTN final rule does allow some flexibility specific to each organ such that the OPTN may develop distinct organ-specific policies tailored to the circumstances, including risk of donor transmissible disease by transplanting particular organs.

The Secretary has considered comments that VCA such as hand transplants are not life saving and therefore are different from organs presently under HRSA and OPTN oversight. The Secretary does not agree with a direct demarcation between life-saving organ transplants and life-enhancing organ transplants for the purposes of defining organs under the OPTN final rule. The kidney has always been included in the list of organs governed by NOTA, the OPTN final rule, and the OPTN. Until additional life years provided by a kidney transplant (as opposed to continuing dialysis) were demonstrated, a kidney transplant was not understood to be life-saving. This fact did not dissuade the Congress from determining that kidneys should be subject to oversight under NOTA at its original enactment in 1984. As a result, kidney transplants are under the purview of the OPTN final rule and the OPTN (and subject to oversight by HRSA). Moreover, instead of adopting an all or nothing approach (life-extending versus life-enhancing), it may be better to understand improvements to the quality of life and increases to the length of life as coexisting on a spectrum of benefits. Hand and face transplants, and transplants of other body parts qualifying as VCA under the definition proposed here, may prove to be more powerful in improving a recipient's quality and extension of life than previously understood. In the Secretary's view, the appropriate way to distinguish between those VCA that should be regulated as organs under the OPTN final rule and body parts that should not be similarly defined is based upon the properties of the body parts themselves, rather than their potential impact upon the lives of their recipients.

Upon consideration of the comments received, and for the reasons described below, the Secretary now proposes that transplants of VCA be regulated under the OPTN final rule and governed by section 301 of NOTA.

Adding VCA to the Definition of Organs Covered by the OPTN Final Rule

Through this notice, the Department proposes adding VCA to the definition of organs included in the OPTN final rule, codified at 42 CFR 121.2, through rulemaking. When it enacted NOTA in 1984, Congress included a definition of the term organ and authorized the Secretary to expand this definition by regulation. The Secretary has previously exercised this authority and expanded the statutory definition of organ. Currently, the OPTN final rule defines covered organs as ''a human kidney, liver, heart, lung, or pancreas, or intestine (including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract). Blood vessels recovered from an organ donor during the recovery of such organ(s) are considered part of an organ with which they are procured for purposes of this part if the vessels are intended for use in organ transplantation and labeled 'For use in organ transplantation only.'''

One of the major reasons NOTA was enacted and affirmed by several amendments was to establish an organ allocation system that functions equitably on a nationwide basis with provisions for outcomes reporting and evaluation. Prior to the enactment of NOTA, deceased donor organs were allocated regionally, based on relationships between transplant programs and donor hospitals. Congress recognized the need to allocate this national resource on a national and equitable basis. To ensure equitable access for those awaiting VCA transplantation, there is a need to provide for consistency in allocation processes and reliable outcomes reporting on a nationwide basis. Appropriate Federal oversight of a national allocation system can increase safety of such transplants and provides equitable and consistent national access to such transplants while also conveying to the public that donation for such purpose will serve an essential medical need. The FDA does not have statutory authority to provide oversight of VCA allocation, outcomes reporting, or promotion of donation. The Secretary believes that the rationale for a national system of organ allocation and outcomes reporting underlying NOTA applies to VCA.

Once a body part is defined as an organ under the OPTN final rule, such body parts are excluded from the coverage of FDA regulations governing HCT/Ps. In addition, transplants involving body parts defined as organs under the OPTN final rule are subject to the requirements of the OPTN final rule. For example, entities performing transplants with covered organs must receive designation as an organ-specific designated transplant program (in this case, a designation as a VCA-specific transplant program) within an OPTN member institution. Members must comply with data submission requirements of the OPTN final rule and are subject to oversight by the OPTN contractor for compliance with OPTN policies, OPTN bylaws, and the OPTN

final rule. Members may be subject to Federal enforcement actions for violations of Federal regulations or enforceable policies (those approved by the Secretary of Health and Human Services) or for actions or inactions that indicate a risk to health of patients or to the public safety. Finally, OPTN members can be subject to OPTN sanctions for violating OPTN bylaws and non-enforceable OPTN policies (*e.g.,* being declared a member not in good standing).

As previously discussed and also explained in ''Statement of Need'' within the ''Impact of the New Rule'' section (below), the Secretary believes that oversight of the VCA transplants is necessary to ensure transplant recipient safety and to provide a consistent allocation process nationwide that will ensure equitable access to those waiting for VCA transplantation., to collect data on VCA transplant outcomes, and to maintain the public trust in the integrity of the VCA donation, recovery and transplant processes. Because of the clinical, procurement, logistical, allocation, and outcomes reporting similarities between VCA and organs currently under the OPTN's auspices, the Secretary believes that HRSA is the appropriate HHS agency to assure Federal oversight over VCA transplantation. HRSA oversees transplantation of vascularized human organs through the OPTN, which sets policies related to the procurement, transplantation, allocation, and outcomes reporting of human organs. The OPTN serves the critical role of matching donor organs to potential recipients on a national basis. The issues concerning allocation and recipient safety are similar for VCA and for organs currently under the OPTN's auspices. Additionally, the membership of the OPTN, which is charged with developing policies consistent with the OPTN final rule, includes professionals with expertise in the field. Therefore, the Secretary believes that the OPTN, with HRSA's oversight, will be able to effectively address issues involving the regulation of the emerging field of VCA transplantation.

If VCA are included within the OPTN final rule's definition of organs, transplants involving VCA will be subject to the requirements of the OPTN final rule. For example, an entity performing VCA transplants would have to receive designation as a VCA-designated transplant program within an OPTN member institution. In addition, OPTN members would be required to comply with the OPTN final rule's data submission requirements with respect to the transplants performed. Thus, the OPTN would need to devise certain policies with respect to VCA, including allocation policies meeting the requirements set forth in the OPTN final rule. Finally, OPTN members would be subject to oversight by the OPTN contractor for compliance with OPTN policies extending to VCA (*e.g.,* those concerning donor screening and allocation), and could be subject to enforcement actions for violations of such policies.

Even so, the OPTN final rule does allow some flexibility specific to each organ. The OPTN sometimes fashions distinct organ-specific policies tailored to the circumstances of transplanting particular organs. For example, the training of professionals working for designated programs may vary by organ and OPTN policies with respect to disease transmission protocols and testing may diverge based on circumstances relating to particular organs. Likewise, the particular characteristics of and circumstances surrounding different types of organs lead to different OPTN allocation policies.

In addition, if VCA are added as covered organs under the OPTN final rule as proposed here, the Secretary will continue to exercise oversight over proposed and final OPTN policies with respect to VCA, consistent with the authority of the Secretary under 42 CFR 121.4. Given the relatively small numbers of other VCA transplanted at this time, the Secretary does not expect that the OPTN would develop allocation policies for all VCA within a short time frame if VCA are added to the OPTN final rule's definition of organs. We expect that the OPTN will initially create policies addressing hands and faces as these two VCA have been the most frequently performed VCA transplant procedures in the U.S. and are the subject of extensive ongoing clinical research programs by the Departments of Defense and Veterans Affairs. We expect that the OPTN will wait to develop allocation policies for other VCA until the field has more clinically evolved. Given the Secretary's substantial interest in VCA policy and involvement in the operations of the OPTN, the Secretary will be notified of proposals to develop policies for other VCA as they are addressed in the future.

The nature of the regulatory framework governing the operation of the OPTN underlies the importance of including VCA within the definition of organs covered by the OPTN final rule. Under the OPTN final rule, the OPTN must submit proposed policies for review and approval by the Secretary (42 CFR 121.4). Upon consideration of public comments on proposed policies that are considered significant, the Secretary will determine whether to make such proposed policies enforceable in accordance with section 121.10 of the OPTN final rule. The Secretary may direct the OPTN to develop individual policies for specific body components that are defined as VCA in addition to OPTN policies that apply to all VCA. Any transplant hospital that fails to comply with any policy approved as enforceable by the Secretary under this process may be subject to the enforcement sanctions delineated in section 121.10 of the OPTN final rule, including possible termination from the Medicare and Medicaid programs.

The Secretary has the following additional authorities provided by the OPTN final rule (42 CFR 121.4(b)(2)), which she may exercise in the case of policies extending to VCA: The Secretary may require the OPTN Board of Directors to provide to the Secretary, at least 60 days prior to their proposed implementation, proposed policies on matters that the Secretary directs. The Secretary will refer significant proposed policies to the Advisory Committee on Organ Transplantation (ACOT) established under 42 CFR 121.12, and publish them in the *Federal Register* for public comment. This is in addition to the public comment process that is engaged in by the OPTN.

The Secretary also may seek the advice of the ACOT on other proposed policies and publish them in the **Federal Register** for public comment.

The Secretary will determine whether proposed policies are consistent with NOTA and the OPTN final rule, taking into account the views of the ACOT and public comments. Based on this review, the Secretary may provide comments to the OPTN.

If the Secretary concludes that a proposed policy is inconsistent with NOTA or the OPTN final rule, the Secretary may direct the OPTN to revise the proposed policy consistent with the Secretary's direction. If the OPTN does not revise the proposed policy in a timely manner, or if the Secretary concludes that the proposed revision is inconsistent with NOTA or the OPTN final rule, the Secretary may take such other action as the Secretary determines appropriate, but only after additional consultation with the ACOT on the proposed action.

Also, the Secretary has the authority under the OPTN Final Rule (42 CFR 121.4(a)(6)) to require the OPTN to develop policies on such matters as the Secretary directs.

The Secretary is legally obliged, as part of her responsibilities in administering the Medicare and Medicaid programs, to require hospitals that transplant organs to comply with the rules and requirements of the OPTN as a condition of their participation in Medicare and Medicaid. (42 U.S.C. 1320b–8(a)(1)(B).) Because VCA are not included within the OPTN final rule's definition of organs, the Secretary could not currently make any VCA allocation policy enforceable. If VCA are added as covered organs under the OPTN final rule as proposed here, the Secretary could take appropriate enforcement actions against an OPO or transplant hospital for failing to comply with the OPTN's VCA retrieval and allocation policy, if such a policy has been approved as enforceable by the Secretary under the process outlined above. If VCA are defined as organs under the OPTN final rule, then this will ensure that VCA organ allocation, whether pertaining to isolated VCA transplants or combined/multi-organ transplants, is consistent with OPTN final rule's goals, including that of an equitable national system for organ allocation, to be consistent with NOTA.

Even if OPTN policies pertaining to VCA transplantation do not become enforceable, all institutions performing VCA transplantation would be required to comply with the provisions of the OPTN final rule (including the requirement that such institutions become members of the OPTN). Further, such institutions could be subject to sanctions by the OPTN for failure to comply with allocation and other OPTN policies. For example, a member may be named a member not in good standing by the OPTN for failing to comply with such a policy.

As the field of VCA transplantation evolves, it will become more critical that VCA organ allocation keeps pace with advances in the field; that the field be subject to appropriate Federal oversight; that policy developments include performance indicators to assess whether the goals of an equitable transplant system are being achieved; that the Secretary have the authority to make those policies enforceable; and that patients and physicians have timely access to accurate data that will assist them in making decisions regarding VCA transplantation. Upon consideration of the foregoing factors, and to achieve the most equitable and medically effective use of donated organs, the Secretary proposes that VCA should explicitly be added to the definition of organs covered by the OPTN final rule. The Secretary seeks comments on this proposal.

Defining Vascularized Composite Allografts

At the time of the RFI, and to assist the Secretary in adding VCA to the definition of organs covered by the OPTN final rule and/or to the definition of human organs governed by section 301 of NOTA, HRSA sought feedback from stakeholders and from the public as to how such allografts should be defined. HRSA identified two potential approaches: (1) A broad regulatory definition describing the common features of VCA without listing covered body parts; or (2) a definition listing body parts that would qualify as VCA.

The Secretary has elected to propose the first approach, a broad regulatory definition that describes the features of the allografts without listing particular body parts. Under this approach, the definition would extend to transplants of particular body parts that are not known to have been performed clinically to date, or even to body parts whose transplantation has not yet been envisioned. The Secretary is proposing which elements should be included in the definition of VCA to be sufficiently broad to cover the universe of intended body parts, but narrow enough to put the public on notice as to which parts meet the regulatory definitions of organs.

The Secretary proposes that for a body part to be defined as a VCA, it must have all the following characteristics: a body part (1) That is vascularized and requires blood flow by surgical connection of blood vessels to function after transplantation; (2) containing multiple tissue types; (3) recovered from a human donor as an anatomical/structural unit; (4) transplanted into a human recipient as an anatomical/structural unit; (5) minimally manipulated, (processing that does not alter the original relevant characteristics of the organ relating to the organ's utility for reconstruction, repair, or replacement—examples of minimal manipulation include cutting, grinding, and shaping of a VCA); (6) for homologous use, (the replacement or supplementation of a recipient's organ with an organ that performs the same basic function or functions in the recipient as in the donor), (*e.g.,* a hand from the donor is to be used as a hand in the recipient); (7) not combined with another article such as a device; (8) susceptible to ischemia and, therefore, only stored temporarily (*e.g.,* cold storage in preservation medium and intended for implantation into a recipient within hours of the recovery) and not cryopreserved; and (9) susceptible to allograft rejection, requiring immunosuppression that may increase infectious disease risk to the recipient. This proposed definition is intended to explain to the public which body parts would be covered presently, while allowing other body parts that are transplanted to be covered as the field of VCA transplantation advances. A non-exclusive list of body parts that would meet the proposed definition for VCA here would include faces, hands, fingers, toes, larynges, and abdominal walls. Periodically, HRSA may publish an updated list of VCA in the *Federal Register*. In addition, through this definition, the Secretary intends to distinguish those body parts she proposes to define as organs under the OPTN final rule from other body parts that are regulated as HCT/Ps under FDA's regulatory authority.

Under a second alternative, the Secretary could have proposed a definition that lists specific transplantable body parts to be added to the definition of organs (*e.g.,* face, hand, etc.). The Secretary finds this unnecessary since the general set of nine characteristics provide clear identification of such body parts. Moreover, definition by an explicit list would likely exclude certain body parts for which transplantation might be possible, but not done to date (either in the United States or internationally). The Secretary is proposing the more descriptive definition to avoid the need of amending the regulatory definition to extend its reach to new types of transplantation that emerge in the future.

HRSA received no negative feedback in response to its request for information on adopting this first approach or on the criteria discussed in the request for information (other than the comment distinguishing between those grafts that are lifesaving and those that are life enhancing). Most of the commenters supporting the inclusion of VCA in the definition of organs covered by the OPTN final rule would defer to the physicians and surgeons involved to determine the optimal way to define VCA. Given that Congress authorized the Department to modify the definition of covered organs through rulemaking, it would not be permissible to allow transplant surgeons and physicians (or others participating in the OPTN), on their own, to define VCA for the purposes of the final rule. However, the Secretary seeks feedback from the transplant community on the definition of VCA proposed here.

Additionally, body parts allocated as VCA are intended to be used ''intact'' as a VCA until the transplant center receiving the VCA determines that a

portion of the VCA is not needed for transplantation of the remainder of the VCA. If portions of a VCA are not used in connection with the same transplant (for example, left over bone or tendons from a limb allocated as a VCA), such body parts cannot be used for other purposes including transplantation in a different anatomical location in the recipient who received the VCA or in a different recipient. Disposition of such remnants would be subject to OPTN policies.

Because the Secretary is proposing a definition that does not identify specific VCA by name, the Secretary proposes amending 42 CFR 121.4(e) to make clear that the OPTN must identify the specific body parts covered by any OPTN policy specific to VCA. The purpose of this proposal is to ensure that all OPTN members and stakeholders understand the body parts covered by OPTN policies specific to VCA. Under this proposal, any OPTN policy that applies broadly to organs would apply to all body parts meeting the proposed definition for VCA unless otherwise provided for.

State registries for organ and tissue donors generally provide the option to select organs, tissues, both, or neither. In the future we anticipate that states will likely further distinguish VCAs and will continue to permit individuals to select what they wish to donate. The potential impact of including VCA in the definition of organs on organ donation efforts, including the number of deceased donor organs that may become available, has not been explored. Therefore, the Secretary is seeking public comment on what impact this proposed expanded definition of organs may have on efforts to increase participation in deceased organ donor registries, signing organ donor cards, and general willingness of individuals to agree to be deceased organ donors.

Including VCA Within the Definition of Human Organs Covered by Section 301 of NOTA

The Secretary further proposes including VCA within the definition of human organs, as covered by section 301 of NOTA, which prohibits the purchase or sale of human organs for human transplantation. This criminal prohibition provides in part that ''[i]t shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce. The preceding sentence does not apply with respect to human organ paired donation.'' (42 U.S.C. 274e(a).) Section 301 of NOTA defines the term ''human organ'' to mean ''the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.'' (42 U.S.C. 274e(c)(1).)

As set forth by statute, Congress authorized the Secretary to add additional organs to the definition of human organ covered by section 301 through rulemaking to include the transplantation of additional human organs within section 301's prohibition. The Secretary has previously exercised this authority. Adding VCA to this definition of human organs will subject persons violating its terms to VCA to criminal penalties.

Through this notice, the Secretary proposes to add VCA to the list of human organs covered by section 301 of NOTA. The Secretary proposes modifying 42 CFR 121.13, which includes the definition of human organs covered by section 301 of NOTA, to include VCA (as defined in the proposed amendment to section 121.2 of the OPTN final rule). Subparts are being added to this definition to conform with Public Law 100–607, which added subparts of covered human organs to the statutory definition of human organs governed by section 301 of NOTA.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety, distributive and equity effects). In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small entities the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are significant because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that minimal resources are required to implement the requirements in this rule because organizations involved (*e.g.,* OPOs and transplant hospitals) already implement related requirements for other organs in the OPTN rule (42 CFR 121.2). Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA), and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary also has determined that this proposed rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. We have determined that the proposed rule is not a major rule within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments or on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

The provisions of this rule will not affect the following elements of family well-being: Family safety, family stability, marital commitment; parental rights in the education, nurture, and supervision of their children; family functioning, disposable income, or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

As stated above, this proposed rule would modify the regulations governing the OPTN and section 301 of NOTA based on legal authority.

Impact of the New Rule

Statement of Need

The field of VCA transplantation has advanced from the first hand transplant in the U.S. in 1999 to the point that there are now more than a dozen VCA transplant centers extending from coast to coast involving hand, face, abdominal wall, larynx, and possibly other body parts. The Departments of Defense and Veterans Affairs have invested hundreds of millions of dollars in clinical VCA transplantation research programs for the benefit of wounded warriors returning from the Iraq and Afghanistan conflicts with extensive debilitating injuries of the face and multiple extremities. Although the current activity level is less than a dozen transplants a year in the U.S., the VCA transplant community has begun to encounter the expansion problems faced

in the early days of organ transplantation with ensuring equitable access for patients to VCA, uniform allocation policies across the U.S., coordination of procurement efforts, consistent application of recovery and logistics processes, and monitoring patient safety with appropriate outcomes reporting and oversight of transplant programs.

VCA transplantation consists of surgical transplants of a variety of body parts that currently do not fall within the current regulatory definition of ''organ'' covered by the rules governing the operation of the OPTN. Face and hand allografts, and other body parts meeting the definition of VCA in this notice, currently are subject to FDA oversight under 21 CFR parts 1270 and 1271. VCA, like organs, differ from tissues in that they must be transplanted within hours (not months or years), recipients require immunosuppression drugs to prevent or treat rejection, and the allocation process requires specific genetic and clinical matching between donor and recipient.

The FDA has no statutory or regulatory authority to mandate allocation policies, direct coordination of procurement efforts, require consistent application of recovery and logistics processes, or establish mandatory outcomes reporting and provide oversight of VCA transplant programs. In short, the FDA's authority for regulation of tissues like VCA stops at the hospital door. Only the OPTN, under HRSA oversight, can provide reliable consistent and mandatory mechanisms and infrastructure to address these problems facing the VCA transplant community. Recognizing the need for such efforts to continue to advance the field of VCA transplantation, the VCA transplant community specifically requested the Secretary of the Department of Health and Human Services to provide the necessary regulatory change to define those body parts meeting the definition of VCA in this notice as ''organs'' under the OPTN Final Rule so that VCA transplantation can continue to progress in an appropriate manner that will best serve the patients in need of such allografts.

This proposed rule would have the effect of including VCA within the ambit of the regulations governing the operation of the OPTN, and would include transplanted human VCA within the prohibition set forth at section 301 of NOTA. If implemented, the proposals set forth in this rule would authorize the Secretary to take enforcement actions against entities violating OPTN policies pertaining to the transplantation of VCA once such policies are approved as enforceable by the Secretary. Even if the Secretary does not approve such policies as enforceable, OPTN members will be subject to enforcement actions by the OPTN for violations of OPTN policies extending to VCA. If this rule is promulgated, OPTN members will be required to comply with requirements set forth in the OPTN final rule, including those pertaining to data submission, as applied to VCA. Finally, if this proposal is implemented, individuals violating section 301 of NOTA with respect to VCA transplants would be subject to criminal penalties.

If this rule takes effect, transplant centers that perform VCA transplantation would be required to take the necessary steps to ensure that VCA transplant programs are in compliance with any policies enacted by the OPTN specific to designated VCA allografts (*e.g.* hand, face). Such policies typically specify the clinical submission requirements for candidate registration on the waiting list, clinical information of the transplant procedure, follow up reporting on graft and patient outcomes, and reporting of potential donor disease transmission events.

Paperwork Reduction Act of 1995

The amendments proposed in this notice of proposed rulemaking contain information collection activities that are very similar to, and based on the data collection requirements in, the OPTN final rule approved by the Office of Management and Budget (OMB No. 0915–0157 and OMB No. 0915–0184). Membership in the OPTN is determined by submission of application materials to the OPTN demonstrating that the applicant meets all required criteria for membership and will agree to comply with all applicable provisions of the National Organ Transplant Act, as amended, 42 U.S.C. 273 *et seq.* Section 1138 of the Social Security Act, as amended, 42 U.S.C. 1320b–8 requires that hospitals in which transplants are performed be members of, and abide by, the rules and requirements (as approved by the Secretary of the HHS) of the OPTN as a condition of participation in Medicare and Medicaid for the hospital. Section 1138 contains a similar provision for the organ procurement organizations (OPOs) and makes membership in the OPTN and compliance with its operating rules and requirements (as approved by the Secretary of the HHS), including those relating to data collection, mandatory for all transplant programs and OPOs. The information is used predominantly to match donor organs with recipients, to monitor compliance of member organizations with OPTN policies and requirements to guide organ allocation policy development, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country.

The currently-approved data collection includes worksheets and burden for organs and describes respondents as non-profit institutions and small organizations, which would be the same for this proposed rule. The title, description, and respondent description of all information collections relating to VCA are shown below with similar estimates of annual reporting and record keeping burden as with other organs previously approved in the OPTN final rule.

Currently there are approximately 10 hand, 2 face, and 1 abdominal wall transplant programs in the U.S., although only 7 have actually performed a clinical transplant operation to date. Since the current rate of VCA transplants is less than 10 a year (hand) and less than 1 a year (face and abdominal wall), for reporting burden calculations (below) we have projected a total of 20 VCA transplant programs each registering 2 candidates a year to the waiting list and each program performing 1 transplant procedure a year. The data burden calculation in the table below assumes that data associated with entering deceased donor information is already accounted in the current OMB approved data collection forms. Specifically, it is reasonable to assume that any donor that would be considered as a VCA donor is also considered to be a donor for other organs covered by this rule. The hourly rate used for calculation of total burden cost to respondents is the average hourly wage for a transplant data coordinator ($26.00). This rate reflects the median annual salary and benefits for a Data Control Clerk II (www.salary.com) The total annual respondent burden hours (202) represents 10.1 hours ($262.60) per respondent.

Title: Organ Procurement and Transplantation Network.

Description: Information will be collected from transplant hospitals, organ procurement organizations, and histocompatibility laboratories predominantly for the purpose of matching donor VCA with potential recipients, monitoring compliance of member organizations with system rules, conducting statistical analyses, and developing policies relating to organ procurement and transplantation.

The practical utility of the data collection is further enhanced by

requirements that the OPTN must report a variety of data to the Secretary, including data on performance by organ and status category, including program-specific data, OPO specific data, data by program size, and data aggregated by organ procurement area, OPTN region, the nation as a whole, and other geographic areas (42 CFR 121.8(c)(3)). The OPTN must also transmit proposed allocation policies and performance indicators which will be used to assess the likely effects of policy changes and to ensure that the proposed policies are consistent with the OPTN final rule.

The OPTN and Scientific Registry must make available to the public timely and accurate information concerning the performance of transplant programs, and must respond to requests from the public for data needed for bona fide research or analysis purposes or to assess the performance of the OPTN or Scientific Registry, to assess individual transplant programs, or for other purposes (42 CFR 121.11(b)(1)(C)).

The OPTN must provide to each member OPO and transplant hospital the plans and procedures for reviewing applications and for monitoring compliance with these rules and OPTN policies. The OPTN must also report to the Secretary on OPOs and transplant hospitals that may not be in compliance with these rules or OPTN policies, and on their progress toward compliance.

The OPTN and Scientific Registry are required to maintain and manage the information on candidates, donors and recipients.

Description of Respondents: Non-profit institutions and small organizations. The estimated annual reporting burden is as follows:

Section	Form	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total burden hours/ cost ($)
121.6(c)	Establishing Criteria for VCA Acceptance	20	1	20	0.5	10 $260.00
121.7(b)(4)	Reasons for Refusal	20	50	1000	0.1	100 $2,600.00
121.9(b)	Designated Transplant Program Requirements.	20	1	20	2.0	40 $1,040.00
121.11(b)(2)	Recipient Histo-compatibility	20	1	20	0.2	4 $104.00
	VCA Candidate Registration	20	2	40	0.5	20 $520.00
121.11(b)(2)	VCA Recipient Registration	20	1	20	0.75	15 $390.00
121.11(b)(2)	VCA Follow-Up	20	1	20	0.65	13 $338.00
Total		20		1,140	0.18	202 $5,252.00

List of Subjects in 42 CFR Part 121

Health care, Hospitals, Organ transplantation, Reporting and recordkeeping requirements.

Dated: August 18, 2011.

Mary Wakefield,

Administrator, Health Resources and Services Administration.

Approved: September 7, 2011.

Kathleen Sebelius,

Secretary.

Accordingly, 42 CFR part 121 is proposed to be amended as set forth below:

PART 121—ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

1. The authority citation for part 121 continues to read as follows:

Authority: Sections 215, 371–376 of the Public Health Service Act (42 U.S.C. 216, 273–274d); sections 1102, 1106, 1138 and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1320b–8 and 1395hh); and section 301 of the National Organ Transplant Act, as amended (42 U.S.C. 274e).

§ 121.2 [Amended]

2. Amend § 121.2 to revise definition for Organ and add definition for Vascularized composite allograft to read as follows:

* * * * *

Organ means a human kidney, liver, heart, lung, pancreas, intestine (including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract), or vascularized composite allograft (defined in this section). Blood vessels recovered from an organ donor during the recovery of such organ(s) are considered part of an organ with which they are procured for purposes of this part if the vessels are intended for use in organ transplantation and labeled ''For use in organ transplantation only.''

* * * * *

Vascularized composite allograft means a body part:

(1) That is vascularized and requires blood flow by surgical connection of blood vessels to function after transplantation;

(2) Containing multiple tissue types;

(3) Recovered from a human donor as an anatomical/structural unit;

(4) Transplanted into a human recipient as an anatomical/structural unit;

(5) Minimally manipulated, (processing that does not alter the original relevant characteristics of the organ relating to the organ's utility for reconstruction, repair, or replacement);

(6) For homologous use, (the replacement or supplementation of a recipient's organ with an organ that performs the same basic function or functions in the recipient as in the donor);

(7) Not combined with another article such as a device;

(8) Susceptible to ischemia and, therefore, only stored temporarily and not cryopreserved; and

(9) Susceptible to allograft rejection, requiring immunosuppression that may increase infectious disease risk to the recipient.

3. In § 121.4, add paragraph (e)(3) to read as follows:

§ 121.4 OPTN policies: Secretarial review and appeals.

* * * * *

(e) * * *

(3) identify all covered body parts in any policies specific to vascularized composite allografts, defined in § 121.2.

4. Revise § 121.13 to read as follows:

§ 121.13 Definition of Human Organ Under section 301 of the National Organ Transplant Act of 1984, as amended.

Human organ, as covered by section 301 of the National Organ Transplant Act of 1984, as amended, means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, skin, intestine (including the esophagus, stomach, small and/or large intestine, or any portion of the gastrointestinal tract), or any vascularized composite allograft defined in § 121.2. It also means any subpart thereof, including that derived from a fetus.

[FR Doc. 2011–32204 Filed 12–15–11; 8:45 am]

BILLING CODE 4165–15–P

Notices

Federal Register

Vol. 76, No. 242

Friday, December 16, 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

Office of the Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Appointment of members.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces the appointments made by the Secretary of Agriculture to the 8 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Appointments by the Secretary of Agriculture are for a 1, 2, or 3-year term, effective October 1, 2011 until September 30, 2014.

ADDRESSES: National Agricultural Research, Extension, Education, and Economics Advisory Board Office, Room 3901, South Building, U.S. Department of Agriculture; STOP 0321; 1400 Independence Avenue SW., Washington, DC 20250–0002

FOR FURTHER INFORMATION CONTACT: Robert Burk, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3901, South Building, U.S. Department of Agriculture; STOP 0321; 1400 Independence Avenue SW., Washington, DC 20250–0002, *Telephone:* (202) 720–3684, Fax: (202) 720–6199, or *email: Robert.burk@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 authorized the creation of the National Agricultural Research, Extension, Education and Economics Advisory Board. The Board is composed of 25 members, each representing a specific category related to agriculture. The Board was first appointed in September 1996 and at the time one-third of the original members were appointed for one, two, and three-year term, respectively. Due to the staggered appointments, the terms for 8 of the 25 members expired September 30, 2011. Each member is appointed by the Secretary of Agriculture to a specific category on the Board, including farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, non-land grant college or university with a historic commitment to research in the food and agricultural sciences, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. Appointees to the 8 available member positions are as follows: Category B. ''Farm Cooperatives,'' Jean-Mari Peltier, Former President, National Council for Farmers Cooperatives and President, National Grape & Wine Initiative, Sacramento, CA (Re-appointment—1 year); James P. Goodman, Owner/Farmer, Northwood Farm, Wonewoc, WI (Alternate, Appointment—2 years beginning October 1, 2012); Category D. ''Plant Commodity Producer,'' Richard F. Schlosser, Farmer, Edgely, ND (Appointment—3 years); Category E. ''National Aquaculture Association,'' James E. Parsons, Member, National Aquaculture Association and Senior Vice President, Troutlodge, Inc., Sumner, WA (Appointment—3 years); Category H. ''National Food Science Organization, Dr. Mark R. McLellan, Member, Institute of Food Technologists and Vice President of Research & Dean of the School of Graduate Studies, Utah State University, Logan, UT (Appointment—3 years); Category J. ''National Nutritional Science Society,'' Dr. Adriana Campa, Member, American Dietetic Association/American Society of Nutrition and Associate Professor of Nutrition, Florida International University, Miami, FL (Appointment—3 years); Category K. ''1862 Land-Grant Colleges and Universities,'' Dr. Milo J. Shult, Vice President for Agriculture—Emeritus, University of Arkansas System, Doss, TX (Re-appointment to 3 year term); Category M. ''1994 Equity in Education Land-Grant Institutions,'' Chad Waukechon, Dean, Community Programs, College of Menominee Nation, Keshena, WI (Re-appointment to 3 year term); Category Y. ''National Social Science Association,'' Dr. Dawn Thilmany, Member, Agricultural and Applied Economics Association and Professor, Colorado State University Department of Agriculture and Resource Economics, Fort Collins, CO (Appointment—3 years).

Done at Washington, DC, this 30th day of November 2011.

Catherine Woteki,

Under Secretary, Research, Education, and Economics.

[FR Doc. 2011–32345 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0110]

Notice of Request for Extension of Approval of an Information Collection; Importation of Citrus From Peru

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of citrus from Peru.

DATES: We will consider all comments that we receive on or before February 14, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0110-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0110, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket

may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0110* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of citrus from Peru, contact Mr. Tony Román, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734–5820. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Citrus From Peru.

OMB Number: 0579–0289.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54).

Under these regulations, fresh citrus (grapefruit, limes, mandarins or tangerines, sweet oranges, and tangelos) from Peru is subject to certain conditions before entering the United States to prevent the introduction of plant pests into the United States. The regulations require the use of information collection activities, including inspections by national plant protection organization officials from Peru, grower registration and agreement, fruit fly trapping, monitoring, and recordkeeping, and a phytosanitary certificate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 7.769494 hours per response.

Respondents: National plant protection organization officials of Peru and growers of citrus fruit in Peru.

Estimated Annual Number of Respondents: 444.

Estimated Annual Number of Responses per Respondent: 9.2139639.

Estimated Annual Number of Responses: 4,091.

Estimated Total Annual Burden on Respondents: 31,785 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32310 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0109]

Notice of Revision and Request for Extension of Approval of an Information Collection; Health Certificates for the Export of Live Crustaceans, Finfish, Mollusks, and Related Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to revise an information collection associated with health certificates for the export of live crustaceans, finfish, mollusks, and related products and to request extension of approval of the information collection.

DATES: We will consider all comments that we receive on or before February 14, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0109-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0109, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0109* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on health certificates for the export of live crustaceans, finfish, mollusks, and related products, contact Dr. Christa Speekmann, Import/Export Specialist-Aquaculture, Technical Trade Services Team, NCIE, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–8364. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Health Certificates for the Export of Live Crustaceans, Finfish, Mollusks, and Related Products.

OMB Number: 0579–0278.

Type of Request: Revision and extension of approval of an information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and animal products, the Animal and Plant Health

Inspection Service (APHIS) of the U.S. Department of Agriculture maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Many countries that import animals from the United States require a certification that the United States is free of certain diseases. These countries may also require the certification statement to contain additional declarations regarding the U.S. animals or products being exported. U.S. trading partners are increasing import requirements, which must be addressed using one of the three Veterinary Services export health certificates or country specific export health certificates. The current collection includes VS Form 17–141, and we are revising the collection to add VS Form 17–140 and APHIS Form 7001.

The certificates are completed by an accredited veterinarian and must be signed by the accredited veterinarian who inspects the animals prior to their departure from the United States, and endorsed by APHIS.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Accredited veterinarians who complete the health certificates and producers who provide information for the health certificates to the accredited veterinarians.

Estimated annual number of respondents: 69.

Estimated annual number of responses per respondent: 24.63768116.

Estimated annual number of responses: 1,700.

Estimated total annual burden on respondents: 2,550 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32312 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0108]

Notice of Request for Extension of Approval of an Information Collection; Emergency Management Response System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Emergency Management Response System.

DATES: We will consider all comments that we receive on or before February 14, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0108-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0108, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0108* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Emergency Management Response System, contact Dr. Steven Finch, Senior Staff Veterinarian, Preparedness and Incident Coordination Staff, NCAHEM, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 734–0823. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Emergency Management Response System.

OMB Number: 0579–0071.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS), among other things, administers regulations intended to prevent foreign diseases of livestock or poultry from being introduced into the United States, conducts surveillance for the early detection of such foreign animal diseases, and conducts eradication programs if such foreign diseases are detected.

Through our automated Emergency Management Response System (EMRS), APHIS helps manage and investigate potential incidents of foreign animal diseases in the United States.

When a potential foreign animal disease incident is reported, APHIS dispatches a foreign animal disease veterinary diagnostician to the site to conduct an investigation. The diagnostician obtains vital epidemiologic data by conducting field investigations, including sample collection, and by interviewing the owner or manager of the premises being investigated. These important data, submitted electronically by the diagnostician into EMRS, include such items as the number of sick or dead animals on the premises, the results of necropsy examinations, vaccination information on the animals in the flock or herd, biosecurity practices at the site, whether any animals were recently moved out of the herd or flock, whether any new animals were recently introduced into the herd or flock, and detailed geographic data concerning

premises location. The web-based system allows epidemiological and diagnostic data to be documented and transmitted more efficiently.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Owners and operators of livestock and poultry facilities and State animal health officials.

Estimated annual number of respondents: 471.

Estimated annual number of responses per respondent: 4.

Estimated annual number of responses: 1,884.

Estimated total annual burden on respondents: 1,884 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32315 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0105]

Notice of Request for Extension of Approval of an Information Collection; Citrus Greening and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to prevent the spread of citrus greening and its vector, Asian citrus psyllid, to noninfested areas of the United States.

DATES: We will consider all comments that we receive on or before February 14, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0105-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0105, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0105* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the interstate movement of regulated articles to prevent the spread of citrus greening and its vector, contact Ms. Lynn Evans-Goldner, National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737; (301) 734–7228. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Citrus Greening and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations.

OMB Number: 0579–0363.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture, either independently or in cooperation with States, may carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and diseases that are new to or not widely distributed within the United States. Under the Act, the Secretary may also issue regulations requiring plants and plant products moved in interstate commerce to be subject to remedial measures determined necessary to prevent the spread of the pest or disease, or requiring the objects to be accompanied by a permit issued by the Secretary prior to movement. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, which administers regulations to implement the PPA.

Citrus greening, also known as Huanglongbing disease of citrus, is considered to be one of the most serious citrus diseases in the world. Citrus greening is a bacterial disease, caused by strains of the bacterial pathogen ''*Candidatus* Liberibacter asiaticus'' that attacks the vascular system of host plants. Citrus greening greatly reduces production, destroys the economic value of the fruit, and can kill trees. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where the disease is endemic, citrus trees decline and die within a few years and may never produce usable fruit.

In accordance with the regulations in ''Subpart—Citrus Greening and Asian Citrus Psyllid'' (7 CFR 301.76 through 301.76–11), APHIS restricts the interstate movement of regulated articles from quarantined areas to control the artificial spread of citrus greening and the insect vector, Asian citrus psyllid, to noninfested areas of the United States. The regulations contain requirements that involve information collection activities, including a compliance agreement, limited permit, Federal certificate, recordkeeping, labeling statement, the attachment of a tag to consignee's waybill, and 72-hour inspection notification.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1285 hours per response.

Respondents: Commercial nurseries/operations in U.S. States or Territories quarantined for citrus greening or Asian citrus psyllid.

Estimated annual number of respondents: 621.

Estimated annual number of responses per respondent: 23.2919.

Estimated annual number of responses: 13,882.

Estimated total annual burden on respondents: 1,785 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32327 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0106]

Notice of Request for Extension of Approval of an Information Collection; Importation of Hass Avocados From Peru

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of Hass avocados from Peru.

DATES: We will consider all comments that we receive on or before February 14, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0106-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0106, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0106* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of Hass avocados from Peru, contact Mr. Tony Roman, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734–5820. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Hass Avocados From Peru.

OMB Number: 0579–0355.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54).

Under these regulations, Hass avocados from Peru are subject to certain conditions before entering the United States to prevent the introduction of plant pests into the United States. The regulations require the use of information collection activities, including phytosanitary certificates, trust funds, workplans, recordkeeping, inspection of packinghouses, box marking, and shipping documents.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.6099 hours per response.

Respondents: National plant protection organization officials and growers and shippers of Hass avocados in Peru.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 253.

Estimated annual number of responses: 505.

Estimated total annual burden on respondents: 308 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32328 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0112]

Notice of Request for Extension of Approval of an Information Collection; Requirements for Requests to Amend Import Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the requirements for requests to amend import regulations for plants, plant parts, and plant products.

DATES: We will consider all comments that we receive on or before February 14, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0112-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0112, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0112* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for requests to amend import regulations, contact Mr. Farrell Wise, Chief, Regulatory Coordination and Compliance, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–6805. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Requirements for Requests to Amend Import Regulations.

OMB Number: 0579–0261.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations governing the importation of plants, fruits, vegetables, roots, bulbs, seeds, unmanufactured wood articles, and other plant products are contained in 7 CFR part 319, ''Foreign Quarantine Notices.''

Persons who request changes to the import regulations and who wish to import plants, plant parts, or plant products that are not allowed importation into the United States, must file a request with Animal and Plant Health Inspection Service (APHIS) for consideration to determine whether the new commodity may be safely imported. This process requires the use of information collection activities, including information about the requestor, information about the commodity to be imported, shipping information, a description of pests and diseases associated with the commodity, risk mitigation or management strategies, and additional information as determined by APHIS to complete a pest risk analysis in accordance with international standards.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 40 hours per response.

Respondents: Importers, national plant protection organizations, and producers.

Estimated annual number of respondents: 37.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 74.

Estimated total annual burden on respondents: 2,960 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32247 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0104]

Notice of Request for Extension of Approval of an Information Collection; Importation of Peppers From Certain Central American Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of peppers from certain Central American countries.

DATES: We will consider all comments that we receive on or before February 14, 2012.

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

- *Federal eRulemaking Portal: Go to http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0104-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0104, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0104* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 6902817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of peppers from certain Central American countries, contact Mr. Tony Roman, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734–5820. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Peppers From Certain Central American Countries.

OMB Number: 0579–0274.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54).

Under these regulations, peppers from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama are subject to certain conditions before entering the United States to prevent the introduction of plant pests into the United States. The regulations require the use of information collection activities, including inspections by Central American national plant protection organization officials; fruit fly trapping, monitoring, and recordkeeping; box labeling; and a phytosanitary certificate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0037936 hours per response.

Respondents: National plant protection organization officials and growers and shippers of peppers in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

Estimated annual number of respondents: 245.

Estimated annual number of responses per respondent: 3,226.653061.

Estimated annual number of responses: 790,530.

Estimated total annual burden on respondents: 2,999 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32324 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0023]

Notice of Decision To Authorize the Importation of Fresh Cape Gooseberry Fruit With Husks From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh Cape gooseberry fruit (*Physalis peruviana* L.) with husks from Chile. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh Cape gooseberry fruit from Chile.

DATES: *Effective Date:* December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231, (301) 734–0754.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–54, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on August 11, 2011 (76 FR 49726, Docket No. APHIS–2010–0023), in which we announced the availability, for review and comment, of a PRA that evaluates the risks associated with the importation into the continental United States of fresh Cape gooseberry fruit (*Physalis peruviana* L.) with husks from Chile. We solicited comments on the notice for 60 days ending on October 11, 2011. We did not receive any comments by that date.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of fresh Cape gooseberry fruit from Chile subject to the following phytosanitary measures:

- Cape gooseberry fruit will be subject to inspection upon arrival in the United States.
- Each consignment of Cape gooseberry fruit must be accompanied by a phytosanitary certificate issued by NPPO of Chile stating: ''The Cape gooseberry in the consignment has been inspected and is free of pests.''
- Cape gooseberry fruit must be imported into the United States in commercial consignments only.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, fresh Cape gooseberry fruit from Chile will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

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

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32317 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice and the PRA, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0023.*

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0046]

Monsanto Co.; Determination of Nonregulated Status for Soybean Genetically Engineered To Have a Modified Fatty Acid Profile and for Tolerance to the Herbicide Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a soybean line developed by the Monsanto Co., designated as event MON 87705, which has been genetically engineered to have a modified fatty acid profile and for tolerance to the herbicide glyphosate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Monsanto Company in its petition for a determination of nonregulated status, our analysis of available scientific data, and comments received from the public in response to our previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment and plant pest risk assessment. This notice also announces the availability of our written determination and finding of no significant impact.

DATES: *Effective Date:* December 16, 2011.

ADDRESSES: You may read the documents referenced in this notice and the comments we received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 6902817 before coming. Those documents are also available on the Internet at *http://www.aphis.usda.gov/biotechnology/not_reg.html* and are posted with the previous notice and the comments we received on the Regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0046.*

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, *email: evan.a.chestnut@aphis.usda.gov.* To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 734–0667, *email: cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a petition (APHIS Petition Number 09–201–01p) from the

Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status for soybean (*Glycine max*) designated as event MON 87705, which has been genetically engineered to have a modified fatty acid profile and for tolerance to the herbicide glyphosate, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice [1] published in the **Federal Register** on June 28, 2011 (76 FR 37771–37772, Docket No. APHIS–2011–0046), APHIS announced the availability of the Monsanto petition, a plant pest risk assessment (PPRA), and a draft environmental assessment (EA) for public comment. APHIS solicited comments on the petition, whether the subject soybeans are likely to pose a plant pest risk, the draft EA, and the PPRA for 60 days ending on August 29, 2011.

APHIS received 36 comments during the comment period, with 29 commenters expressing support of the EA's preferred alternative to make a determination of nonregulated status and the remaining 7 commenters expressing opposition. Issues raised during the comment period include liability following adverse incidents, trade implications, effects of genetically engineered crops on honey bee populations, scientific peer review of safety tests, and health effects of genetically modified organisms and glyphosate. APHIS has addressed the issues raised during the comment period and has provided responses to these comments as an attachment to the finding of no significant impact.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status for Monsanto's soybean event MON 87705, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA, the response to public comments, and other pertinent scientific data, APHIS has reached a finding of no significant impact with regard to the preferred alternative identified in the EA.

Determination

Based on APHIS' analysis of field and laboratory data submitted by Monsanto, references provided in the petition, peer-reviewed publications, information analyzed in the EA, the PPRA, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that Monsanto's soybean event MON 87705 is unlikely to pose a plant pest risk and therefore is no longer subject to our regulations governing the introduction of certain genetically engineered organisms.

Copies of the signed determination document, as well as copies of the petition, PPRA, EA, finding of no significant impact, and response to comments are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 12th day of December 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–32323 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, petition, draft EA, the PPRA, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0046.*

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—WIC Breastfeeding Policy Inventory

AGENCY: Food and Nutrition Service (FNS), USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed collection. This is a new collection for the contract *WIC Local Agency Breastfeeding Policy and Practices Inventory.*

DATES: Written comments must be received by February 14, 2012.

ADDRESSES: Comments are invited on (a) whether the proposed data collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Director, Office of Research and Analysis, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at (703) 305–2576 or via email to *Steve.Carlson@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instruction for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at Room 1014, 3101 Park Center Drive, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Steven Carlson at (703) 305–2017.

SUPPLEMENTARY INFORMATION:

Title: WIC Breastfeeding Policy Inventory.

OMB Number: 0584–NEW

Expiration Date: Not yet determined.

Type of Request: New information collection.

Abstract: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides supplemental foods, health care referrals, and nutrition education to nutritionally at-risk, low-income pregnant women, new mothers, their infants, and children up to age five. The Program is administered through 90 State, territorial, and Indian tribal organization (ITO) agencies. These agencies oversee approximately 2,000 local WIC agencies, which in turn operate about 10,000 clinic sites. WIC

clinics are the point of service for program participants.

Research has shown that there is no better food than breast milk for a baby's first year of life. Breastfeeding provides many health, nutritional, economic, and emotional benefits to both mother and baby. As a major goal of the WIC Program is to improve the nutritional status of infants, WIC mothers are encouraged to breastfeed their infants. In addition to increasing incentives for exclusive breastfeeding by providing fully breastfeeding mothers and infants with the most comprehensive food packages, the WIC program promotes breastfeeding through State and local agency policies and practices. These are designed to inform expectant and new mothers of the well-documented benefits of breastfeeding and, for those mothers that choose to breastfeed, to provide peer counseling and continued support through the infant's first year. This collection notice is for the WIC Breastfeeding Policy Inventory, which is being funded by FNS with the objective of assessing the types and diversity of policies and practices offered by local and State WIC agencies and their associations with agency-level breastfeeding outcomes.

To meet this study objective, FNS will collect data using a self-administered, Web-based survey of all State and local WIC agencies: 90 State agencies (including those of territories and ITOs) and 2,000 local WIC agencies. The survey will obtain a census of (1) all measures of breastfeeding that State and local WIC agencies currently collect, including their definitions and methods of collection, as well as the most recent values of those measures; (2) the data systems agencies use to store and process breastfeeding data and the types of information they report to other agencies or external organizations; and (3) breastfeeding policies and practices at State and local WIC agencies. The end products will give a comprehensive description of breastfeeding statistics, policies, and practices at the local and State WIC agency levels and demonstrate how breastfeeding outcomes (including initiation, duration, exclusivity, and intensity of breastfeeding), as well as policies and practices to promote breastfeeding, could be tracked over time on the local, State, and National levels.

Affected Public: Respondents will consist of WIC agency staff. Typically, the web-based survey will be completed by a single staff member, although multiple respondents may be used at some agencies. The amount of time to complete the survey, whether by one or more agency staff, is about the same. At both the State and local WIC agency levels, respondents are likely to be agency directors, breastfeeding coordinators, database managers, or staff members with equivalent titles.

Estimated Number of Respondents: The study will collect data from a total of 2,090 agencies which includes 90 State WIC agencies and 2,000 local WIC agencies.

Estimated Number of Responses per Respondent: The instrument will be administered once per respondent.

Estimated Total Annual Responses: 2,090.

Estimated Time per Respondent: For the Web-based survey, the burden estimate is 75 minutes for local WIC agency staff and 75 minutes for State WIC agency staff and is inclusive of the respondents' time to prepare for and complete the survey. For all persons who decline to participate in the survey, the burden estimate is 0.05 hours (3 minutes) and includes the respondents' time to read a letter.

Estimated Total Annual Burden on Respondents: 2,111 hours.

Respondent type	Number of respondents	Number of responses per respondent	Estimated total annual responses	Hours per response	Total hours
State WIC Agency Staff Member (Complete)	72	1	72	1.25	90
State WIC Agency Staff Member (Attempted)	18	1	18	0.05	1
Local WIC Agency Staff Member (Complete)	1,600	1	1,600	1.25	2000
Local WIC Agency Staff Member (Attempted)	400	1	400	0.05	20
Total Respondent Burden	2,090		2,090		2,111

Dated: December 9, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–32329 Filed 12–15–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Campbell County, WY; Mackey Road Relocation

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposes to authorize Peabody Powder River Mining, LLC to vacate and relocate portions of Campbell County Road 69, Mackey Road, onto National Forest System (NFS) land on Thunder Basin National Grassland. The proposal comprises new construction of approximately 6.56 miles on NFS lands in portions of Sections 6–8, 17, and 21–22 of T. 42 N., R. 69 W. and Sections 29–31 of T. 43 N., R. 69 W., 6th Principal Meridian, Campbell County, Wyoming.

DATES: Comments concerning the project or the scope of the planned environmental analysis must be received by January 17, 2012. The draft environmental impact statement (DEIS) is expected to be available by January 2012, and the final environmental impact statement (FEIS) is expected to be completed by April 2012.

ADDRESSES: Send written comments to Richard A. Cooksey, Deputy Forest Supervisor, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, 2250 East Richards Street, Douglas, Wyoming 82633, or email comments to *comments-rm-mbr-douglas-thunder-basin@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Peter Rose, Solid Minerals Project Manager, Douglas Ranger District, 2250 East Richards St, Douglas, WY 82633, (307) 358–4690.

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: Federal coal lessee (WYW–179011, WYW–0321779, WYW–172413, WYW172414, and WYW151134), Peabody Powder River Mining, LLC (PPRM), filed with

the USDA Forest Service a request for authorization to vacate and relocate portions of Mackey (CR 69) and temporary Reno (CR 83) county roads onto NFS lands on March 22, 2011. Vacated road segments will be mined through and subsequently reclaimed.

Purpose and Need for Action

The purpose of this action is to relocate the affected segments of Mackey and Reno roads outside of the mining area so that the underlying coal can be mined and to prevent interrupted road services.

Proposed Action

The Forest Service proposes to authorize PPRM to construct 6.56 miles of new road on NFS lands. Of the 6.56 miles, 1.25 miles coincides with an existing Forest Service Road—School Creek Road—that will be reconstructed. The environmental analysis will include approximately 250 acres of NFS lands. Road specifications will conform to or exceed current county road standards. Upon completion of the road construction, the final easement would be acquired by Campbell County, and this road will be maintained and operated as part of the county road system. PPRM has initiated formal discussion with Campbell County regarding the relocation, and public hearings were held by the County in November 2010.

Responsible Official

Richard Cooksey, Deputy Forest Supervisor, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, 2468 Jackson Street, Laramie, Wyoming 82070 is the Official responsible for making the decision on this action.

Nature of Decision To Be Made

The Responsible Official will consider the results of the analysis and then document the final decision in a Record of Decision (ROD). The decision will include a determination on whether or not to authorize the Mackey Road Relocation to occur in the above described lands as proposed by the applicant (PPRM), or to allow an alternative to the proposed action.

Preliminary Issues

The Forest Service has identified the following preliminary issues related to the proposed action: (1) Potential impacts to wildlife in the proposed project area; (2) potential impacts to the watershed; (3) potential impacts to cultural and paleontological resources; (4) potential impacts to adjacent private lands; and (5) potential impacts to livestock grazing permits on the National Grassland.

Scoping Process

This notice of intent initiates this phase of the scoping process, which guides the development of the environmental impact statement. Prior to this notice, the Forest Service published a Legal Notice in the *Laramie Boomerang* on May 1, 2011 initiating a 30-day formal comment period. Scoping notices were also mailed to Federal, state, and local government agencies, conservation groups, and individuals who could be impacted by the project.

A draft environmental impact statement (DEIS) will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** This notice is to inform the public of the proposed action and invite the public to participate by providing any comments or information they may have concerning the proposal. This information will be used to identify important issues and determine the extent of the analysis necessary to make an informed decision on the proposal. Such issues will assist in the formulation of additional alternatives and the development of mitigation measures necessary to reduce impacts.

In addition to this notice, the scoping process included the distribution of letters to interested parties requesting comments on the proposed action, and a public notice was published in area media.

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 9, 2011.

Misty A. Hays,

Deputy District Ranger.

[FR Doc. 2011–32200 Filed 12–15–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Dairyland Power Cooperative: CapX 2020 Hampton-Rochester-La Crosse Transmission Line Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of a Draft Environmental Impact Statement and Notice of Public Hearings.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has prepared a Draft Environmental Impact Statement (EIS) to meet its responsibilities under the National Environmental Policy Act (NEPA) and 7 CFR 1794 related to providing financial assistance to Dairyland Power Cooperative (Dairyland) for its share in the construction of a proposed 345-kilovolt (kV) transmission line and associated infrastructure between Hampton, Minnesota and the La Crosse area in Wisconsin (the proposed project). Dairyland is participating in the proposed project with a number of other utilities (Applicants).

The purpose of the proposed project is to: (1) Improve community reliability of the transmission system in Rochester, Winona, La Crosse, and the surrounding areas, which include areas served by Dairyland; (2) improve the regional reliability of the transmission system; and (3) increase generation outlet capacity.

DATES: Written comments on this Draft EIS will be accepted 45 days following the publication of the U.S. Environmental Protection Agency's notice of receipt of the Draft EIS in the **Federal Register.**

RUS will conduct five public meetings in an open-house format followed by a discussion period: January 9, 2012, Alma High School Gym, S1618 State Rd 35, Alma, Wisconsin; January 10, 2012, Wanamingo Community Center, 401 Main Street, Wanamingo, Minnesota; January 11, 2012, Cannon Falls High School Cafeteria, 820 Minnesota St. E, Cannon Falls, Minnesota; January 12, 2012, American Legion Hall, 215 3rd Street SW., Plainview, Minnesota; and January 13, 2012, Centerville/Town of Trempealeau Community Center, W24854 State Road 54/93, Galesville, Wisconsin.

All meetings will be held as follows: open house from 5:00 to 6 p.m. followed by the discussion period from 6:00 to 8 p.m. local time. A court reporter will be available.

ADDRESSES: A copy of the Draft EIS may be viewed online at the following Web

site: *http://www.rurdev.usda.gov/UWP–CapX2020–Hampton-Rochester-LaCrosse.html* and at the following repositories:

Alma Public Library, 312 North Main Street, Alma, WI 54610. *Phone:* 608–685–3823.

Arcadia Public Library, 406 E Main Street, Arcadia, WI 54612. *Phone:* 608–323–7505.

Campbell Library, 2219 Bainbridge Street, La Crosse, WI 54603. *Phone:* 608–783–0052.

Cannon Falls Library, 306 West Mill Street, Cannon Falls, MN 55009. *Phone:* 507–263–2804.

Dairyland Power Cooperative, 500 Old State Highway 35, Alma, WI 54610. *Phone:* 608–685–4497.

Galesville Public Library, 16787 South Main Street, Galesville, WI 54630. *Phone:* 608–582–2552.

Holmen Area Library, 103 State Street, Holmen, WI 54636. *Phone:* 608–526–4198.

Kenyon Public Library, 709 2nd Street, Kenyon, MN 55946. *Phone:* 507–789–6821.

Riverland Energy Cooperative, N28988 State Road 93, Arcadia, WI 54612. *Phone:* 608–323–3381.

Rochester Public Library, 101 2nd Street SE., Rochester, MN 55904. *Phone:* 507–328–2300.

Shirley M. Wright Memorial Library, 11455 Fremont Street, Trempealeau, WI 54661. *Phone:* 608–534–6197.

Tri-County Electric, 31110 Cooperative Way, Rushford, MN 55971. *Phone:* 507–864–7783.

La Crosse Public Library, 800 Main Street, La Crosse, WI 54601. *Phone:* 608–789–7100.

Onalaska Public Library, 741 Oak Avenue, South, Onalaska, WI 54650. *Phone:* 608–781–9568.

People's Cooperative Services, 3935 Hwy 14 E., Rochester, MN 55903. *Phone:* 507–288–4004.

Plainview Public Library, 345 1st Avenue Northwest, Plainview, MN 55964. *Phone:* 507–534–3425.

Van Horn Public Library, 115 SE. 3rd Street, Pine Island, MN 55963. *Phone:* 507–356–8558.

Xcel Energy, 5050 Service Drive, Winona, MN 55987. *Phone:* 507–457–1236.

Xcel Energy, 1414 West Hamilton Avenue, Eau Claire, WI 54701. *Phone:* 715–839–2621.

Zumbrota Public Library, 100 West Avenue, Zumbrota, MN 55992. *Phone:* 507–732–5211.

FOR FURTHER INFORMATION: To obtain copies of the Draft EIS or for further information, contact: Stephanie Strength, Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue SW., Room 2244, Stop 1571, Washington, DC 20250–1571, or email *stephanie.strength@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife Service (USFWS) are participating in the EIS as cooperating agencies, with RUS as the lead Federal agency. The Draft EIS addresses the construction and operation of the proposed project, which, in addition to the 345-kV transmission line and associated infrastructure, includes 161-kV transmission lines in the vicinity of Rochester, Minnesota; construction of two new and expansion of three substations, with a total transmission line length of approximately 150 miles. Counties through which the proposed project may pass include Dakota, Goodhue, Wabasha, and Olmsted in Minnesota, and La Crosse, Trempealeau, and Buffalo in Wisconsin. The Draft EIS also addresses rebuilding an existing Dairyland 39-mile long 161-kV line that extends from Alma to north La Crosse, Wisconsin, which may be co-located in whole or in part with the 345-kV line.

Among the alternatives addressed in the Draft EIS is the No Action alternative, under which the proposed project would not be undertaken. Additional alternatives addressed in the Draft EIS include route alternatives also considered in the EISs prepared for the Proposed project by the states of Minnesota and Wisconsin. RUS has carefully studied public health and safety, environmental impacts, and engineering aspects of the Proposed project.

RUS used input provided by government agencies, private organizations, and the public in the preparation of the Draft EIS. RUS will prepare a Final EIS that considers all comments received on the Draft EIS. Following the 30-day comment period for the Final EIS, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Final EIS and the ROD will be published in the **Federal Register** and in local newspapers.

In accordance with Section 106 of the National Historic Preservation Act and its implementing regulation, ''Protection of Historic Properties'' (36 CFR 800) and as part of its broad environmental review process, RUS must take into account the effect of the proposed project on historic properties. Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. Any party wishing to participate more directly with RUS as a ''consulting party'' in Section 106 review may submit a written request to the RUS contact provided in this notice.

The proposed project involves unavoidable impacts to wetlands and floodplains; this Notice of Availability also serves as a statement of no practicable alternatives to impacts on wetlands and floodplains, in accordance with Executive Orders 11990 and 11988, respectively (see Draft EIS Sections 3.2 and 3.5).

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as promulgated in RUS' Environmental Policies and Procedures (7 CFR 1794).

Nivin Elgohary,

Assistant Administrator, Electric Programs, Rural Utilities Service.

[FR Doc. 2011–32337 Filed 12–15–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency (MBDA).

Title: Focus Groups on Minority-Owned Business Growth, Opportunities and Barriers to Global Commerce.

OMB Control Number: 0640–0027.

Form Number(s): None.

Type of Request: Regular submission (reinstatement with change of a previously approved information collection).

Number of Respondents: 100.

Average Hours per Response: 3 hours.

Burden Hours: 300.

Needs and Uses: The U.S. Department of Commerce's National Advisory Council on Minority Business Enterprise has been working on recommendations for the Secretary of Commerce on domestic and global growth strategies and programs for minority-owned businesses. The recommendations are also in support of the President's National Export

Initiative (NEI), which calls for doubling U.S. exports in five years.

The Council, which is managed by the Minority Business Development Agency, will hold a series of focus groups (five to ten) to gather qualitative data on minority-owned businesses strategies and barriers to business growth domestically and through exports. The collection is necessary because currently there are no sources of qualitative data available that provide this kind of information.

The focus groups will be held, upon approval, in January and February of 2012. The Council will invite minority business owners representing diverse geographic locations, industries, firm sizes, and growth performance. Findings from the Focus groups will be used to inform Final Recommendations to the Secretary of Commerce to be delivered in April 2012.

The change from previous request is that MBDA will be conducting focus groups instead of using a survey to collect the same information.

Affected Public: Business or other for-profit organizations (minority-owned businesses, entrepreneurs).

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer:. Nicholas Fraser, (202) 395–5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–7285, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov.*

Dated: December 12, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–32215 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–847]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From India: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a timely request by one manufacturer/exporter, Aquapharm Chemicals Pvt., Ltd. (Aquapharm), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from India with respect to Aquapharm. The review covers the period April 1, 2010, through March 31, 2011. We preliminarily determine that Aquapharm did not make sales below normal value (NV).

If the preliminary results are adopted in our final results of the administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP).

FOR FURTHER INFORMATION CONTACT: David Goldberger or Brandon Custard, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–4136 or (202) 482–1823, respectively.

SUPPLEMENTARY INFORMATION:

Background

In response to a timely request by Aquapharm, on April 29, 2010, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on HEDP from India with respect to Aquapharm covering the period April 1, 2010, through March 31, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 30912 (May 27, 2011).

On May 31, 2010, we issued the antidumping duty questionnaire to Aquapharm. On August 5, 2011, we received a response to section A (*i.e.,* the section covering general information about the company), section B (*i.e.,* the section covering comparison-market sales) and section C (*i.e.,* the section covering U.S. sales) of the antidumping duty questionnaire from Aquapharm.

On September 19, 2011, we issued to Aquapharm a supplemental questionnaire regarding its responses to sections A, B, and C of the original questionnaire, and received a response to this supplemental questionnaire on October 12, 2011.

Scope of the Order

The merchandise covered by this order includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid [1], also referred to as hydroxethlylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4. The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this order is dispositive.

Period of Review

The period of review (POR) is April 1, 2010, through March 31, 2011.

Comparisons to Normal Value

To determine whether Aquapharm's sales of HEDP from India to the United States were made at less than NV, we compared the export price (EP) or constructed export price (CEP) to NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the EPs and CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade. *See* discussion below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Aquapharm covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared Aquapharm's U.S. sales of HEDP to its sales of HEDP made in the home market. Where there were no contemporaneous sales within the definition of 19 CFR 351.414(e)(2)(i), pursuant to 19 CFR 351.414(e)(2)(ii) and (iii), we compared sales within the contemporaneous

[1] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$.

window period, which extends from three months prior to the month of the U.S. sale until two months after the sale. In making the product comparisons, we matched foreign like products based on their aqueous concentration. Aquapharm reported that, pursuant to section 771(16)(A) of the Act, all of its U.S. sales during the POR were identical based on the product matching criterion (*i.e.,* aqueous concentration) to contemporaneous sales in the home market. Accordingly, in calculating Aquapharm's NV, we made product comparisons without having to account for cost differences associated with differences in the physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, we calculated EP for those sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. We based EP on the packed delivered price to unaffiliated purchasers in the United States. Where appropriate, pursuant to 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, U.S. brokerage and handling, international freight, U.S. inland freight to the customer, marine insurance, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees).

Pursuant to section 772(b) of the Act, we calculated CEP for those sales where the subject merchandise was first sold or agreed to be sold in the United States before or after the date of importation by or for the account of the producer or exporter or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We based CEP on the packed ex-U.S. warehouse prices to unaffiliated purchasers in the United States. Where appropriate, pursuant to 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, U.S. brokerage and handling, international freight (inclusive of U.S. port to U.S. warehouse transportation), marine insurance, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.,* credit expenses, commissions, and bank charges), and indirect selling expenses (including inventory carrying costs). We also deducted from CEP an amount for profit in accordance with section 772(d)(3) of the Act. In accordance with sections 772(f)(1) and (f)(2)(C)(iii) of the Act, we calculated the CEP profit percentage using information from Aquapharm's audited financial statement. *See* Memorandum entitled ''Aquapharm Preliminary Results Margin Calculation,'' dated contemporaneously with this notice, for further discussion of the CEP profit calculation.

Normal Value

A. Home Market Viability and Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), Aquapharm had a viable home market during the POR. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales of the foreign like product at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stages of marketing. *See id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison-market sales (*i.e.,* where NV is based on either home market or third country prices),[2] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Tech., Inc.* v. *United States,* 243 F. 3d 1301, 1314–16 (Fed. Cir. 2001). When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa,* 62 FR at 61732–33.

In this administrative review, we obtained information from Aquapharm regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by Aquapharm for each channel of distribution.

Aquapharm reported that during the POR it sold HEDP to end-users, distributors, and end-users/distributors through three channels of distribution in the United States, and to end-users and traders through two channels of distribution in the home market.

[2] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative expenses, and profit for CV, where possible. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From Brazil,* 69 FR 47081 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil,* 69 FR 76910 (December 23, 2004).

Aquapharm made CEP sales in the U.S. market through one channel of distribution: sales through an unaffiliated U.S. selling agent to unaffiliated U.S. distributors/end-users of HEDP maintained in inventory at an unaffiliated U.S. warehouse (Channel 1). In addition, Aquapharm made EP sales in the U.S. market through two channels of distribution: direct sales/shipments to unaffiliated U.S. end-users (Channel 2); and direct sales/shipments to unaffiliated U.S. distributors (Channel 3).

We examined the selling activities performed for the three U.S. sales channels and found that Aquapharm performed the following selling functions for each channel: Sales forecasting, order input/processing, direct sales personnel, packing, freight and delivery services, inventory maintenance, technical assistance, payment of commissions, warranty service, and provision of guarantees. These selling activities can be generally grouped into four selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) warehousing and inventory; and (4) warranty and technical support. Accordingly, based on the four selling function categories, we find that Aquapharm performed primarily sales and marketing, freight and delivery services, and warranty and technical services for U.S. sales. Although Aquapharm performed additional freight and delivery functions (such as repacking) and warehousing functions for its U.S. sales through Channel 1, we do not find that these selling functions constitute a substantial difference in selling functions which are significant enough to warrant a separate LOT in the U.S. market. As explained in the Department's regulations at 19 CFR 351.412(c)(2), ''{s}ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.'' Therefore, we preliminarily determine that there is one LOT in the U.S. market because Aquapharm performed essentially the same selling functions for all U.S. sales.

With respect to the home market, Aquapharm made sales through the following channels of distribution: (1) Sales to unaffiliated end-users (Channel 1); and (2) sales to unaffiliated traders (Channel 2). We examined the selling activities performed for each home market sales channel and found that Aquapharm performed the following selling functions for sales made through both channels: sales forecasting, sales promotion, distributor/dealer training, order input/processing, direct sales personnel, sales/marketing support, market research, packing, freight and delivery services, inventory maintenance, technical assistance, warranty service, and provision of guarantees. Accordingly, based on the four selling function categories described above, we find that Aquapharm performed primarily sales and marketing, freight and delivery services, and warranty and technical services for home market sales. Moreover, we did not find any significant distinctions between the selling functions Aquapharm performed for each home market channel to warrant a separate LOT in the home market. Therefore, we preliminarily determine that there is one LOT in the home market because Aquapharm performed essentially the same selling functions for all home market sales.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for home market sales are either performed at the same degree of intensity as, or vary only slightly from, the selling functions performed for U.S. sales. Specifically, we found that with respect to the four selling function categories, there are only slight differences in the level of intensity between the home and U.S. markets, and have preliminarily determined that these slight differences do not provide a sufficient basis to find separate LOTs between the two markets. Therefore, we find that the single home market LOT and single U.S. LOT are the same and, as a result, no LOT adjustment or CEP offset is warranted. Accordingly, we matched U.S. and home market sales at the same LOT.

C. Calculation of Normal Value Based on Comparison-Market Prices

We based NV for Aquapharm on delivered prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for discounts, inland freight expenses and inland insurance expenses, under section 773(a)(6)(B)(ii) of the Act. Where appropriate, we also added freight and insurance revenue to the starting price, and capped it by the amount of freight and insurance expenses incurred, in accordance with our practice. *See, e.g.,* Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part, 74 FR 44819 (August 31, 2009), and accompanying Issues and Decision Memorandum at Comment 7.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments for imputed credit expenses and bank charges. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: (1) the amount of the commission paid in the U.S. market; or (2) the amount of the indirect selling expenses incurred in the comparison market. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for Aquapharm for the period April 1, 2010, through March 31, 2011:

Manufacturer/exporter	Percent margin
Aquapharm Chemicals Pvt., Ltd. ..	0.00

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants;

and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue appropriate appraisement instructions for the company subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Where Aquapharm reported entered value for its U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

Where Aquapharm did not report entered value for its U.S. sales, we will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.10 percent, the all-others rate made effective by the LTFV investigation. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value,* 74 FR 10543 (March 11, 2009). These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: December 11, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–32262 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–815]

Gray Portland Cement and Clinker From Japan: Continuation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 2, 2011, the Department of Commerce (the Department) initiated the third sunset review of the antidumping duty order on gray portland cement and clinker from Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 24459 (May 2, 2011) (*Notice of Initiation*). As a result of the determination by the Department and the International Trade Commission (ITC) that revocation of the antidumping duty order on gray portland cement and clinker from Japan would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of this antidumping duty order.

DATES: *Effective Date:* December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, 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) 482–1757 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2011, the Department published the notice of initiation of the third sunset review of the antidumping duty order on gray portland cement and

clinker from Japan [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Notice of Initiation.*

As a result of this sunset review, the Department determined that revocation of the antidumping duty order on gray portland cement and clinker from Japan would likely lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Gray Portland Cement and Clinker From Japan: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order,* 76 FR 54206 (August 31, 2011).

On December 8, 2011, the ITC published its determination in the **Federal Register,** pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on gray portland cement and clinker from Japan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Gray Portland Cement and Clinker From Japan,* 76 FR 76760 (December 8, 2011), and USITC Publication 4281 (December 2011) entitled *Gray Portland Cement and Cement Clinker From Japan (Inv. Nos. 731–TA–461 (Third Review)).*

Scope of the Order

The products covered by the order are cement and cement clinker from Japan. Cement is a hydraulic cement and the primary component of concrete. Cement clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement was specifically excluded from the antidumping duty order. Cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive as to the scope of the product covered by the order.[2]

Continuation of Order

As a result of the determination by the Department and the ITC that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on gray portland cement and clinker from Japan.

U.S. Customs and Border Protection will continue to collect antidumping cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication of this notice of continuation in the **Federal Register.** Pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year sunset review and this notice is in accordance with section 751(c) of the Act and is published pursuant to section 777(i) of the Act and 19 CFR 351.218(f)(4).

Dated: December 8, 2011.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2011–32270 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker From Japan,* 56 FR 21658 (May 10, 1991), and *Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Gray Portland Cement and Clinker From Japan,* 60 FR 39150 (August 1, 1995).

[2] The Department has made two scope rulings regarding subject merchandise. *See Scope Rulings,* 57 FR 19602 (May 7, 1992) (classes G and H of oil well cement are within the scope of the order), and *Scope Rulings,* 58 FR 27542 (May 10, 1993) (''Nittetsu Super Fine'' cement is not within the scope of the order).

DEPARTMENT OF COMMERCE

International Trade Administration

Limitation of Duty-Free Imports of Apparel Articles Assembled in Haiti Under the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act (HOPE)

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notification of Annual Quantitative Limit on Certain Apparel under HOPE.

DATES: *Effective Date:* December 20, 2011.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

SUPPLEMENTARY INFORMATION:

Authority: The Caribbean Basin Recovery Act (''CBERA''), as amended by the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act of 2006 (''HOPE''), Title V of the Tax Relief and Health Care Act of 2006 and the Food, Conservation, and Energy Act of 2008 (''HOPE II''); the Haiti Economic Lift Program Act of 2010 (''HELP''); and implemented by Presidential Proclamations No. 8114, 72 FR 13655, 13659 (March 22, 2007), and No. 8596, 75 FR 68153 (November 4, 2010).

HOPE provides for duty-free treatment for certain apparel articles imported directly from Haiti. Section 213A(b)(1)(B) of HOPE outlines the requirements for certain apparel articles to qualify for duty-free treatment under a ''value-added'' program. In order to qualify for duty-free treatment, apparel articles must be wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, as long as the sum of the cost or value of materials produced in Haiti or one or more countries, as described in HOPE, or any combination thereof, plus the direct costs of processing operations performed in Haiti or one or more countries, as described in HOPE, or any combination thereof, is not less than an applicable percentage of the declared customs value of such apparel articles. Pursuant to HELP, the applicable percentage for the period December 20, 2011 through December 19, 2012, is 50 percent or more.

For every twelve month period following the effective date of HOPE, duty-free treatment under the value-added program is subject to a quantitative limitation. HOPE provides that the quantitative limitation will be recalculated for each subsequent 12-month period. Section 213A(b)(1)(C) of HOPE, as amended by HOPE II and HELP, requires that, for the twelve-month period beginning on December 20, 2011, the quantitative limitation for qualifying apparel imported from Haiti under the value-added program will be an amount equivalent to 1.25 percent of the aggregate square meter equivalent of all apparel articles imported into the United States in the most recent 12-month period for which data are available. The aggregate square meters equivalent of all apparel articles imported into the United States is derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (''ATC''), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC. For purposes of this notice, the most recent 12-month

period for which data are available as of December 20, 2011 is the 12-month period ending on October 31, 2011.

Therefore, for the one-year period beginning on December 20, 2011 and extending through December 19, 2012, the quantity of imports eligible for preferential treatment under the value-added program is 326,752,739 square meters equivalent. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

Dated: December 12, 2011.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 2011–32278 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO45

Marine Mammals; File No. 14241

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Dr. Peter Tyack, Woods Hole Oceanographic Institution, Woods Hole, MA has applied for an amendment to Permit No. 14241–02 to conduct research on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before January 17, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14241 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9300; fax (978) 281–9333; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 14241–02 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216.

Permit No. 14241, issued on July 15, 2009 (74 FR 3668), authorizes the permit holder to conduct research on cetacean behavior, sound production, and responses to sound. The research methods include tagging marine mammals with an advanced digital sound recording tag that records the acoustic stimuli an animal hears and measures vocalization, behavior, and physiological parameters. Research also involves conducting sound playbacks in a carefully controlled manner and measuring animals' responses. The principal study species are beaked whales, especially Cuvier's beaked whale (*Ziphius cavirostris*), and large delphinids such as long-finned pilot whales (*Globicephala melas*), although other small cetacean species may also be studied. The locations for the field work are the Mediterranean Sea, waters off of the mid-Atlantic United States, and Cape Cod Bay. The permit has been amended twice since issuance. Amendment number 1 (Permit No. 14241–01) issued on July 27, 2010 (75 FR 47779): (1) Included authorization for collection of a skin and blubber biopsy sample from animals that are already authorized to be tagged; (2) added new species for existing projects involving tagging, playbacks, and behavioral observations; and (3) modified and clarified tagging and playback protocols and mitigation for when dependent calves are present. Amendment number 2 (Permit No. 14241–02), a minor amendment, issued on April 4, 2011, modified the sound source protocols and added zinc oxide marking for animals being tagged or biopsied. The permit, as amended, is valid through July 31, 2014.

The permit holder has a pending amendment request (76 FR 75524) to: (1) Add one new species, Atlantic spotted dolphin (*Stenella frontalis*), for field work in waters off Georgia, North Carolina, South Carolina, and Virginia; (2) add a new project to Dtag the following species in waters off the west coast of North America: Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whale, Risso's dolphin (*Grampus griseus*), killer whale (*Orcinus orca*) and Mesoplodont beaked whales (*Mesoplodon* spp); (3) add a new procedure for marking cetaceans with zinc oxide; (4) add satellite tagging to long-finned pilot whales in approaches to the Mediterranean; and (5) switch some of the playback takes initially located in the Mediterranean and eastern North Atlantic to the same stocks of long-finned and short-finned (*G. macrorhynchus*) pilot whales off Cape Hatteras, an area where research is already authorized. The amendment would not change the expiration date of the permit.

The permit holder is requesting that the pending amendment also include: (1) adding waters off Florida to the project for tagging to study risks of entanglement is mid-Atlantic states, with no changes in the numbers, species, or stocks of marine mammals taken; and (2) increasing the number of Baird's beaked whales that may be zinc-marked off the west coast of North America from 40 to 80 per year (as part of item number 2 above).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the *Federal Register*, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 13, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–32288 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA866

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Application for a research permit renewal.

SUMMARY: Notice is hereby given that NMFS has received a scientific research

permit application request relating to Pacific salmon and the southern distinct population segment of Pacific eulachon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The application may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on January 17, 2012.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to (503) 230–5441 or by email to *nmfs.nwr.apps@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (*ph.:* (503) 231–2314), *Fax:* (503) 230–5441, *email: Robert.Clapp@noaa.gov.* Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened upper Willamette River (UWR); threatened lower Columbia River (LCR); endangered upper Columbia River (UCR); threatened Snake River (SR) spring/sum (spr/sum); threatened SR fall;

Steelhead (*O. mykiss*): threatened UWR, threatened LCR; threatened UCR; threatened SR; threatened middle Columbia River (MCR).

Chum salmon (*O. nerka*): threatened CR.

Coho salmon (*O. kisutch*): threatened LCR.

Eulachon: the southern Distinct Populations Segment (SDPS) of Pacific eulachon (*Thaleichthys pacificus*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1461–5R

The United States Geological Survey (USGS) is seeking to renew for five years a research permit that would allow them to take all fish species covered in this notice while conducting research at Crims Island and the Julia Butler Hanson National Wildlife Refuge in the lower Columbia River. The purpose of the research is to determine fish species composition, habitat use, and diet in the areas sampled. The data gathered would be used to guide and determine the effectiveness of habitat restoration activities in the lower Columbia River. The species would benefit from well-planned and monitored habitat restoration activities as well as (ultimately) the restored habitat itself. Permit 1461 has been in place since 2004; the USGS is requesting that the permit be issued for an additional five years. Juvenile salmonids would be collected (using beach seines, Fyke nets, backpack electrofishing, and boat electrofishing), and variously anesthetized, measured for length and weight, sampled for stomach contents and scales, marked (using fluorescent elastomers, Pan-jet needle-less inocculators, or batchmarked with a flourochrome dye), PIT tagged, allowed to recover from the anesthesia, and released. Not all fish would undergo all these procedures, but all would be anesthetized. The USGS does not intend to kill any fish, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: December 12, 2011.

Lisa Manning,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–32286 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA853

Notice of Availability for General Conservation Plans and Notice of Intent To Prepare Environmental Assessments

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

ACTION: Notice of Availability of General Conservation Plans; and Notice of Intent To prepare Environmental Assessments; announcement of a public scoping meeting; request for comments.

SUMMARY: We, NMFS, announce our intent to conduct public scoping necessary to gather information to prepare General Conservation Plans (GCPs) for the Penobscot Bay, Merrymeeting Bay, and Downeast Coastal Salmon Habitat Recovery Units (SHRUs) and Environmental Assessments (EAs) under the National Environmental Policy Act (NEPA). The GCPs will provide a streamlined process by which dam owners that are not regulated by the Federal Energy Regulatory Commission (FERC) can obtain an incidental take permit (ITP) by conforming to specific measures in their respective GCP that minimize and mitigate impacts to Gulf of Maine Distinct Population Segment (GOM DPS) of Atlantic salmon (*Salmo salar*). The GCP will be implemented cooperatively by participating dam owners and NMFS. The EAs will analyze the environmental effects of the proposed issuance of ITPs under the Endangered Species Act of 1973 (ESA), as amended. We provide this notice to announce the initiation of a public scoping period, during which other Federal and State agencies, Tribes, and the public can provide suggestions and information on the scope of issues and range of alternatives to be addressed in the GCPs and EAs.

DATES: Please send written comments on or before February 14, 2012. A formal Public scoping meeting will be held on January 11, 2011. For the public meeting locations, see ''Meeting'' below.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0291, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit

comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0291 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• *Mail or hand-delivery:* Assistant Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

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

The GCPs and other pertinent information are also available electronically at the NMFS Web site at *http://www.nero.noaa.gov/prot_res/altsalmon/conservationplan* and *http://www.nero.noaa.gov.*

Meeting: A public meeting will be held on January 11, 2011, from 12:30–5 p.m. at the Hilton Garden Inn, 250 Haskell Road, Bangor, ME.

FOR FURTHER INFORMATION CONTACT: David Bean, NMFS, Northeast Regional Office, Maine Field Station, 17 Godfrey Drive, Orono, ME 04473; (207) 866–4172.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact the National Marine Fisheries Service (NMFS) at the address above no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

In accordance with section 10(a)(1)(B) of the ESA, we are preparing three individual GCPs to provide a streamlined process by which dam owners within the GOM DPS can obtain an incidental take permit. Section 9 of the ESA (16 U.S.C. 1538) and the implementing regulations prohibit the take of animal species listed as endangered or threatened. The term ''take'' is defined under the ESA (16 U.S.C. 1532) as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in such conduct. ''Harm'' is defined by Service regulation (50 CFR 17.3) to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Under section 10(a)(1)(B) of the ESA, NMFS may issue permits to authorize ''incidental take'' of listed species, where the take is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.32 and 50 CFR 17.22, respectively. If a permit is issued, participating dam owners would receive assurances for all species included on the ITP under the Service's ''No Surprises'' regulations (50 CFR 17.22 (b)(5) and 17.32 (b)(5)).

Section 10 of the ESA specifies the requirements for the issuance of ITPs to non-Federal entities. Any proposed take cannot appreciably reduce the likelihood of the survival and recovery of the species in the wild. The impacts of such take must also be minimized and mitigated to the maximum extent practicable. Typically, to obtain an ITP, an applicant must prepare a Habitat Conservation Plan (HCP) describing the impact that would likely result from the proposed taking, the measures for minimizing and mitigating the take, the funding available to implement such measures, alternatives to the taking, and the reason why such alternatives are not being implemented. NMFS is preparing three individual GCPs that describe the required protective measures and provides a regulatory structure for these specific conditions to occur. Individual private dam owners could receive ITPs by participating in the GCP process.

The specific objectives of the GCPs are to (1) Provide for safe, timely, and effective passage for all relevant life stages of Atlantic salmon at each facility covered in the GCPs to promote recovery of the species; (2) provide full access to critical habitat with a habitat quality score of 2 or 3 (74 FR 29300; June 19, 2009) in the GOM DPS; (3) provide a mechanism for which authorized incidental take can be mitigated by requiring the applicant to provide additional funds which can be used to improve access to quality habitat within the GOM DPS; and (4) provide a regulatory and permitting process for qualified dam owners to receive take authorization that minimizes time requirements for the applicant.

Owners of dams not regulated by FERC that are located within the GOM DPS would be eligible for participation in the GCPs. We are proposing to address only the federally endangered GOM DPS Atlantic salmon in the GCP for ITP coverage, although other Federally listed and special-status species are expected to benefit from activities conducted through the GCPs. Under the GCPs, ITPs would be issued to cover otherwise legal activities necessary to maintain or improve Atlantic salmon passage. Such activities include, but are not limited to: Demolishing and removing a dam; rehabilitating riparian vegetation after dam removal; sediment removal upstream of a dam prior to removal; reconstructing the river channel after dam removal; and, constructing and maintaining upstream or downstream fishways. The GCPs would not allow for coverage of activities that are not specifically related to maintaining or improving Atlantic salmon passage.

Participating dam owners in the GCPs would have two options to minimize take of Atlantic salmon: (1) Remove the dam; or (2) modify the dam such that it allows for upstream migration of adult Atlantic salmon during times of salmon migration. Dam owners utilizing minimization option two would also be required to pay a mitigation fee for ongoing impacts to fish passage that will result from continued dam presence. Specifically, dam owners would be assessed an annual mitigation fee which would be allocated to an individual GCP Adaptive Management Fund that would be used to improve fish passage at high priority locations in the respective SHRU. The annual fee would be calculated based on general information regarding the impacts of dams to Atlantic salmon passage and the quantity and quality of habitat upstream of the dam.

We intend for the GCPs to be effective for 50 years. For projects pursuing Minimization Option 1 (dam removal), individual ITPs would be valid for the duration of the GCPs if necessary, though in most cases all take should be eliminated by dam removal and long-term take issuance should not be needed. For projects pursuing Minimization Option 2 (modify dam to allow for fish passage), individual ITPs

would be valid for 20 years and may be extended for additional terms if we determine that a dam has been, and remains, in compliance with the GCP's requirements.

Environmental Assessment

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, a reasonable range of alternatives to proposed projects is developed and considered in the environmental review. Alternatives considered for analysis in an environmental document may include: variations in the scope of covered activities; Variations in the location, amount, and type of conservation; variations in permit duration; or, a combination of these elements.

The EAs will consider the proposed action (issuance of ITPs through the GCP process), a no-action alternative (a scenario where there would be no issuance ITPs and dam owners would remain in violation of the ESA), and a reasonable range of alternatives that fit within the purpose and need as described by NMFS. The purpose of the proposed action is to provide a process for authorizing take of Atlantic salmon incidental to the removal of dams and the installation and maintenance of fish passage improvements for dams not regulated by FERC. The need for the proposed action is to provide a mechanism by which participating dam owners can comply with section 9 of the ESA, which prohibits the take of ESA listed fish, wildlife, or plant species. A detailed description of the proposed action and alternatives will be included in each of the EAs.

The alternatives for analysis in the EAs may include, but are not limited to, development of individual HCPs for dam owners to receive take authorization for Atlantic salmon and development of regional HCPs developed by the State of Maine or local agencies (*e.g.,* counties) to provide opportunities for dam owners to receive take authorization. The EAs will also identify potentially significant impacts on biological resources, land use, air quality, cultural resources, water resources, socioeconomics, and other resources in the human environment that may occur directly, indirectly, and/or cumulatively as a result of implementing the proposed action or any of the alternatives. Various strategies for avoiding, minimizing, and mitigating the impacts of incidental take will be considered.

We are furnishing this notice in accordance with 40 CFR 1501.7 and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives they believe need to be addressed in the EAs. The primary purpose of the scoping process is to identify important issues raised by the public related to the proposed action. Written comments from interested parties are requested to ensure that the full range of issues related to the proposed action is identified. Comments will only be accepted in written form.

Request for Public Comments

We seek comments concerning: (1) Atlantic salmon proposed for inclusion in the proposed GCPs, including information regarding its range, distribution, population size and population trends within the GOM DPS; (2) relevant data concerning the impacts of the proposed actions on Atlantic salmon; (3) any other environmental issues that should be considered with regard to the proposed permit action; and (4) the information and range of alternatives to be included in the EAs.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: December 13, 2011.

Marta Nammack,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–32287 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA727

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Reef Fish Fishery; South Atlantic Snapper-Grouper Fishery

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

ACTION: Notice of agency action.

SUMMARY: NMFS, under the authority granted to the Secretary of Commerce (Secretary) under section 304(f) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), has designated the South Atlantic Fishery Management Council (South Atlantic Council) as the responsible council to manage Nassau grouper in the Gulf of Mexico (Gulf) under the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP). Prior to this designation, the Gulf of Mexico Fishery Management Council (Gulf Council) was the responsible council to manage Nassau grouper from the fishery management unit in the FMP for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP).

DATES: This action is effective on December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, (727) 824–5305; email: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf Council has submitted a Generic Annual Catch Limits/Accountability Measures Amendment for the Gulf Council's Red Drum, Reef Fish, Shrimp, and Coral and Coral Reefs FMPs (Generic ACL Amendment) for purposes of review by the Secretary under the Magnuson-Stevens Act. A Notice of Availability for the Generic ACL Amendment was published in the **Federal Register** on September 26, 2011 (76 FR 59373). A proposed Rule to implement the actions in the Generic ACL Amendment was published in the **Federal Register** on October 25, 2011 (76 FR 66021). As part of this amendment, the Gulf Council has selected to remove Nassau grouper from the Reef Fish FMP. This proposed action is based on an October 20, 2010, letter from the South Atlantic Council informing the Gulf Council of its willingness to accept responsibility for managing Nassau grouper throughout South Atlantic and Gulf Federal waters. Prior to this designation, the South Atlantic Council solely managed Nassau grouper in its area of jurisdiction, in the South Atlantic, through the Snapper-Grouper FMP.

In accordance with section 304(f) of the Magnuson-Stevens Act, on September 16, 2011, the Gulf Council formally requested, through a letter, that the Secretary designate the South Atlantic Council as the responsible Council for the continued management of Nassau grouper in the Federal waters of the South Atlantic region and to manage the species in the Federal waters of the Gulf. NMFS agrees with designating management of Nassau grouper in the South Atlantic and Gulf Federal waters to the South Atlantic Council. Therefore, on October 18, 2011, NMFS published a notice in the **Federal Register** (76 FR 64327) requesting public comment on the proposed action through November 17, 2011, on the Gulf Council's proposal.

Prior to this designation, the harvest of Nassau grouper was prohibited in Federal waters by regulations implemented through the Reef Fish FMP in the Gulf and the Snapper-Grouper FMP in the South Atlantic. The harvest of Nassau grouper in Florida state waters is prohibited by the applicable Florida regulations. With the approval and implementation of the Gulf Council's Generic ACL Amendment, which proposes to remove Nassau grouper from the Reef Fish FMP, all harvesting restrictions for Nassau grouper in Federal waters of the Gulf would be removed. With this notice, the South Atlantic Council is designated as the responsible council for the management of Nassau grouper in the Gulf. The South Atlantic Council is expected to extend the prohibition on harvest of Nassau grouper in the Gulf. Any action to remove the current prohibitions in the Gulf will have a delayed effective date, so that it will be implemented simultaneously with a subsequent South Atlantic Council action to extend the harvest prohibition.

No comments were received regarding the proposed action and therefore NMFS is proceeding with the change in designation of the responsible council for Nassau grouper in the Gulf.

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

Dated: December 13, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–32273 Filed 12–13–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2011–0076]

Extension of the Extended Missing Parts Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) implemented a pilot program (Extended Missing Parts Pilot Program) in which an applicant, under certain conditions, can request a twelve-month time period to pay the search fee, the examination fee, any excess claim fees, and the surcharge (for the late submission of the search fee and the examination fee) in a nonprovisional application. The Extended Missing Parts Pilot Program benefits applicants by permitting additional time to determine if patent protection should be sought—at a relatively low cost—and by permitting applicants to focus efforts on commercialization during this period. The Extended Missing Parts Pilot Program benefits the USPTO and the public by adding publications to the body of prior art, and by removing from the USPTO's workload those nonprovisional applications for which applicants later decide not to pursue examination. The USPTO is extending the Extended Missing Parts Pilot Program until December 31, 2012, to better gauge whether the Extended Missing Parts Program offers sufficient benefits to the patent community for it to be made permanent.

DATES: *Effective Date:* December 16, 2011.

Duration: The Extended Missing Parts Pilot Program will run through December 31, 2012. Therefore, any certification and request to participate in the Extended Missing Parts Pilot Program must be filed before December 31, 2012. The USPTO may further extend the pilot program (with or without modifications) depending on the feedback received and the continued effectiveness of the pilot program.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7727, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones.

Inquiries regarding this notice may be directed to the Office of Patent Legal Administration, by telephone at (571) 272–7701, or by electronic mail at *PatentPractice@uspto.gov.*

SUPPLEMENTARY INFORMATION: The USPTO implemented a change to missing parts practice in certain nonprovisional applications as a pilot program (*i.e.,* Extended Missing Parts Pilot Program) after considering written comments from the public. *See Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44 (Jan. 4, 2011).

The USPTO is extending the Extended Missing Parts Pilot Program until December 31, 2012. The USPTO may further extend the Extended Missing Parts Pilot Program, or may discontinue the pilot program after December 31, 2012, depending on the results of the program. The requirements of the program are reiterated below. Applicants are strongly cautioned to review the pilot program requirements before making a request to participate in the Extended Missing Parts Pilot Program.

The USPTO cautions all applicants that, in order to claim the benefit of a prior provisional application, the statute requires a nonprovisional application filed under 35 U.S.C. 111(a) to be filed within twelve months after the date on which the corresponding provisional application was filed. *See* 35 U.S.C. 119(e). It is essential that applicants understand that the Extended Missing Parts Pilot Program cannot and does not change this statutory requirement.

I. *Requirements:* In order for an applicant to be provided a twelve-month (non-extendable) time period to pay the search and examination fees and any required excess claims fees in response to a Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program, the applicant must satisfy the following conditions: (1) Applicant must submit a certification and request to participate in the Extended Missing Parts Pilot Program with the nonprovisional application on filing, preferably by using Form PTO/SB/421 titled ''Certification and Request for Extended Missing Parts Pilot Program;'' (2) the application must be an original nonprovisional utility or plant application filed under 35 U.S.C. 111(a) within the duration of the pilot program; (3) the nonprovisional application must directly claim the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a prior provisional application filed within the previous twelve months; the specific reference to the provisional application must be in the first sentence of the specification following the title or in an application data sheet under 37 CFR 1.76 (*see* 37 CFR 1.78(a)(5)); and (4) applicant must not have filed a nonpublication request.

As required for all nonprovisional applications, applicant will need to satisfy filing date requirements and publication requirements. In accordance with 35 U.S.C. 122(b), the USPTO will publish the application promptly after the expiration of eighteen months from the earliest filing date to which benefit is sought. Therefore, the nonprovisional application should also be in condition for publication as provided in 37 CFR 1.211(c). The following are required in order for the nonprovisional application to be in condition for publication: (1) The basic filing fee; (2) an executed oath or declaration in compliance with 37 CFR 1.63; (3) a specification in

compliance with 37 CFR 1.52; (4) an abstract in compliance with 37 CFR 1.72(b); (5) drawings in compliance with 37 CFR 1.84 (if applicable); (6) any application size fee required under 37 CFR 1.16(s); (7) any English translation required by 37 CFR 1.52(d); and (8) a sequence listing in compliance with 37 CFR 1.821–1.825 (if applicable). The USPTO also requires any petition under 37 CFR 1.47 to be granted, any compact disc requirements to be satisfied, and an English translation of the provisional application to be filed in the provisional application if the provisional application was filed in a non-English language and a translation has not yet been filed. If the requirements for publication are not met, applicant will need to satisfy the publication requirements within a two-month extendable time period.

As noted above, applicants should request participation in the Extended Missing Parts Pilot Program by using Form PTO/SB/421. For utility patent applications, applicant may file the application and the certification and request electronically using the USPTO electronic filing system, EFS–Web, and selecting the document description of ''Certification and Request for Missing Parts Pilot'' for the certification and request on the EFS–Web screen. Form PTO/SB/421 is available on the USPTO Web site at *http://www.uspto.gov/forms/sb0421.pdf.* Information regarding EFS–Web is available on the USPTO Web site at *http://www.uspto.gov/ebc/index.jsp.*

The utility application including the certification and request to participate in the pilot program may also be filed by mail (*e.g.,* by ''Express Mail'' in accordance with 37 CFR 1.10) or hand-carried to the USPTO. However, applicants are advised that, effective November 15, 2011, as provided in the Leahy-Smith America Invents Act, a new additional fee of $400.00 for a non-small entity ($200.00 for a small entity) is due for any nonprovisional utility patent application that is not filed by EFS–Web. *See* Public Law 112–29, § 10(h), 125 Stat. 283, 319 (2011). This non-electronic filing fee is due on filing of the utility application or within the two-month (extendable) time period to reply to the Notice to File Missing Parts of Nonprovisional Application. Applicants will not be given the twelve-month time period to pay the non-electronic filing fee. Therefore, utility applicants are strongly encouraged to file their utility applications via EFS–Web to avoid this additional fee.

For plant patent applications, applicant must file the application including the certification and request to participate in the pilot program by mail or hand-carried to the USPTO since plant patent applications cannot be filed electronically using EFS–Web. *See Legal Framework for Electronic Filing System Web* (EFS–Web), 74 FR 55200 (Oct. 27, 2009), 1348 *Off. Gaz. Pat. Office* 394 (Nov. 24, 2009).

II. *Processing of Requests:* If applicant satisfies the requirements (discussed above) on filing of the nonprovisional application and the application is in condition for publication, the USPTO will send applicant a Notice to File Missing Parts of Nonprovisional Application that sets a twelve-month (non-extendable) time period to submit the search fee, the examination fee, any excess claims fees (under 37 CFR 1.16(h)–(j)), and the surcharge under 37 CFR 1.16(f) (for the late submission of the search fee and examination fee). The twelve-month time period will run from the mailing date, or notification date for e-Office Action participants, of the Notice to File Missing Parts. For information on the e-Office Action program, see *Electronic Office Action,* 1343 *Off. Gaz. Pat. Office* 45 (June 2, 2009), and *http://www.uspto.gov/patents/process/status/e-Office_Action.jsp.* After an applicant files a timely reply to the Notice to File Missing Parts within the twelve-month time period and the nonprovisional application is completed, the nonprovisional application will be placed in the examination queue based on the actual filing date of the nonprovisional application.

For a detailed discussion regarding treatment of applications that are not in condition for publication, processing of improper requests to participate in the program, and treatment of authorizations to charge fees, see *Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76403–04 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44, 47–49 (Jan. 4, 2011).

III. *Important Reminders:* Applicants are reminded that the disclosure of an invention in a provisional application should be as complete as possible because the claimed subject matter in the later-filed nonprovisional application must have support in the provisional application in order for the applicant to obtain the benefit of the filing date of the provisional application.

Furthermore, the nonprovisional application as originally filed must have a complete disclosure that complies with 35 U.S.C. 112, first paragraph, which is sufficient to support the claims submitted on filing and any claims submitted later during prosecution. New matter cannot be added to an application after the filing date of the application. *See* 35 U.S.C. 132(a). In order to be accorded a filing date, a nonprovisional application must include a specification concluding with at least one claim as prescribed by 35 U.S.C. 112 and a drawing as prescribed by 35 U.S.C. 113. *See* 35 U.S.C. 111(a). While only one claim is required in a nonprovisional application for filing date purposes and applicant may file an amendment adding additional claims later during prosecution, applicant should consider the benefits of submitting a complete set of claims on filing of the nonprovisional application. This would reduce the likelihood that any claims added later during prosecution might be found to contain new matter. Also, if a patent is granted and the patentee is successful in litigation against an infringer, provisional rights to a reasonable royalty under 35 U.S.C. 154(d) may be available only if the claims that are published in the patent application publication are substantially identical to the patented claims that are infringed, assuming timely actual notice is provided. Thus, the importance of the claims that are included in the patent application publication should not be overlooked.

Applicants are also advised that the extended missing parts period does not affect the twelve-month priority period provided by the Paris Convention for the Protection of Industrial Property (Paris Convention). Thus, any foreign filings must still be made within twelve months of the filing date of the provisional application if applicant wishes to rely on the provisional application in the foreign-filed application or if protection is desired in a country requiring filing within twelve months of the earliest application for which rights are left outstanding in order to be entitled to priority.

For additional reminders, see *Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76405 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44, 50 (Jan. 4, 2011).

Dated: December 6, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–32330 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletions from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 1/16/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 9/30/2011 (76 FR 60810), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice for the proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 USC Chapter 85 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC Chapter 85) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Locations: Custodial Services, Radiological and Environmental Sciences Laboratory (RESL), IF Buildings 601 and 683, 2351 North Boulevard, Idaho Falls, ID.
NPA: Development Workshop, Inc., Idaho Falls, ID.
Contracting Activity: Department of Energy, Idaho Operations Office, Idaho Falls, ID.

Deletions

On 7/8/2011 (76 FR 40342–40343); 7/22/2011 (76 FR 43990–43991); 8/19/2011 (76 FR 51955–51956); 9/2/2011 (76 FR 54741–54742); 9/30/2011 (60810); and 10/7/2011 (76 FR 62391–62393), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 USC Chapter 85 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC Chapter 85) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN: 7290–00–130–3271—Cover, Ironing Board.
NPA: Lions Services, Inc., Charlotte, NC.
Contracting Activity: General Services Administration, Fort Worth, TX.
NSN: 2090–00–372–6064—Repair Kit, Standard.
NPA: Mid-Valley Rehabilitation, Inc., McMinnville, OR.
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH.

Line, Tent

NSNs: 8340–00–252–2291; 8340–00–263–0254; 8340–00–263–0255.
NPAs: ASPIRO, Inc., Green Bay, WI. Community Option Resource Enterprises, Inc., Billings, MT.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

Services

Service Type/Location: Janitorial/Custodial, Veterans Affairs Medical Center, 1540 Spring Valley Drive, Huntington, WV.
NPA: Goodwill Industries of KYOWVA Area, Inc., Huntington, WV.
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL
Service Type/Location: Administrative Services, Department of Agriculture: Rural Development Agency, St. Louis, MO.
NPA: St. Vincent DePaul Rehabilitation Services of Texas, Inc., Austin, TX
Contracting Activity: Department of Agriculture, Rural Development Agency USD, St. Louis, MO.
Service Type/Location: Recycling Service, Goodfellow Air Force Base: Basewide, Goodfellow AFB, TX.
NPA: MHMR Services for the Concho Valley, San Angelo, TX
Contracting Activity: Dept of the Air Force, Fa3030 17 CONS CC, Goodfellow AFB, TX.
Service Type/Location: Janitorial/Custodial, U.S. Federal Building and Customhouse, 721 19th Street, Denver, CO.
NPA: Platte River Industries, Inc., Denver, CO.
Contracting Activity: General Services Administration, Washington, DC.
Service Type/Location: Janitorial/Custodial, Social Security Administration District, 686 Nye Avenue—Office Building, Irvington, NJ.
NPA: The First Occupational Center of New Jersey, Orange, NJ.
Contracting Activity: General Services Administration, Public Buildings Service, Newark, NY.
Service Type/Location: Janitorial/Custodial, USCG, Sandy Hook Detachment, 20 Crispin Road, Highlands, NJ.
NPA: The Center for Vocational Rehabilitation, Inc., Eatontown, NJ.
Contracting Activity: Department of Homeland Security, U.S. Coast Guard, Washington, DC.
Service Type/Location: Janitorial/Custodial, Buildings 1830, 1807, 2155, 4050, and 427, Fort Polk, LA.
NPA: Vernon Sheltered Workshop, Inc., Leesville, LA.
Contracting Activity: Dept of the Army, W6QM ft Polk DOC, Fort Polk, LA.
Service Type/Location: Laundry Service, Stratton Medical Center, 113 Holland Ave, Albany, NY.

NPA: Uncle Sam's House, Inc., Schenectady, NY.
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL.
Service Type/Location: Janitorial/Custodial, FBI Information Technology Center, 1203 Nealis Avenue, Fort Monmouth, NJ.
NPA: The Center for Vocational Rehabilitation, Inc., Eatontown, NJ.
Contracting Activity: Dept of Justice, Federal Bureau of Investigation, Washington, DC.

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2011–32243 Filed 12–15–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR Agreement'')

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Effective Date:* December 16, 2011.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain cotton/nylon/spandex raschel knit, open work crepe, piece dyed fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

FOR FURTHER INFORMATION ON–LINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf* under ''Approved Requests,'' Reference number: 158.2011.11.10.Fabric.SS&AforHansoll Textile,Ltd.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Pub. Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On November 10, 2011, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sorini Samet & Associates, on behalf of Hansoll Textile, Ltd. for certain cotton/nylon/spandex raschel knit, open crepe, piece dyed fabric, as specified below. On November 15, 2011, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by November 28, 2011, and any Rebuttal Comments to a Response (''Rebuttal'') must be submitted by December 2, 2011, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

Specifications

Certain Cotton/Nylon/Spandex Raschel Knit Open Work Crepe Fabric, Piece Dyed

HTS: 6005.22.00

Fabric Type: Raschel knit, open work crepe fabric with a blistered surface with interstices covering 15% of the surface area, piece dyed.
Fiber Content: Cotton: 61–65%; Nylon: 32–34%; Spandex: 3–5%
Yarn Size:
Cotton:
Metric: 28/2 to 32/2
English: 16.5/2 to 19/2
Nylon:
Metric: 150–160 denier/10 filament
English: 56–60 denier/10 filament
Nylon (wrapping yarn for spandex core):
Metric: 113–150 denier/36 filament
English: 60–80 denier/36 filament
Spandex (wrapped in nylon):
Metric: 40–45 denier
English: 200–225 denier
Weight:
Metric: 160–180 grams per sq. meter
English: 4.7–5.3 ounces per sq. yard
Width:
Metric: 137.2–147.4 centimeters, cuttable
English: 54–58 inches, cuttable
Machine gauge: 18
Bar: 18
Coloration: Piece dye
Performance Criteria:
1. Dimensional Stability: −7%/+2%, AATCC 135/150
2. Fabric Skewing: 4%, AATCC 179
3. Fabric Weight: −8%/+8%

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2011–32274 Filed 12–15–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before January 17, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 12, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title of Collection: Request for Title IV Reimbursement or Heightened Cash Monitoring 2.

OMB Control Number: 1845–0089.

Agency Form Number(s): Form 207.

Frequency of Responses: Monthly.

Affected Public: Business or other for-profit institutions.

Total Estimated Number of Annual Responses: 732.

Total Estimated Annual Burden Hours: 3,660.

Abstract: The purpose of the form is to gather financial information from the institution in order to process claims for payment. The US Department of Education (ED) Payment Analysts compare data on the form with disbursement records in the Common Origination and Disbursement System to determine what amount will be paid to the institution under the restricted method of payments. Data and signatures are collected from the institution on these forms. The data collected is in regards to the Title IV program funds that are requested and certified by the institution in the President/Owner/Chief Executive Officer and the Financial Aid Director/Third Party Servicer section of the form. The forms are signed by the institution official and submitted when requesting payment for Reimbursement or Heightened Cash Monitoring 2 claims.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4716. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–32348 Filed 12–15–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Final Priority; Safe and Healthy Students Discretionary Grant Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information

Final Priority; Safe and Healthy Students Discretionary Grant Programs.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.184A, 84.215M, 84.184J, 84.184L, 84.215H, 84.215E.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces a competitive preference priority for the following discretionary grant programs (Safe and Healthy Students (SHS) Discretionary Grant Programs) administered by the Office of Elementary and Secondary Education's Office of Safe and Healthy Students (OSHS):

Grants to Reduce Alcohol Abuse (CFDA No. 84.184A).

Grants for the Integration of Schools and Mental Health Systems (CFDA No. 84.215M).

Safe Schools/Healthy Students (CFDA Nos. 84.184J, 84.184L).

Foundations for Learning (CFDA No. 84.215H).

Elementary and Secondary School Counseling (CFDA No. 84.215E).

The Department may use this competitive preference priority for competitions under the SHS Discretionary Grant Programs in fiscal year (FY) 2012 and subsequent years, contingent upon funding for these programs. The Department takes this action to align the SHS Discretionary Grant Programs with identified needs of American Indian and Alaska Native (AI/AN) youths who are members of federally recognized tribes. The Department intends this competitive preference priority to enhance the ability of applicants serving tribal communities to address the substance abuse and mental health crises that affect AI/AN students.

DATES: *Effective Date:* This priority is effective January 17, 2012.

FOR FURTHER INFORMATION CONTACT: Donald Yu, U.S. Department of Education, 400 Maryland Avenue SW., room 6E308, Washington, DC 20202–6450. Telephone (202) 205–4499 or by *email: donald.yu@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1-(800) 877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Programs: The Grants to Reduce Alcohol Abuse program (CFDA No. 84.184A) assists local educational agencies (LEAs) in the development and implementation of innovative and effective alcohol abuse prevention programs for secondary school students.

The Grants for the Integration of Schools and Mental Health Systems program (CFDA No. 84.215M) provides

grants to State educational agencies (SEAs), LEAs, and Indian tribes for the purpose of increasing student access to quality mental health care by developing innovative programs that link school systems with local mental health systems.

The Safe Schools/Healthy Students program (CFDA Nos. 84.184J, 84.184L) provides grants to support LEAs in the development of communitywide approaches to creating safe and drug-free schools and promoting healthy childhood development. These approaches are intended to prevent violence and the illegal use of drugs and to promote safety and discipline.

The Foundations for Learning program (CFDA No. 84.215H) provides assistance to help eligible children become ready for school.

The Elementary and Secondary School Counseling program (CFDA No. 84.215E) provides funding to LEAs to establish or expand elementary school counseling programs and, if the appropriation exceeds $40 million in any fiscal year, the program may be expanded to secondary schools.

Program Authority: 20 U.S.C. 1221e-3; 20 U.S.C. 7139; 20 U.S.C. 7269; 20 U.S.C. 7131; 20 U.S.C. 7269a; 20 U.S.C. 7245.

Applicable Program Regulations: 34 CFR part 299.

We published a notice of proposed priority for these programs in the **Federal Register** on March 15, 2011 (76 FR 14001). That notice contained background information and our reasons for proposing the particular priority. The notice of proposed priority also referred to the Department's Office of Safe and Drug-Free Schools. That office has been renamed the Office of Safe and Healthy Students and is now a component within the Department's Office of Elementary and Secondary Education.

There are no differences between the proposed priority and this final priority.

Public Comment: In response to our invitation in the notice of proposed priority, two parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: Two commenters agreed with the reasons we provided for proposing the priority. Specifically, the commenters stated that there are many cases of emotional and behavioral problems, substance abuse, and violence in their schools and that this priority would help address these problems.

Discussion: We appreciate the commenters' support. We believe the competitive preference priority will encourage eligible applicants serving tribal communities to address the substance abuse and mental health crises that affect AI/AN students.

Changes: None.

Comment: One commenter recommended that the Department award priority points to applications from small rural schools in order to level the playing field in meeting the needs of AI/AN students.

Discussion: We appreciate the commenter's recommendation; however, we have a priority for improving achievement and high school graduation rates of rural and high-needs students that is part of the Secretary's Supplemental Priorities published in the **Federal Register** on December 15, 2010 (75 FR 78486) and corrected on May 12, 2011 (76 FR 27637). We may use that priority in our competitions in order to address the needs of students attending rural schools. The purpose of the final priority contained in this notice is to meet the unique needs of AI/AN students residing on Indian lands.

Changes: None.

Final Priority

Projects that are proposed by any eligible entity serving students residing on ''Indian lands'' as that term is defined by section 8013 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7713(7)). The eligible entity must be the only applicant or the lead applicant in a consortium of eligible entities.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) Awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing or using additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we will invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the SHS Discretionary Grant Programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

We have also determined that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the notice of proposed priority.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal**

Register. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 13, 2011.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2011–32249 Filed 12–15–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its ''Technology Partnerships Ombudsmen Reporting Requirements'', OMB Control Number 1910–5188. This information collection request covers information necessary to implement a statutory requirement that the Technology Transfer Ombudsmen report quarterly on complaints they receive.

DATES: Comments regarding this collection must be received on or before January 17, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503; and to

Kathleen M. Binder, HG–6, Director, Office of Conflict Prevention and Resolution, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Kathleen.binder@hq.doe.gov,* (202) 287–1415 (facsimile).

FOR FURTHER INFORMATION CONTACT: Kathleen M. Binder at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* 1910–5188; (2) *Information Collection Request Title:* Technology Transfer Ombudsmen Reporting Requirements; (3) *Type of Request:* Renewal; (4) *Purpose:* The information collected will be used to determine whether the Technology Partnerships Ombudsmen are properly helping to resolve complaints from outside organizations regarding laboratory policies and actions with respect to technology partnerships; (5) *Annual Estimated Number of Respondents:* 22; (6) *Annual Estimated Number of Total Responses:* 88; (7) *Annual Estimated Number of Burden Hours:* 50; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0.

Statutory Authority: Section 11 of the Technology Transfer Commercialization Act of 2000, Public Law 106–404, codified at 42 U.S.C. 7261c(c)(3)(C).

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

Kathleen M. Binder,

Director, Office of Conflict Prevention and Resolution, Office of Hearings and Appeals.

[FR Doc. 2011–32251 Filed 12–15–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of Renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and Section 102–3.65(a), Title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Advisory Committee will be renewed for a two-year period.

The Committee will provide advice to the Department of Energy on complex science and technical issues that arise in the planning, managing, and implementation of DOE's nuclear energy program.

Additionally, the renewal of the NEAC has been determined to be essential to conduct business of the Department of Energy's and to be the in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Kenneth Wade, Designated Federal Officer at (301) 903–6509.

Issued at Washington, DC, on December 12, 2011.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2011–32332 Filed 12–15–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9000–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 12/12/2011 Through 12/16/2011

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110417, Draft EIS, USFS, CA, Rubicon Trail Easement and Resource Improvement Project, Construction and Operation, Right-of-Way Grant, Eldorado National Forest, Pacific Ranger District, El Dorado County, CA, *Comment Period Ends:* 01/30/2012, *Contact:* Laura Hierholzer (530) 642–5187

EIS No. 20110418, Final EIS, NPS, WA, Ross Lake National Recreation Area Project, General Management Plan, Implementation, Skagit and Whatcom Counties, WA, *Review Period Ends:* 01/17/2012, *Contact:* Roy Zipp (360) 873–4590 Ext. 31

EIS No. 20110419, Final EIS, BR, CA, Suisun Marsh Habitat Management,

Preservation, and Restoration Plan, Implementation, CA, *Review Period Ends:* 01/17/2012, *Contact:* Becky Victorine (916) 978–5035

EIS No. 20110420, Draft Supplement, USACE, TX, Clear Creek Reevaluation Study Project, Flood Risk Management and Ecosystem Restoration, Brazoria, Fort Bend, Galveston and Harris Counties, TX, *Comment Period Ends:* 01/30/2012, *Contact:* Andrea Catanzaro (409) 766–6346

EIS No. 20110421, Draft EIS, USFS, CA, Greys Mountain Ecological Restoration Project, Proposed Forest Management Treatments to Reduce Fire Hazard and Restore Forest Health, Sierra National Forest, Bass Lake Ranger District, Madera County, CA, *Comment Period Ends:* 01/30/2012, *Contact:* Burt Stalter (559) 877–2218 Ext. 3208

EIS No. 20110422, Draft EIS, RUS, 00, Hampton—Rochester—La Crosse Transmission System Improvement Project, Proposed Construction and Operation of a 345–Kilovolt (kV) Transmission Line and Associated Facilities between Hampton, Minnesota and La Crosse, Wisconsin, *Comment Period Ends:* 01/30/2012, *Contact:* Stephanie A. Strength (970) 403–3559

Amended Notices

EIS No. 20110404, Draft EIS, BLM, NV, Mount Hope Project, Molybdenum Mining and Processing Operation in Eureka County, NV, *Comment Period Ends:* 03/01/2012, *Contact:* Angelica Rose (775) 635–4000

Revision to FR Notice Published 12/02/2011: Correction to Comment Period from 03/07/2012 to 03/01/2012

EIS No. 20110410, Draft EIS, FAA, CA, Gnoss Field Airport Project, Proposed Extension to Runway 13/31/, Funding, Marin County, CA, *Comment Period Ends:* 02/06/2012, *Contact:* Doug Pomeroy (650) 827–7612.

Revision to FR Notice 12/09/2011: Correction to Contact Telephone Number.

Dated: December 13, 2011.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–32282 Filed 12–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9508–1]

New York State Prohibition of Discharges of Vessel Sewage; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: Notice is hereby given that, pursuant to Clean Water Act, Section 312(f)(3) (33 U.S.C. 1322(f)(3)), the State of New York has determined that the protection and enhancement of the quality of the New York State portions of Lake Ontario requires greater environmental protection and has petitioned the United States Environmental Protection Agency (EPA), Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

The New York State Department of Environmental Conservation (NYSDEC) has proposed to establish a Vessel Waste No Discharge Zone (NDZ) for the New York State portion of Lake Ontario (''Lake'') including the waters of the Lake within the New York State boundary, stretching from the Niagara River (including the Niagara River up to Niagara Falls) in the west, to Tibbetts Point at the Lake's outlet to the Saint Lawrence River in the east. The proposed No Discharge Zone encompasses approximately 3,675 square miles and 326 linear shoreline miles, including the navigable portions of the Lower Genesee, Oswego, and Black Rivers; numerous other tributaries, harbors, and embayments of the Lake including Irondequoit Bay, Sodus Bay, North/South Ponds, Henderson Bay, Black River Bay and Chautmont Bay; and an abundance of formally designated habitats and waterways of local, state, and national significance. NYSDEC certified the need for greater protection of the water quality. EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Lake Ontario.

EPA published a tentative affirmative determination on October 5, 2011 in the **Federal Register**. Public comments were solicited for 30 days and the comment period ended on November 4, 2011. EPA received a total of eight (8) comments via letter and email. The comment tally was seven (6) in favor of, and two (2) questioning or opposing the No Discharge Zone designation. All the relevant comments received have been considered in the final affirmative determination. This **Federal Register** document addresses comments submitted in response to the October 5, 2011 (Volume 76 No. 193) **Federal Register** document.

Response to Comments

1. *Comment:* Several commenters, including boaters, paddlers and community advocates, expressed strong support for EPA's action to establish a vessel waste no discharge zone for Lake Ontario. Some commenters pointed out that this action will reduce pathogens and chemicals, improve water quality and further protect and restore the Lake.

EPA Response: EPA is in full agreement that designating Lake Ontario is an important step to further protect this valuable natural resource, water quality, wetlands and habitats throughout the U.S. portions of Lake Ontario.

2. *Comment:* One commenter stated that discharges from boats are a relatively small source of pollution compared to the pollution caused by farm runoff into the Lake.

EPA Response: These comments go beyond the scope of EPA's authority in this action. EPA's authority here is limited to determining whether adequate pumpout facilities exist. Establishing a no discharge zone for vessel sewage will have a positive effect on water quality in the Lake.

3. *Comment:* One commenter expressed concerns about the conditions and availability of the pumpout facilities at Sodus Point in Lake Ontario.

EPA Response: The criterion established by the Clean Vessel Act regarding the adequate number of pumpouts per vessel population is one pumpout per 300 to 600 vessels. NYSDEC has submitted pumpout information (including location, phone numbers, latitude/longitude, VHF channel, dates and hours of operation, fees, and capacity) outlining how areas of the Lake meet or exceed this criterion; therefore, EPA has determined that there are adequate pumpout facilities. EPA recognizes the importance of adequate pumpouts to service the boating activity within a given waterbody. New York State is responsible for ensuring that all of the facilities are accessible and operational. There are six pumpouts (Pultneyville Yacht Club, Sodus Bay Yacht Club, Krenzer Marine, Inc., Arney's Marina,

Inc., Anchor Resort and Marina, and Bayside Marina) available in the vicinity of Sodus Bay in Wayne County. Therefore, in the event that a particular facility is not accessible or operational, the public should contact NYSDEC.

4. Comment: One commenter stated that the pumpout facilities that serve recreational vessels may not be reasonably available to commercial tugboat, towboats and barges that service the area because some of those commercial vessels are too large to dock where the recreational vessel pumpout facilities are located. The commenter also indicated that in order to comply with the NDZ requirements, a tugboat or towboat must disable federally compliant marine sanitation devices and install holding tanks for effluent. Such retrofitting is complicated due to the extremely limited space aboard a towing vessel and the necessity to ensure that the additional weight does not negatively impact the stability of the vessel.

EPA Response: EPA understands that some commercial vessels may not be able to use pumpouts designed for recreational vessels, and found that ''honey dipper'' pumpout trucks are readily available for hire and are able to reach commercial vessels on the commercial docks on the Lake. In order to achieve the storage capacity needed to hold sewage on board, a Type II Marine Sanitation Device (MSD) can be converted to a Type III MSD, commonly called a holding tank, which can be equipped with the valve, usually called a Y-valve, needed to discharge to a pumpout truck.

5. One commenter suggested that EPA provide a suitable lag time between when an NDZ is established and when compliance is required to improve compliance and ease the heavy financial burden on commercial vessel owners. According to this commenter, the current model of instant implementation without a phase-in period does not allow vessel owners to make the necessary changes in a planned and cost-effective fashion.

EPA Response: EPA's authority here is limited to determining whether adequate pumpout facilities exist, it cannot base its determination on the cost of compliance and, once EPA issues a final affirmative determination, it is up to the petitioning state, in this case, New York, to determine how to implement and enforce the NDZ.

FOR FURTHER INFORMATION CONTACT: Moses Chang, (212) 637–3867, *email address: chang.moses@epa.gov.* The EPA Region 2 NDZ Web site is: *http://www.epa.gov/region02/water/ndz/index.html.* A copy of the State's NDZ petition can be found there.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the State of New York (NYS or State) has petitioned the United States Environmental Protection Agency, Region 2, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the NYS portion of Lake Ontario. Adequate pumpout facilities are defined as one pumpout station for every 300 to 600 boats pursuant to the Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (**Federal Register**, Vol. 59, No. 47, March 10, 1994).

As one of the nation's premier waterbodies, the open waters, harbors, embayments, creeks and wetlands of Lake Ontario support a remarkable diversity of uses—fish spawning areas, breeding grounds, valuable habitats, commercial and recreational boating, and a profusion of recreational resources. The Lake serves as an economic engine for the region and a place of great natural beauty, heavily used and enjoyed by the citizens of the many lakeshore communities and throughout the Lake Ontario Watershed, which encompasses about one-quarter of New York State. It is also a source of drinking water for 760,000 people. NYSDEC developed their petition in collaboration with the New York State Department of State (DOS) and the New York State Environmental Facilities Corporation (EFC) in order to establish a vessel waste No Discharge Zone (NDZ) on the open waters, tributaries, harbors and embayments of New York State's portion of Lake Ontario.

The Clean Vessel Act requires that one pumpout station be available for every 300 to 600 boats in order to support an NDZ determination. Accordingly, for EPA to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State portion of Lake Ontario, the State must demonstrate that the pumpout-to-vessel ratio meets the requirement. In its petition, the State described the recreational and commercial vessels that use Lake Ontario, and the pumpout facilities that are available for their use.

Based on recreational boater registrations obtained through the New York State Office of Parks, Recreation and Historic Preservation's 2009 Boating Report for the counties of Niagara, Orleans, Monroe, Wayne, Cayuga, Oswego and Jefferson (all of which have shoreline on Lake Ontario), a general estimate places the recreational vessel population at 10,050.

There are 28 pumpout facilities funded by the Clean Vessel Assistance Program (CVAP) in the relevant areas of the Lake. There are also nine other (non-CVAP funded) pumpouts available for recreational and small commercial vessels for a total of 37 facilities. These facilities either discharge to a holding tank, to a municipal wastewater treatment plant or to an on-site septic system. With 37 pumpouts available for the 10,050 recreational and small commercial vessels that use the lake, the pumpout-to-vessel ratio for those vessels is 1:272 (37:10,050). Because EPA did not have sufficient information for seven of the nine non-CVAP funded pumpout facilities in NYSDEC's petition, we also evaluated the vessel to pumpout ratio using a more conservative total of 30 pumpout facilities for 10,050 boats yielding a 1:335 pumpout per vessel ratio. (Note: These are the 30 pumpout facilities identified in the table below.) Based on NYS 2009 boater registrations, the pumpout facility ratios for each individual county are as follows: Orleans (1:138), Jefferson (1:193), Niagara (1:223), Oswego (1:231), Wayne (1:234), Cayuga (1:252), and Monroe (1:449). Therefore, adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for recreational vessels are reasonably available for the New York portions of the Lake as a whole and for each county along the Lake Ontario shore line.

In addition, Lake Ontario is used by commercial vessels. Commercial vessel populations were estimated using data from the National Ballast Information Clearinghouse (NBIC), which records ballast water discharge reports for arriving ships, and interviews with administrators involved with the two main commercial ports on Lake Ontario, Oswego and Rochester.

In the calendar year 2010, ballast manifests showed 73 vessel arrivals at the Port of Oswego, 43 of these ships were bulkers carrying a wide array of goods, such as petroleum, aluminum and salt. The other 30 ships consist of passenger ships, tugs and barges. During the 2010 survey, ballast manifests showed 24 commercial vessels arriving at the Port of Rochester, one passenger ship and 23 bulkers. As with the Port of Oswego, all other commercial vessels in the Port of Rochester are transient. Summing these sources, an upper bound estimate of commercial boat traffic in Lake Ontario using New York ports is approximately 150 vessels a

year, less than one every other day. Although there are no fixed commercial vessel pumpouts at the Ports of Oswego or Rochester, mobile pumpout services are available for hire. The Port of Rochester reported that ''honey dipper'' trucks have come in to pumpout commercial vessels on occasion while they are docked in the Port. The Port of Rochester supplies all commercial vessels with the names of pumpout trucks (as well as other services, such as solid waste handlers) at the time they receive their permits to dock at the terminal. Therefore, it appears that there are adequate pumpout facilities to serve the commercial vessels in Lake Ontario.

Based on the above information which supports that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Lake Ontario, the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

A list of the pumpout facilities, phone numbers, locations, hours of operation, water depth and fees is provided as follows:

LIST OF PUMPOUTS IN THE LAKE ONTARIO NDZ PROPOSED AREA

Numbers	Name	Location	Contact information	Days and hours of operation	Water depth (feet)	Fee
1	Youngstown Yacht Club	Lower Niagara River	716–754–8245	Apr–Nov, Mon–Fri, 9 a.m.–5 p.m.	9′–12′	$5.00.
2	NYSOPRSHP-Wilson-Tuscarora SP Marina.	Tuscarora Bay	716–278–1775	24 hours	5′	$5.00.
3	Tuscarora Yacht Club	Tuscarora Bay	716–434–4475	9 a.m.–5 p.m.	7′	$5.00.
4	Rochester Yacht Club	Genesee River/Lake Ontario.	585–342–5511/585–314–6460	Mon–Sun, 7 a.m.–10 p.m.	9′	Free Members/ $10.00–Guest.
5	City of Rochester-River Street Waterfront.	Genesee River-Canal North to 490 Dam.	716–428–7045	Jan–Dec, 24 hours.	4′–6′	0.00.
6	County of Monroe-Irondequoit Bay NYS Marine.	Irondequoit Bay	716–428–5301	Apr–Oct, 7 a.m.–7 p.m.	8′	$5.00.
7	Four C'S Marina at Oak Orchard Creek.	Oak Orchard Creek	585–682–4224	6 a.m.–7 p.m.	10′	$5.00.
8	Eagle Creek Marina	Oak Orchard Creek	585–723–5708	8 a.m.–5 p.m.	8′–9′	$5.00.
9	Braddock Marina	Braddock Bay	585–227–1579	10 a.m.–4 p.m.	2′	$8.00.
10	Newport Marina, Inc	Irondequoit Bay	585–544–4950	Mar–Dec, 9 a.m.–6 p.m.	6′	$10.00.
11	Sutter's Marine, Inc	Irondequoit Bay	716–217–8811	Apr–Nov, Mon–Fri, 6:30 a.m.–5:00 p.m.	7′	$5.00.
12	Pultneyville Yacht Club	Pultneyville	315–524–2762	Apr–Sep, 24 hours.	6′	$5.00.
13	Sodus Bay Yacht Club	Pultneyville	315–483–9550	Apr–Sep, 24 hours.	6′	$5.00.
14	Krenzer Marine, Inc	Sodus Bay	315–483–8808	Apr–Nov, 8 a.m.–5 p.m.	3′–6′	0.00.
15	Arney's Marina, Inc	Sodus Bay	315–483–9111	Apr–Oct, 9 a.m.–5 p.m.	7′	$5.00.
16	Anchor Resort and Marina.	Little Sodus Bay	315–947–5331	Apr–Sep, 6 a.m.–6 p.m.	8′–10′	$5.00.
17	Bayside Marina	Little Sodus Bay	315–947–5773	Apr–Oct, 24 hours.	8′	$5.00.
18	Port of Oswego-International Marina West.	(Erie) Oneida Shore Park Terminal-Three Rivers Port Terminal.	315–343–4503	Apr–Nov, 7 a.m.–9 p.m.	15′	$5.00.
19	Port of Oswego-East Marina.	Three Rivers Point Terminal—Lock 8 (Wright's Landing).	315–343–4503	Apr–Nov, 7 a.m.–9 p.m.	18′	$5.00.
20	Mexico Bay Co.	Mexico Bay—Little Salmon River.	315–963–3221	Daylight Hours.		0.00.
21	Wigwam Marina	North Pond	315–387–3001	12 p.m.–4 p.m.	8′	0.00.
22	Seber Shores Marina	North Pond	315–387–5502	May–Nov, 9 a.m.–5 p.m.	8′	$5.00.

LIST OF PUMPOUTS IN THE LAKE ONTARIO NDZ PROPOSED AREA—Continued

Numbers	Name	Location	Contact information	Days and hours of operation	Water depth (feet)	Fee
23	Harbor's End, Inc	Henderson Bay and Harbor.	315–938–5425	Apr–Nov, 8 a.m.–4:30 p.m.	4.5′	$5.00.
24	Henchen Marina	Henderson Bay and Harbor.	315–938–5313	Apr–Oct, 7 a.m.–8 p.m.	8′	$10.00.
25	Harbor View Marina, Inc	Henderson Bay and Harbor.	315–938–5494	May–Oct, 8 a.m.–5 p.m.		0.00.
26	Grunerts Marina	Black River Bay	315–646–2003			0.00.
27	Navy Point Marina	Black River Bay	315–646–3364	May–Nov, 8 a.m.–5 p.m.	10′	0.00.
28	Madison Barracks	Black River Bay	315–646–3374	May 15–Oct 15, 8 a.m.–6 p.m.	10′	0.00.
29	Kitto's Marina	Chaumont Bay	315–788–2191	Apr–Oct, 8 a.m.–7 p.m.	7′	0.00.
30	Chaumont Club	Black River Bay	315–649–5018	Apr 15 –Nov, 7 a.m.–5 p.m.	6.5′–7′	0.00.

Based on the information above, EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the waters of the New York State portion of Lake Ontario.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–32276 Filed 12–15–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9508–2]

Request for Nominations of Experts for the Review of Approaches To Derive a Maximum Contaminant Level Goal for Perchlorate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office requests public nominations for technical experts to form an SAB panel to review the agency's approaches for a deriving maximum contaminant level goal (MCLG) for perchlorate.

DATES: Nominations should be submitted by January 13, 2012.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Mr. Thomas Carpenter, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–4885, by fax at (202) 565–2098, or via email at *carpenter.thomas@epa.gov*. General information concerning the EPA SAB can be found at the EPA SAB Web site at *http//www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. In response to EPA's request, the SAB Staff Office will form an expert panel to review EPA's approaches to derive an MCLG for perchlorate.

In 2011, EPA announced its decision (76 FR 7762–7767) to regulate perchlorate under the Safe Drinking Water Act (SDWA) and publish a proposal no later than February 2013. SDWA requires EPA to request comments from the SAB prior to proposal of a maximum contaminant level goal (MCLG) and national primary drinking water regulation. EPA has therefore requested an SAB review of the scientific and technical bases for the approaches being considered to derive an MCLG for perchlorate. The agency seeks review of a draft Health Effects Support Document for Perchlorate. This draft document is under development and is expected to be available in early 2012. The document will include the following information: EPA's use and interpretation of reference doses (RfDs); statutory requirements for MCLGs and approaches for deriving MCLGs that EPA has used in the past; a discussion of the 2005 National Research Council report, ''Health Implications of Perchlorate Ingestion;'' and discussion of physiologically based pharmacokinetic (PBPK) modeling related to perchlorate health effects.

Availability of the review materials: The draft Health Effects Support Document for perchlorate will be available and posted on the agency's Web site in the near future. For questions concerning the draft Health Effects Support Document for Perchlorate, please contact either Mr. Eric Burneson, Office of Ground Water and Drinking Water, U.S. EPA, 1200 Pennsylvania Avenue NW., MC 4607M, Washington, DC 20460, phone (202) 564–5250 or at *burneson.eric@epa.gov* or Mr. Daniel Olson, Office of Ground Water and Drinking Water, U.S. EPA, 1200 Pennsylvania Avenue NW., MC 4607M, Washington, DC 20460, phone (202) 564–5239 or at *olson.daniel@epa.gov*

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists and engineers with demonstrated expertise and research in one or more of the following areas: drinking water, public health, epidemiology, toxicology, endocrinology, requirements and approaches to derive MCLGs, PBPK models, and health implications of perchlorate ingestion.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert panel. Nominations should be submitted in electronic format (preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed,'' provided on the SAB Web site. The instructions can be accessed through the ''Nomination of Experts'' link on the blue navigational bar at the SAB Web site *http://www.epa.gov/sab*. To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume or curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Mr. Thomas Carpenter, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than January 13, 2012. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and bio-sketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab*. Public comments on this List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the Panel as a whole, diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address *http://www.epa.gov/sab/pdf/epaform3110–48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document*: Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Dated: December 9, 2011.

Vanessa T. Vu,

Director, Science Advisory Board Staff Office.

[FR Doc. 2011–32279 Filed 12–15–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission

Federal Register CITATION OF PREVIOUS ANNOUNCEMENT—76 FR 77229 (December 12, 2011)

DATE AND TIME: Thursday, December 15, 2011 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

CHANGES IN THE MEETING—The following items have been added to the agenda:

Draft Notice of Proposed Rulemaking—Independent Expenditure Reporting by Persons other than Political Committees

Draft Notice of Proposed Rulemaking—Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2011–32470 Filed 12–14–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Senior Executive Service Performance Review Board

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service Performance Review Boards for the Federal Retirement Thrift Investment Board. The purpose of the Performance Review Boards is to view and make

recommendations concerning proposed performance appraisals, ratings, and bonuses, and other appropriate personnel actions for members of the Senior Executive Service.

DATES: This notice is effective December 16, 2011.

FOR FURTHER INFORMATION CONTACT: Kelly Powell, Administrative Officer, at (202) 942–1681.

SUPPLEMENTARY INFORMATION: Title 5, U.S. Code, 4314(c)(4), requires that the appointment of Performance Review Board members be published in the **Federal Register** before Board service commences. The following persons will serve on the Federal Retirement Thrift Investment Board's Performance Review Boards which will oversee the evaluation of the performance appraisals of the Senior Executive Service members of the Federal Retirement Thrift Investment Board: Pamela-Jeanne Moran, James B. Petrick, Tracey A. Ray, Thomas J. Trabucco, Mark Walther, and Renee Wilder.

Thomas K. Emswiler,

General Counsel.

[FR Doc. 2011–32299 Filed 12–15–11; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[File No. 111 0216]

Valeant Pharmaceuticals International, Inc.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 12, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Valeant J&J, File No. 111 0216'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/valeantjohnsonconsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jacqueline K. Mendel (202) 326–2603), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 12, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW, Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 12, 2012. Write ''Valeant J&J, File No. 111 0216'' on your comment. Your comment B including your name and your state B will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/valeantjohnsonconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Valeant J&J, File No. 111 0216'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 12, 2012. You can find more information, including routine uses permitted by the Privacy Act, in

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Valeant Pharmaceuticals International, Inc. (''Valeant''), which is designed to remedy the anticompetitive effects of Valeant's acquisition of the Ortho Dermatologics division of Janssen Pharmaceuticals, Inc. (''Janssen''), a wholly owned subsidiary of Johnson & Johnson.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Valeant intends to acquire Ortho Dermatologics from Janssen, a Johnson & Johnson company, in a transaction valued at approximately $345 million. Both parties sell topical pharmaceuticals in the United States. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for tretinoin emollient cream. The proposed Consent Agreement remedies the loss of competition that would result from the merger in this market. Specifically, the Consent Agreement requires that Valeant return the marketing rights to two pharmaceutical products, Refissa, a branded tretinoin emollient cream, and a generic tretinoin emollient cream, to Spear Pharmaceuticals (''Spear''), the company that owns both products.

II. The Products and the Structure of the Market

Valeant's proposed acquisition of Ortho Dermatologics from Johnson & Johnson would create a monopoly in the market for tretinoin emollient cream. Tretinoin emollient cream is a topical retinoid cream used for the treatment of fine line wrinkles (retinoids are chemical compounds derived from Vitamin A, most commonly used in the treatment of acne, but also used to treat fine line wrinkles). This market includes branded and generic tretinoin emollient cream, and is highly concentrated. Pursuant to a co-marketing agreement between Valeant and Spear Pharmaceuticals, Valeant markets branded Refissa tretinoin emollient cream as well as a generic tretinoin emollient cream. Johnson & Johnson's Renova is the only other tretinoin emollient cream product on the market. The proposed acquisition would create a monopoly in the market for tretinoin emollient cream in the United States.

III. Entry

As with most pharmaceutical products, entry into the manufacture and sale of tretinoin emollient cream is difficult, expensive and time consuming. Developing and obtaining U.S. Food and Drug Administration (''FDA'') approval for the manufacture and sale of topical pharmaceuticals takes at least two years due to substantial regulatory, technological and intellectual property barriers. Moreover, entry is not likely because the relevant market is relatively small, providing limited sales opportunities relative to the cost of entry for any potential entrant.

IV. Effects of the Acquisition

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for tretinoin emollient cream by eliminating actual, direct and substantial competition between Valeant and Johnson & Johnson. The evidence indicates that the loss of head to head competition between Renova and the products co-marketed by Valeant (Refissa and generic tretinoin emollient cream) would result in higher prices for tretinoin emollient cream.

V. The Consent Agreement

The proposed Consent Agreement would remedy the competitive concerns raised by the proposed acquisition by requiring that (1) Valeant terminate its agreement with Spear Pharmaceuticals, returning all its marketing rights to Refissa and generic tretinoin emollient cream and allowing Spear to take over its role in the market and (2) Valeant and Johnson & Johnson take steps to ensure that confidential business information relating to Refissa and generic tretinoin emollient cream will not be obtained or used by Valeant.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–32217 Filed 12–15–11; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 111–0215]

Valeant Pharmaceuticals International, Inc.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 12, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Valeant-Sanofi, File No. 111–0215'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/valeantsanoficonsent,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jacqueline K. Mendel (202) 326–2603), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period

of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 12, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 12, 2012. Write ''Valeant-Sanofi, File No. 111–0215'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/valeantsanoficonsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Valeant-Sanofi, File No. 111–0215'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 12, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Valeant Pharmaceuticals International, Inc. (''Valeant''), which is designed to remedy the anticompetitive effects of Valeant's acquisition of certain assets of Sanofi's dermatology unit, Dermik (''Dermik'').

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Valeant proposes to acquire certain assets of Sanofi's dermatology unit, Dermik, in a transaction valued at approximately $425 million (''the Acquisition''). Both parties sell topical pharmaceutical products in the United States. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the markets for (1) BenzaClin and (2) topical fluorouracil cream (''topical 5FU''). The proposed Consent Agreement remedies the loss of competition in these markets that would result from the Acquisition. Specifically, under the terms of the Consent Agreement, Valeant would be required to (1) divest all rights and assets related to generic BenzaClin, and (2) grant a perpetual, unrestricted license for the authorized generic of Efudex (''AG Efudex''). Valeant has proposed Mylan Inc. (''Mylan'') as the buyer of generic BenzaClin and AG Efudex assets.

II. The Products and the Structure of the Market

Valeant's proposed acquisition of Dermik from Sanofi would create a monopoly in the BenzaClin market. Dermik manufactures and markets BenzaClin, which is a topical pharmaceutical product used to treat acne vulgaris, commonly known as acne. BenzaClin is a combination of clindamycin, an antibiotic, and benzoyl peroxide, an antimicrobial. Valeant owns the only Abbreviated New Drug Application (''ANDA'') for the generic version of BenzaClin, which it licenses to Mylan. Pursuant to that license, Mylan sells the only generic equivalent of BenzaClin in the United States and Valeant receives the vast majority of royalties from those sales. Currently Dermik's BenzaClin sales account for approximately 50 per cent of sales, while sales of Mylan's generic version account for the other approximate 50 per cent. The Acquisition would create a monopoly in this market.

In addition, Valeant's proposed acquisition of Dermik is likely to result in anticompetitive effects in the market for topical 5FU products. Topical 5FU

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

products are used to treat actinic keratosis (''AK''), which is a pre-cancerous lesion that can result from years of repeated sun exposure. Three branded topical 5FUs are currently on the market, including Valeant's Efudex and Dermik's Carac. There are also two generic versions of Efudex, as well as an ''authorized'' generic, also sold by Valeant. The price of the generic drugs in this market determines the pricing of branded Carac. Post-acquisition, Valeant's market share in the topical 5FU market would be over 50 per cent. Other treatments for AKs are not viable substitutes for topical 5FUs because they are more costly, less efficacious or impracticable.

III. Entry

Entry into the manufacture and sale of both BenzaClin and topical 5FU products is difficult, expensive and time consuming. Developing and obtaining U.S. Food and Drug Administration approval for the manufacture and sale of topical pharmaceuticals takes over two years due to substantial regulatory, technological and intellectual property barriers. Furthermore, entry would not be likely because the markets are relatively small, so the limited sales opportunities available to a new entrant would likely be insufficient to justify the time and investment necessary to enter.

IV. Effects of the Acquisition

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of both BenzaClin and topical 5FU products by eliminating actual, direct and substantial competition between Valeant and Sanofi in those markets. With respect to the BenzaClin market, the transaction would combine BenzaClin and its only generic equivalent, eliminating BenzaClin's closest competitor and creating a monopoly. The impact of eliminating the competition between BenzaClin and its only currently-marketed generic equivalent, is highly likely to result in consumers paying higher prices.

In the topical 5FU market, the transaction would give Valeant control over three linked treatments for AK—Dermik's branded Carac and Valeant's branded and AG Efudex products. The combination of these products at Valeant would eliminate head to head competition between Carac and the Efudex AG and is thus likely to result in higher prices for topical 5FUs.

V. The Consent Agreement

The proposed Consent Agreement effectively remedies the acquisition's anticompetitive effects in the relevant markets by requiring Valeant to (1) divest its ANDA for generic BenzaClin to Mylan, and (2) supply an authorized generic of Efudex, pursuant to a license to Mylan. If approved, Mylan will acquire all rights and assets currently held by Valeant, including any existing inventory. The assets to be transferred include all manufacturing and research and development rights in the divested products.

Mylan is a particularly well-suited acquirer of generic BenzaClin because it has been manufacturing and marketing the product, pursuant to an agreement with Valeant, since it was introduced in August 2009. Mylan is the second-largest generic pharmaceutical manufacturer in the United States, and is well-positioned to replicate the competition that would be lost with the proposed Valeant/Dermik acquisition. Headquartered in Pittsburgh, Pennsylvania, Mylan employs more than 18,000 employees and generated approximately $5.45 billion in revenue in 2010. Mylan sells approximately 270 products and has a manufacturing facility where BenzaClin is manufactured. It is in the process of upgrading that facility to handle compounds such as 5FU.

Mylan expects to begin manufacturing generic Efudex at that facility in 2013. Until that time, the proposed Consent Agreement contemplates Mylan's purchase of topical 5FU from Valeant pursuant to a supply agreement. In order to ensure that there is no supply interruption, the proposed Consent Agreement would require that Valeant build up a two-year inventory and establish its own manufacturing as a back-up supply until Mylan is able to manufacture Efudex commercially. Valeant would also be required to assist Mylan with developing its manufacturing capabilities and securing the necessary FDA approvals. With these provisions, Mylan will be able to compete in the 5FU market immediately following the divestiture and establish independent manufacturing as soon as practicable.

The Commission has appointed Francis J. Civille as the Interim Monitor to oversee the asset transfer and to ensure Valeant's compliance with the provisions of the proposed Consent Agreement. Mr. Civille has over 27 years of experience in the pharmaceutical industry. He has extensive experience in areas such as pharmaceutical research and development, regulatory approval, manufacturing and supply, and marketing. Mr. Civille will oversee the transfer of Efudex manufacturing technology to the acquirer and ensure that Valeant is diligent in building up the required inventory of the product and establishing its own back-up supply capabilities. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires the parties to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2011–32218 Filed 12–15–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day 12–12BZ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 639–5960 and send written comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Residential Care Facility and Adult Day Service Center Components of the National Study of Long-Term Care Providers—NEW—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, ''shall collect statistics on health resources * * * [and] utilization of health care, including extended care facilities, and other institutions.''

NCHS seeks approval to collect data for the residential care facility (RCF) and adult day services center (ADSC) components of a planned new survey, the National Study of Long-Term Care Providers (NSLTCP). A two year clearance is requested.

As background here are some details on the plans for the whole study, of which this data collection is two components. The entire NSLTCP is being designed to: (1) Broaden NCHS' ongoing coverage of paid, regulated long-term care (LTC) providers; (2) merge with existing administrative data on LTC providers (*i.e.* Centers for Medicare and Medicaid Services (CMS) data on nursing home, home health, and hospice care); (3) update data more frequently on LTC providers for which nationally representative administrative data do not exist; and (4) enable comparisons across LTC provider types and monitor the supply and use of these providers.

The data will be collected in the 50 states and the District of Columbia from two types of LTC facilities: 9,450 RCFs and 4,601 ADSCs. The data to be collected include the basic characteristics, services, staffing, and practices of RCFs and ADSCs, and aggregate-level distributions of the demographics, physical functioning, and cognitive functioning of RCF and ADSC care recipients.

Expected users of data from this collection effort include, but are not limited to CDC; other Department of Health and Human Services (DHHS) agencies, such as the Office of the Assistant Secretary for Planning and Evaluation and the Agency for Healthcare Research and Quality; associations, such as LeadingAge (formerly the American Association of Homes and Services for the Aging), National Center for Assisted Living, American Seniors Housing Association, Assisted Living Federation of America, and National Adult Day Services Association; universities; foundations; and other private sector organizations.

Expected burden from data collection is 45 minutes per respondent for a total of 5,270 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number of responses	Average burden/ response (in minutes)	Response burden (in hours)
RCF Director	RCF Questionnaire	4,725	1	45/60	3,544
ADSC Director	ADSC Questionnaire	2,301	1	45/60	1,726
Total					5,270

Dated: December 9, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–32202 Filed 12–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–12–11HU]

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

Web-Based HIV Behavioral Survey among Men who have Sex with Men—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of the proposed information collection is to monitor behaviors related to Human Immunodeficiency Virus (HIV) infection among men who have sex with men (MSM), one of the groups at highest risk for acquiring HIV infection in the United States. Objectives of the proposed web-based behavioral survey of internet-using MSM are to (a) describe the prevalence of and trends in risk behaviors; (b) describe the prevalence of and trends in HIV testing; (c) describe the prevalence of and trends in use of HIV prevention services; and (d) identify met and unmet needs for HIV prevention services. This information will be used to monitor progress toward the National HIV/AIDS Strategy objectives, and will be shared with health departments, community based organizations, community planning groups and other stakeholders to improve prevention services.

This project also addresses the goals of CDC's HIV prevention strategic plan, specifically the goal of strengthening the national capacity to monitor the HIV epidemic to better direct and evaluate prevention efforts.

The Centers for Disease Control and Prevention request approval for data collection for a period of 3 years. Data will be collected through anonymous online surveys completed by MSM in 56 U.S. jurisdictions (all 50 U.S. states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands), with oversampling in 21

metropolitan statistical areas (MSAs) with high AIDS prevalence.

Internet-using MSM will be recruited through a direct marketing method that utilizes selective placement of banner advertisements on non-profit and privately owned Web sites. Individuals interested in learning more about the survey will click on the banner ad and will be directed to a one-minute screening interview to determine eligibility for participation in a behavioral assessment with an estimated duration of 14 minutes. The data from the assessment will provide estimates of behavior related to the risk of HIV and other sexually transmitted diseases, history of HIV testing, and use of HIV prevention services. No other federal agency collects this type of information nationally from MSM. These data are expected to have substantial impact on prevention program development and monitoring at the local, state, and national levels.

CDC estimates that the proposed web-based behavioral assessment will involve, per year in the 56 U.S. jurisdictions and 21 oversampled MSAs, eligibility screening of 309,090 persons. Of these, an estimated 139,090 either will not be interested in completing the behavioral assessment or will be ineligible after completing the screener and an estimated 170,000 eligible persons will participate in the behavioral assessment, resulting in a total of 510,000 eligible survey respondents and 417,270 ineligible screened persons during a 3-year period.

Participation of respondents is voluntary and there is no cost to the respondents other than their time. The total estimated annual burden hours are 44,819.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Persons screened for eligibility	Eligibility Screener	309,090	1	1/60
Eligible persons	Behavioral Assessment	170,000	1	14/60

Dated: December 9, 2011.

Daniel L. Holcomb,

Reports Clearance Officer Centers for Disease Control and Prevention.

[FR Doc. 2011–32201 Filed 12–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC, National Center for Environmental Health (NCEH) announces the aforementioned committee meeting:

DATE AND TIME: January 4, 2012, 1 p.m.–3 p.m.

PLACE: The meeting will be held by teleconference. Please dial (866) 769–2045 and enter participant code 70320520.

STATUS: This meeting is open to the public, limited only by the lines available. Approximately 65 lines will be available to the public. Opportunities will be provided during the meeting for oral comments.

PURPOSE: The Committee provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports regularly on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

MATTERS TO BE DISCUSSED: The teleconference agenda will include an overview on the Blood Lead Level of Concern Workgroup recommendations. The committee will formally vote on whether to accept the recommendations.

Meeting materials for the public will be made available on January 3, 2012, at the following Web site:

• *http://www.cdc.gov/nceh/lead/ACCLPP/activities.htm* (Click on Recommendations for the Blood Lead Level of Concern Workgroup);

• Meeting materials may also be requested by calling the Healthy Homes and Lead Poisoning Prevention Branch at (770) 488–3300 or Barry Brooks at (770) 488–3641.

Agenda items are subject to change as priorities dictates.

FOR FURTHER INFORMATION CONTACT: Claudine Johnson, Program Operation Assistant, or Tiffany Turner, Public Health Advisor, Healthy Homes and Lead Poisoning Prevention Branch, Division of Environmental Emergency Health Services, NCEH, CDC, 4770 Buford Highway, NE., Mailstop F–60, Atlanta, Georgia 30341, Claudine Johnson, telephone (770) 488–3629; Tiffany Turner, telephone (770) 488–0554; fax (770) 488–3635. The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 12, 2011.

Andre Tyler,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–32346 Filed 12–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Occupational Safety and Health Training Project Grants, Program Announcement PAR 10–288, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., January 11, 2012 (Closed).

Place: SpringHill Suites Marriott, 3459 Buckhead Loop, NE., Atlanta, Georgia 30326, *Telephone:* (404) 844–4800.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director,

Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Occupational Safety and Health Training Project Grants, PAR 10–288.''

Contact Person for More Information: Bernadine Kuchinski, Ph.D., Scientific Review Officer, CDC, Taft Laboratories, 4676 Columbia Parkway, Mailstop E00, Cincinnati, Ohio 45226, *Telephone:* (513) 533–8253.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 6, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–32203 Filed 12–15–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–179, CMS–10221, CMS–10408, and CMS–R–245]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* State Plan Under Title XIX of the Social Security Act (Base plan pages, Attachments, Supplements to attachments); *Use:* State Medicaid agencies complete the plan pages and CMS reviews the information to determine if the State has met all of the provisions that the State has chosen to implement. If the requirements are met, CMS will approve the amendments to the State's Medicaid plan giving the State the authority to implement the flexibilities. For a State to receive Medicaid Title XIX funding, there must be an approved Title XIX State plan; *Form Number:* CMS–179 (OCN 0938–0193); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 1,120; *Total Annual Hours:* 400. (For policy questions regarding this collection contact Candice Payne at (410) 786–4453. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection ; *Title of Information Collection:* Worksheet for Recording Results of Medicare Site Visits of Independent Diagnostic Testing Facilities (IDTFs); *Use:* The worksheet (form) was developed, approved by the Office of Management and Budget, and implemented to provide CMS with a standard format to collect and verify information regarding the compliance of IDTFs with the performance standards found in 42 CFR 410.33(g). This previously approved form was allowed to expire in error. CMS is now seeking to reinstate the use of this form.

The worksheet is used to collect and record information obtained on IDTF site visits; the data collected during site visits facilitates the verification of the accuracy and completeness of the information the IDTF furnished on its CMS–855B enrollment application. The worksheet is completed by CMS or its contractors. Some of the answers to the questions/data elements on the worksheet are verbally furnished by the IDTF during the site visit; *Form Number:* CMS–10221 (OCN 0938–1029); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 2,000; *Total Annual Responses:* 2,000; *Total Annual Hours:* 4,000. (For policy questions regarding this collection contact Michael Collett at (410) 786–6121. For all other issues call (410) 786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Early Retiree Reinsurance Program Survey of Plan Sponsors; *Use:* Under the Patient Protection and Affordable Care Act (42 U.S.C. 18002) and implementing regulations at 45 CFR part 149, employment-based plans that offer health coverage to early retirees and their spouses, surviving spouses, and dependents are eligible to receive tax-free reimbursement for a portion of the costs of health benefits provided to such individuals. The statute limits how the reimbursement funds can be used, and requires the Secretary of HHS to develop a mechanism to monitor the appropriate use of such funds. The survey that is the subject of this PRA package is part of that mechanism; *Form Number:* CMS–10408 (OMB 0938–1150); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 2,076; *Total Responses:* 2,076; *Total Hours:* 22,836. (For policy questions regarding this collection contact David Mlawsky at (410) 786–6851. For all other issues call (410) 786–1326.)

4. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs OASIS Collection Requirements as Part of the CoPs for HHAs and Supp. Regs. in 42 CFR 48.55, 484.205, 484.245, 484.250; *Use:* This data set is currently mandated for use by Home Health Agencies (HHAs) as a condition of participation (CoP) in the Medicare program. Since 1999, the Medicare CoPs have mandated that HHAs use the OASIS data set when evaluating adult non-maternity patients receiving skilled services. The OASIS is a core standard assessment data set that agencies integrate into their own patient-specific, comprehensive assessment to identify each patient's need for home care that meets the patient's medical, nursing, rehabilitative, social, and discharge planning needs; *Form Number:* CMS–R–245 (OCN 0938–0760); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 11,495; *Total Annual Responses:* 16,476,008; *Total Annual Hours:* 16,567,968. (For policy questions regarding this collection contact Robin Dowell at (410) 786–0060. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at http://www.cms.hhs.gov/PaperworkReductionActof1995, or

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.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *February 14, 2012:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 9, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–32296 Filed 12–15–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10412]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Section 1115 Demonstration: Long Term Services and Supports (LTSS) and Other Service Models for Individuals with Disabilities and Chronic Conditions; *Use:* Section 1115 of the Social Security Act provides the Secretary of Health and Human Services broad authority to authorize experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Flexibility under Section 1115 is sufficiently broad to allow States to test substantially new ideas of policy merit. States seeking interventions for individuals needing LTSS to lower costs, improve care and improve health can utilize the 1115 demonstration to test and deliver innovative services and approaches to better and more efficiently meet the needs of this population. Section 1115 demonstrations provide a vehicle for innovations in both care delivery and payment methodologies. Demonstrations must be ''budget neutral'' over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver. State Medicaid agencies are responsible for developing section 1115 demonstration applications and submitting them to CMS; *Form Number:* CMS–10412 (OCN: 0938–New); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 2,240. (For policy questions regarding this collection contact Adrienne Delozer at (410) 786–0278. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or 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.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on January 17, 2012.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov*.

Dated: December 9, 2011.

Martique Jones,

Director, Regulations Development Group, Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–32294 Filed 12–15–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10180, CMS–R–199, CMS–10379 and CMS–10418]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Children's Health Insurance Program (CHIP) Report on Payables and Receivables; *Use:* Collection of CHIP data and the calculation of the CHIP Incurred But Not Reported (IBNR) estimate are pertinent to CMS' financial audit. The CFO auditors have reported the lack of an estimate for CHIP IBNR payables and receivables as a reportable condition in the FY 2005 audit of CMS's financial statements. It is essential that CMS

collect the necessary data from State agencies in FY 2006, so that CMS continues to receive an unqualified audit opinion on its financial statements. Program expenditures for the CHIP have increased since its inception; as such, CHIP receivables and payables may materially impact the financial statements. The CHIP Report on Payables and Receivables will provide the information needed to calculate the CHIP IBNR. *Form Number:* CMS–10180 (OMB#: 0938–0988); Frequency: Reporting—Annually; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 392. (For policy questions regarding this collection contact Michele Myers at (410) 786–7911. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Report on Payables and Receivables; *Use:* The Chief Financial Officers (CFO) Act of 1990, as amended by the Government Management Reform Act (GMRA) of 1994, requires government agencies to produce auditable financial statements. Because the Centers for Medicare & Medicaid Services (CMS) fulfills its mission through its contractors and the States; these entities are the primary source of information for the financial statements. There are three basic categories of data: expenses, payables, and receivables. The CMS–64 is used to collect data on Medicaid expenses. The CMS–R–199 collects Medicaid payable and receivable accounting data from the States. *Form Number:* CMS–R–199 (OMB#: 0938–0697); Frequency: Reporting—Annually; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 336. (For policy questions regarding this collection contact Michele Myers at (410) 786–7911. For all other issues call (410) 786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Rate Increase Disclosure and Review Reporting Requirements (45 CFR Part 154). *Use:* Under the Section 1003 of the Affordable Care Act (Section 2794 of the Public Health Service Act), The Secretary, in conjunction with the States, is required to establish a process for the annual review, beginning with the 2010 plan year, of unreasonable increases in premiums for health insurance coverage. Section 2794 directs the Secretary to ensure the public disclosure of information of unreasonable rate increases and justification for those increases.

On December 23, 2010, CMS published a proposed rate review regulation in the **Federal Register** for public comment (Rate Increase Disclosure and Review Rule, 75 FR 81004). CMS revised the proposed rule based on the public comments and published the final rate review regulation in the **Federal Register** on May 19, 2011. The final rule defines the unreasonable rate review process and issuer reporting and disclosure requirements (Rate Increase Disclosure and Review Rule, 76 FR 29964). The regulation establishes the following reporting requirements:

- The Preliminary Justification: This data collection is required of all health insurance issuers for all rate increases that exceed the ''subject to review''' reporting threshold as defined in the rule. This information will be posted on an HHS Web site.
- Rate Review Final Determination: This data collection requires States with effective rate review programs and CMS to report their review findings and unreasonable rate increase determinations on all rate increases that are subject to review. This information will be posted on an HHS Web site.
- The Final Justification for an Unreasonable Rate Increase: This data collection is required of health insurance issuers that elect to implement a rate increase that is determined to be unreasonable based on State or CMS review. This information will be posted on the Health Insurance Issuer's Web site and on a CMS Web site.

1. Preliminary Justification

The Preliminary Justification consists of three parts, Part I: Rate Increase Summary, Part II: Written Explanation of the Rate Increase, and Part III: Rate Filing Documentation. Issuers must complete Parts I and II for all rate increases that exceed the reporting threshold as defined in the rule. As described in the preamble of the rule, this information would be collected to provide consumers with basic information on all rate increases that are subject to review under the rate review program.

Under the rule, ''subject to review'' rate increases would be reviewed by either States or CMS, depending on whether a State has an effective rate review program. Issuers would only be required to submit Part III of the Preliminary Justification when CMS is conducting the review of a rate increase that is ''subject to review.'' Accordingly, Part III requires health insurance issuers to provide detailed rate data that would be used for the purposes of conducting thorough actuarial reviews and for making determinations about whether rate increases are unreasonable.

This Notice contains the following information about the Preliminary Justification:

- Preliminary Justification Issuer Instructions: health insurance issuer instructions for completing all three parts of the Preliminary Justification.
- Part I Worksheet: a standardized Excel worksheet that must be used to complete Part I of the Preliminary Justification.
- Sample Internet display of the Rate Review Consumer Disclosure: Information provided in the Preliminary Justification would be posted on an HHS Web site. This sample display shows how the information contained in the Part I Worksheet would be displayed to consumers.

2. Rate Review Final Determination

Under the rule, States and CMS would have to provide a Rate Review Final Determination at the close of their review of all ''subject to review'' rate increases. The Rate Review Final Determination must provide the State's or CMS' determination on whether a rate increase is ''unreasonable.'' Section 154.301(a)(3) of the rule provides a list of actuarial review elements that must be taken into account as part of the rate review process. The Final Determination must provide a brief statement explaining how the review of elements set forth in § 154.301(a)(3) caused the State or CMS to arrive at its determination that the rate is unreasonable.

The Rate Review Final Determination will be entered into a data entry text box in the Rate Review Data Collection System. CMS is estimating that this statement would be approximately a paragraph in length. There is no specific form or set of instructions associated with this reporting requirement, apart from the reporting requirements provided in the rule. The information provided in the Rate Review Final Determination will be posted as part of the rate review consumer disclosure information on an HHS Web site.

3. Final Justification for an Unreasonable Rate Increase

The rule states that if a health insurance issuer implements a rate increase determined by CMS or a State to be unreasonable, the health insurance issuer must provide a Final Justification for an Unreasonable Rate Increase. In the Final Justification, issuers would

have to provide a short statement about why they are electing to implement an unreasonable rate increase. This statement would be entered into a data entry text box in the Rate Review Data Collection System and would not need to be more than a paragraph or two in length. There is no form or instructions associated with this statement apart from the requirements provided in the regulation.

The Final Justification Statement will be posted on an HHS Web site in the same location as the Preliminary Justification and Rate Review Final Determination. Additionally, health insurance issuers implementing rate increases that were determined to be unreasonable, must post all of this information—the Preliminary Justification, the Rate Review Final Determination, and the Final Justification Statement on their Web sites for a period of 3 years.

In addition to the aforementioned requirements, we revised the information collection request as a result of an amendment to the regulation discussed in the final rule that published September 6, 2011 (76 FR 54969). The amendment to the rate review final rule updated the applicability of the rate review requirements to include products that would be considered part of the individual or small group market had they not been sold through associations, including those that are consider to be large group products under State law or have been otherwise excluded from State's existing definitions for individual and small group products. This change resulted in an increase in the total number of rate increases that are subject to the rate review reporting requirements. The amendment did not propose any changes to the information that issuers must submit for each rate increase. Thus, burden associated with each rate increase submission remains unchanged from the final rate review rule. The revised association product reporting requirements took effect on November 1, 2011. CMS received a 6 month Emergency PRA approval for the revised association reporting requirements on October 31, 2011 (OMB–0938–1141). CMS is now requesting a 3-year OMB approval of these collection requirements. *Form Number:* CMS–10379 (OCN: 0938–1141); *Frequency:* Annually; *Affected Public:* Private Sector and States; *Number of Respondents:* 452; *Number of Responses:* 3,571; *Total Annual Hours:* 14,630. (For policy questions regarding this collection, contact Sally McCarty at (301) 492–4489. For all other issues call (410) 786–1326.)

4. *Type of Information Collection Request:* New information collection; *Title of Information Collection:* Medical Loss Ratio Annual Reporting and Rebate Calculation; *Use:* Under Section 2718 of the Affordable Care Act and implementing regulations at 45 CFR Part 158 (75 FR 74864, December 1, 2010 (Interim Final Rule); 75 FR 82277, December 30, 2010 (Technical Correction); and 76 FR 76574, December 7, 2011 (Final Rule with comment period)), a health insurance issuer (issuer) offering group or individual health insurance coverage must submit a report to the Secretary concerning the amount the issuer spends each year on claims, quality improvement expenses, non-claims costs, Federal and State taxes and licensing and regulatory fees, and the amount of earned premium. An issuer must provide an annual rebate to enrollees if the amount it spends on certain costs compared to its premium revenue (excluding Federal and States taxes and licensing and regulatory fees) does not meet a certain ratio, referred to as the medical loss ratio (MLR). An interim final rule (IFR) implementing the MLR was published on December 1, 2010 (75 FR 74865) and modified by technical corrections on December 30, 2010 (75 FR 82277), which added Part 158 to Title 45 of the Code of Federal Regulations. The IFR is effective January 1, 2011. A final rule regarding selected provisions of the interim final rule was published on December 7, 2011 (76 FR 76574) and an interim final rule regarding an issue not included in issuers' reporting requirements (distribution of rebates by non-federal governmental plans) was also published on December 7, 2011 (76 FR 76596). Each issuer is required to submit MLR data annually, including information about any rebates it must provide, on a form prescribed by CMS for each large group market, small group market, and individual market within each State in which the issuer conducts business. Data is to be submitted electronically through CMS' Health Insurance Oversight System (HIOS). Additionally, each issuer is required to maintain for a period of seven years all documents, records and other evidence that support the data included in each issuer's annual report to the Secretary. *Form Number:* CMS–10418; *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 527; *Number of Responses:* 5,530; *Total Annual Hours:* 352,563. (For policy questions regarding this collection, contact Carol Jimenez at (301) 492–4457. For all other issues, call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or 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.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by February 14, 2012:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 13, 2011.

Martique Jones,

Director, Regulations Development Group, Division B Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–32290 Filed 12–15–11; 8:45 a.m.]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9068–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from July through September 2011, relating to the Medicare and

Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone number
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV Medicare National Coverage Determinations	Wanda Belle	(410) 786–7491
V FDA–Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	Mitch Bryman	(410) 786–5258
VII Medicare –Approved Carotid Stent Facilities	Sarah J. McClain	(410) 786–2294
VIII American College of Cardiology-National Cardiovascular Data Registry Sites.	JoAnna Baldwin, MS	(410) 786–7205
IX Medicare's Active Coverage-Related Guidance Documents	Lori Ashby	(410) 786–6322
X One-time Notices Regarding National Coverage Provisions	Lori Ashby	(410) 786–6322
XI National Oncologic Positron Emission Tomography Registry Sites	Stuart Caplan, RN, MAS	(410) 786–8564
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities.	JoAnna Baldwin, MS	(410) 786–7205
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	JoAnna Baldwin, MS	(410) 786–7205
XIV Medicare-Approved Bariatric Surgery Facilities	Kate Tillman, RN, MAS	(410) 786–9252
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials.	Stuart Caplan, RN, MAS	(410) 786–8564
All Other Information	Annette Brewer	(410) 786–6580

I. Background

Among other things, the Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Summary of the Solicitation for Comments and Response to Comments

As explained in the notice with comment period that published in the August 8, 2011 **Federal Register** (76 FR 48564), technology has advanced since we published our first notice on June 9, 1988, and the information provided in this notice is now available in more efficient, economical, and accessible ways to meet the requirement for publication set forth in the statute. Each quarter, we publish the most current and relevant information; however, many of the quarterly notices simply duplicate the information that was previously published, since there often are no new relevant updates in some categories for the quarter. In addition, there is a 3-month lapse between the information available on the Web site and information covered by this quarterly notice.

In the August 8, 2011 notice (76 FR 48564), we solicited comments on alternative formats to provide this information to the public. For example, we explained that we could publish a notice that provided only Web links to the addenda, or provide this information on a newly-created CMS Quarterly Issuance Web page. We solicited comments and any additional information as to whether these alternative processes would improve accessibility to information. We also inquired whether a new format would pose a problem to those who access the information contained in this notice or pose an unintended burden to beneficiaries, providers, and suppliers. We did not receive any comments in response to our solicitation.

III. Revised Format for the Quarterly Issuance Notices

While we are publishing the quarterly notice required by section 1871(c) of the Act, we will no longer republish duplicative information that is available to the public elsewhere. We believe this approach is in alignment with CMS' commitment to the general principles of the President's Executive Order 13563 released January 2011entitled ''Improving Regulation and Regulatory Review,'' which promotes modifying and streamlining an agency's regulatory program to be more effective in achieving regulatory objectives. Section 6 of Executive Order 13563 requires agencies to identify regulations that may be ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand or repeal them in accordance with what has been learned.'' This approach is also in alignment with the President's Open Government and Transparency Initiative that establishes a system of transparency, public participation, and collaboration.

Therefore, beginning with this quarterly notice, we will provide only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS Web site or the appropriate data registries that are used as our resources. This information is the most current up-to-date information, and will be available earlier than we publish our quarterly notice. We believe

the Web site list provides more timely access for beneficiaries, providers, and suppliers. We also believe the Web site offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time''accessibility. In addition, many of the Web sites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the Web site. These listservs avoid the need to check the Web site, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a Web site proves to be difficult, the contact person listed can provide information.

IV. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program) .

Dated: December 8, 2011 .

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: December 17, 2010 (75 FR 79174), March 31, 2011 (76 FR 17873), August 8, 2011 (76 FR 48564) and November 4, 2011 (76 FR 68467). For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the Web site to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (July through September 2011)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

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Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare National Coverage Determination publication titled Autologous Cellular Immunotherapy Treatment of Metastatic Prostate Cancer Autologous Cellular Immunotherapy Treatment -use CMS-Pub. 100-03, Transmittal No. 133.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our Web site at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
	Medicare General Information (CMS-Pub. 100-01)
70	October 2011 Update to the CMS Standard File for Reason Codes for the Fiscal Intermediary Shared System (FISS)
	Medicare Benefit Policy (CMS-Pub. 100-02)
00	None
	Medicare National Coverage Determination (CMS-Pub. 100-03)
133	Autologous Cellular Immunotherapy Treatment of Metastatic Prostate Cancer Autologous Cellular Immunotherapy Treatment
134	Magnetic Resonance Imaging (MRI) in Medicare Beneficiaries with FDA-Approved Implanted Permanent Pacemakers (PMs) for use in an MRI Environment
135	Magnetic Resonance Imaging (MRI) in Medicare Beneficiaries with FDA-Approved Implanted Permanent Pacemakers (PMs) for use in an MRI Environment
	Medicare Claims Processing (CMS-Pub. 100-04)
2249	Issued to a specific audience, not posted to Internet/Intranet/ due to Sensitivity of Instruction
2250	Non-systems Internet Only Manual (IOM) Changes Form Locators 1-15 Form Locators 43-81
2251	Pharmacy Billing for Drugs Provided "Incident to" a Physician Service (This CR rescinds and fully replaces CR 7109.) Payment Rules for Drugs and Biologicals Exceptions to Average Sales Price (ASP) Payment Methodology
2252	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality
2253	Influenza Virus Vaccine
2254	Autologous Cellular Immunotherapy Treatment of Metastatic Prostate Cancer Autologous Cellular Immunotherapy treatment of Metastatic Prostate Cancer Policy Healthcare Common Procedure coding System (HCPCS) Codes Types of Bills (TOB) and Revenue Codes Payment Method Medicare Summary Notices(MSNs), Remittance Advice Remark Codes (RARCs),Claims Adjustment Reason Codes (CARCs),and Group Codes
2255	Quarterly Update to the End-Stage Renal Disease Prospective Payment System
2256	
2257	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for October 2011
2258	Correction to Processing of Hospice Discharge Claims Table of Contents Hospice Pre-Election Evaluation and Counseling Services

Transmittal Number	Manual/Subject/Publication Number
	Data Required on the Institutional Claim to Medicare Contractor Claims From Medicare Advantage Organizations Independent Attending Physician Services Processing Professional Claims for Hospice Beneficiaries Claims After the End of Hospice Election Period Billing and Payment for Services Unrelated to Terminal Illness Frequency of Billing and Same Day Billing Contractor Responsibilities for Publishing Hospice Information
2259	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2260	Update to Hospice Payment Rates, Hospice Cap, Hospice Wage Index and the Hospice Pricer for FY 2012
2261	Affordable Care Act - Section 3113 - Laboratory Demonstration for Certain Complex Diagnostic Tests (This CR fully Rescinds and Replaces CR 7413) Items 14-33 - Provider of Service or Supplier Information
2262	Implementation of the MIPPA 153c End Stage Renal Disease (ESRD) Quality Incentive Program (QIP) and Other Requirements for ESRD Claims Outpatient Provider Specific File Calculation of the Basic Case-Mix Adjusted Composite Rate and the ESRD Prospective Payment System Rate Required Information for In-Facility Claims Paid Under the Composite Rate and the ESRD PPS Coding for Adequacy of Dialysis, Vascular Access and Infection Requirement for Providing Route of Administration Codes for Erythropoiesis Stimulating Agents (ESAs) Epoetin Alfa (EPO) Darbepoetin Alfa (Aranesp) for ESRD Patients
2263	Claim Adjustment Reason Code (CARC), Remittance Advice Remark Code (RARC), and Medicare Remit Easy Print (MREP) and PC Print Update
2264	October 2011 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
2265	Quarterly Update to the Correct Coding Initiative (CCI) Edits, Version 17.3, Effective October 1, 2011
2266	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2267	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2268	Anesthesiologist Services in a Method II Critical Access Hospital (CAH) Physician Rendering Anesthesia in a Hospital Outpatient Setting
2269	Clarification of Payment for ESRD-Related Services Under the Monthly Capitation Payment Payment for ESRD-Related Services Under the Monthly Capitation Payment (Center Based Patients) Payment for Managing Patients on Home Dialysis
2270	Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality of Instruction
2271	Pharmacy Billing for Drugs Provided "Incident To" a Physician Service (This CR rescinds and fully replaces CR 7109). Payment Rules for Drugs and Biologicals Exceptions to Average Sales Price (ASP) Payment Methodology
2272	Healthcare Provider Taxonomy Codes (HPTC) Update October 2011
2273	Issued to a specific audience not posted to Internet/ Intranet due to Sensitivity of Instruction List of Medicare Telehealth Services Inpatient or Emergency Department Telehealth Consultation Services versus Inpatient Evaluation and Management (E/M) Visits Initial Inpatient or Emergency Department Telehealth Consultations Defined Follow-Up Inpatient or Emergency Department Telehealth Consultations Defined Originating Site Facility Fee Payment Methodology
2274	Annual Update for the Health Professional Shortage Area (HPSA) Bonus Payments
2275	Inpatient Rehabilitation Facility (IRF) Annual Update: Prospective Payment System (PPS) Pricer Changes for FY 2012 Payment Provisions Under IRF PPS
2276	October Update to the CY 2011 Medicare Physician Fee Schedule Database (MPFSDB)
2277	October 2011 Integrated Outpatient Code Editor (I/OCE) Specifications Version 12.3
2278	2012 Healthcare Common Procedure Coding System (HCPCS) Annual Update Reminder
2279	Annual Clotting Factor Furnishing Fee Update 2012 Clotting Factor Furnishing Fee
2280	Instructions for Downloading the Medicare ZIP Code File for January 2012
2281	Issued to a specific audience not posted to Internet/Intranet due to Sensitivity of Instruction
2282	Clarification of Evaluation and Management Payment Policy Table of Contents Payment for Hospital Observation Services and Observation or Inpatient Care Services (Including Admission and Discharge Services) Payment for Inpatient Hospital Visits – General Payment for Initial Hospital Care Services and Observation or Inpatient Care Services (Including Admission and Discharge Services) Consultation Services Nursing Facility Services Prolonged Services With Direct Face-to-Face Patient Contact Service (ZZZ codes)
2283	Clinical Laboratory Fee Schedule – Medicare Travel Allowance Fees for Collection of Specimens
2284	Clarification to Chapter 26, Section 10.4 - Items 14-33 - Provider of Service or Supplier Information Items 14-33/Provider of Service or Supplier Information
2285	Attending Physician Identifiers on Religious Nonmedical Health Care Institution Claims
2286	2012 Annual Update of Healthcare Common Procedure Coding System (HCPCS) Codes for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Update
2287	Medicare Physician Fee Schedule Database (MPFSDB) 2012 File Layout Manual Addendum
2288	Establishing a Quarterly Recurring Update Notification Process for Temporary "K" and "Q" Codes Description of Healthcare Common Procedure Coding System (HCPCS)
2289	Fiscal Year (FY) 2012 Inpatient Psychiatric Facility (IPF) PPS Changes
2290	October 2011 Update of the Ambulatory Surgery Center (ASC) Payment System
2291	Fiscal Year (FY) 2012 Inpatient Prospective Payment System (IPPS), Long-Term Care Hospital (LTCH) PPS, and Critical Access Hospital (CAH) Changes Submitting Bills In Sequence for a Continuous Inpatient Stay or Course of Treatment Medicare Payment for Ambulance Services Furnished by Certain CAHs
2292	Medicare Part A Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Pricer Update FY 2012
2293	Magnetic Resonance Imaging (MRI) in Medicare Beneficiaries with FDA-Approved Implanted Permanent Pacemakers (PMs) for use in an MRI Environment Magnetic Resonance Imaging (MRI) Procedures Payment Requirements Medicare Summary Notices (MSN), Reason Codes, and Remark Codes
2294	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction

Transmittal Number	Manual/Subject/Publication Number
2295	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction
2296	October 2011 Update of the Hospital Outpatient Prospective Payment System (OPPS)
2297	Issued to a specific audience not posted to Internet/Intranet due to Sensitivity of Instruction
2298	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for October 2011
2299	Enhance the Multi-Carrier System (MCS) and ViPS Medicare System (VMS) to maintain five full years of pricing data and to automatically price Claims/adjustments at the rates in effect at the dates of service. Update Factor for Fee Schedule Services Online Pricing Files for DMEPOS
2300	October Quarterly Update to 2011 Annual Update of HCPCS Codes Used for Skilled Nursing Facility (SNF) Consolidated Billing (CB) Enforcement
2301	Inpatient Rehabilitation Facility (IRF) Annual Update: Prospective Payment System (PPS) Pricer Changes for FY 2012 Payment Provisions Under IRF PPS
2302	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction
2303	Teaching Physician Services Evaluation and Management (E/M) Services Surgical Procedures Physician Billing in the Teaching Setting
2304	Claim Adjustment Reason Code (CARC), Remittance Advice Remark Code (RARC), and Medicare Remit Easy Print (MREP) and PC Print Update
2305	October 2011 Update of the Ambulatory Surgery Center (ASC) Payment System
2306	Clinical Laboratory Fee Schedule – Medicare Travel Allowance Fees for Collection of Specimens
2307	Magnetic Resonance Imaging (MRI) in Medicare Beneficiaries with FDA-Approved Implanted Permanent Pacemakers (PMs) for use in an MRI Environment Magnetic Resonance Imaging (MRI) Procedures Payment Requirements Medicare Summary Notices (MSN), Reason Codes, and Remark Codes
2308	Issued to a specific audience not posted to Internet/Intranet due to Sensitivity of Instruction
2309	Maintenance and Update of the Temporary Hook Created to Hold OPPS Claims that Include Certain Drug HCPCS Codes
2310	Ambulance Inflation Factor for CY 2012 Ambulance Inflation Factor (AIF)
2311	Implementation of the MIPPA 153c End Stage Renal Disease (ESRD) Quality Incentive Program (QIP) and Other Requirements for ESRD Claims Outpatient Provider Specific File Calculation of the Basic Case-Mix Adjusted Composite Rate and the ESRD Prospective Payment System Rate Required Information for In-Facility Claims Paid Under the Composite Rate and the ESRD PPS Coding for Adequacy of Dialysis, Vascular Access and Infection Requirement for Providing Route of Administration Codes for Erythropoiesis Stimulating Agents (ESAs) Epoetin Alfa (EPO) Darbepoetin Alfa (Aranesp) for ESRD Patients
2312	Pharmacy Billing for Drugs Provided "Incident To" a Physician Service This CR rescinds and fully replaces CR 7109. Payment Rules for Drugs and Biologicals Exceptions to Average Sales Price (ASP) Payment Methodology
2313	Updates to the Internet Only Manual, Pub. 100-04, Chapter 15-Ambulance, to include the Medicare and Medicaid Extenders Act of 2010 (MMEA) Provisions Components of the Ambulance Fee Schedule
2314	Claim Status Category and Claim Status Codes Update
Medicare Secondary Payer (CMS-Pub. 100-05)	
81	Requesting the Common Working File (CWF) to Cease Submitting First Claim Development (FCD) and Trauma Code Development (TCD) Alerts to the Coordination of Benefits Contractor (COBC)
82	Updates to the Electronic Correspondence Referral System (ECRS) Web User Guide v2.0 and Chapter 5 Coordination With the Coordination of Benefits Contractor (COBC) COBC Electronic Correspondence Referral System (ECRS) CRS Functional Description Technical Overview - Impact on Contractor Data Centers
Medicare Financial Management (CMS-Pub. 100-06)	
190	Notice of New Interest Rate for Medicare Overpayments and Underpayments – 4th Notification for FY 2011
191	Add Physician Specialty Codes for Cardiac Electrophysiology (21) and Sports Medicine (23) to CROWD Forms "F" (ParDoc) and "8" (OptOut). Table of Contents Part D(1) - Claims Processing Timeliness - All Claims Part E - Interest Payment Data Classification of Claims for Counting Participating Physician/Supplier Report Purpose and Scope Due Date Specialty Codes Physician/Limited License Physician Specialty Codes Non-Physician Practitioner/Supplier Specialty Codes Checking Reports Exhibit Definitions of Provider Specialty Codes for Opt Out Reporting Exhibit
192	Recovery Audit Program MAC-issued Demand Letters Adjusting the Claim
193	Recovery Audit Program Tracking Appeals and Reopenings
194	Medicare Financial Management Manual, Chapter 7, Internal Control Requirements
195	To Create Form 9 Within the Contractor Reporting of Operational and Workload Data (CROWD) System for the Reporting of Primary Care Incentive Payments (PCIP) and HPSA Surgical Incentive Payments (HSIP).
Medicare State Operations Manual (CMS-Pub. 100-07)	
00	None
Medicare Program Integrity (CMS-Pub. 100-08)	
378	Prospective Billing for Refills of DMEPOS Items Provided on a Recurring Basis Billing for Refills of DMEPOS Items Provided on a Recurring Basis Refills of DMEPOS Items Provided on a Recurring Basis
379	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
380	Advanced Diagnostic Imaging Accreditation Enrollment Procedures Advanced Diagnostic Imaging
381	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality

Transmittal Number	Manual/Subject/Publication Number
382	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality
383	Update to Pub. 100-08, Medicare Program Integrity Manual - Chapter 3
384	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality
385	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality
386	Ordering/Referring Providers Who Are not Enrolled in Medicare Section 2 of the Form CMS 855I Model Approval Letter for Providers who Order and Refer Only Ordering/Referring Providers Who are not enrolled in Medicare
387	Eligible Physicians and Practitioners who need to Enroll in the Medicare Program for the Sole Purpose of Ordering and Referring Services for Medicare Beneficiaries Ordering/Referring Providers Who Are Not Enrolled in Medicare
388	Additional Review Activities for Home Health Agencies (HHAs)
389	Proof of Delivery and Delivery Methods
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
00	None
Medicare End-Stage Renal Disease Network Organizations (CMS Pub 100-14)	
00	None
Medicare Managed Care (CMS-Pub. 100-16)	
100	Chapter 5, "Quality Improvement Program" Overview of Quality Improvement (QI) Program Requirements Definitions Quality Data Reporting Requirements Quality Improvement (QI) Program QI Program Requirements Chronic Care Improvement Program (CCIP) Types of CCIPs Evaluation of CCIPs and Scoring Criteria CCIP Compliance Indicator 1-Target Population and Method of Identifying Eligible Enrollees CCIP Compliance Indicator 2- Method for Enrolling Participants and Participation Rates CCIP Compliance Indicator 3- Whether the CCIP is Designed to Improve Health Outcomes CCIP Compliance Indicator 4- Data Sources Used to Identify the Need for a CCIP CCIP Compliance Indicator 5- Intervention CCIP Compliance Indicator 6- Program Monitoring and Delegation Oversight CCIP Compliance Indicator 7- Outcome Measures Quality Improvement Projects (QIPs) Characteristics of QIPs Evaluation of QIPs and Scoring Criteria QIP Compliance Indicator 1- Target Population QIP Compliance Indicator 2- Topic Focus and Relevance to the Medicare Population QIP Compliance Indicator 3- QI Indicators, Data Sources and Collection Methodology QIP Compliance Indicator 4- Participation QIP Compliance Indicator 5- Results QIP Compliance Indicator 6- Intervention CMS and Department of Health and Human Services (DHHS) QI Initiatives General CMS Directed Special Projects QI Program Health Information Systems QI Program Remedial Action QI Program Requirements for MAOs Using Physician Incentive Plans (PIPs) QI Program Requirements for Medicare Advantage Regional and Local Preferred Provider Organizations (PPOs QI Program Requirements for Private Fee-For-Service (PFFS) and Medicare Medical Savings Account (MSA) Plans QI Program Requirements for Special Needs Plans (SNPs) Additional SNP QI Program Requirements Additional SNP QI Program Requirements SNP Quality Data Reporting Requirements General SNP Reporting Measures Requirements SNP Structure and Process Measures SNP- Specific Medicare HOS Requirements SNP- Specific Medicare CAHPS® Requirements Medicare and Medicaid Quality Reporting Requirements for D-SNPs Quality Improvement Organizations (QIOs) Medicare Advantage (MA) Deeming Program Deeming Requirements Obligations of Deemed MAOs General Deemed Status and CMS Surveys Removal of an MAOs Deemed Status Removal of an MAOs Deemed Status CMS' Role in Deeming Oversight of AOs Equivalency Review Validation Review Onsite Observation of an AO Enforcement Authority Notice of Intent to Withdraw Approval Obligations of AOs with Deeming Authority Application Requirements Application Notices Withdrawing an Application Reporting Requirements Reconsideration of Application Denials, Removal of Approval of Deeming Authority and Non-Renewals of Deeming Authority Informal Hearing Procedures Informal Hearing Findings Final Reconsideration Determinations Standard Reporting Requirements for MAOs for HEDIS®, HOS and CAHPS® General HEDIS® Reporting Requirements Additional Information Regarding HEDIS® HEDIS® Submission Requirements Summary and Patient- Level Data HEDIS® Compliance Audit Requirements Final Audit Reports, Use and Release Medicare HOS Requirements HOS Survey Process Requirements HOS Modified HOS Data Feedback Medicare CAHPS® Requirements Information Regarding the CAHPS® Satisfaction Survey

Transmittal Number	Manual/Subject/Publication Number
	MAOs with Special Circumstances
	Medicare Business Partners Systems Security (CMS-Pub. 100-17)
11	CMS Business Partners Systems Security Manual
	Demonstrations (CMS-Pub. 100-19)
74	Affordable Care Act – Section 3113 – Laboratory Demonstration for Certain Complex Diagnostic Tests (This CR Fully Rescinds and Replaces CR 7278)
75	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality
76	None
77	Method of Cost Settlement for inpatient Services for Rural Hospitals Participating Under Demonstrations Authorized by Section 410A of the Medicare Modernization Act. Sections 3123 and 10313 of the Affordable Care Act authorized an expansion of the demonstration and an extension for additional 5-year period. This CR gives instructions for this additional 5-year period. This CR s an extension of CR 5020 for additional 5-year period.
78	Affordable Care Act - Section 3113 - Laboratory Demonstration for Certain Complex Diagnostic Tests (This CR fully Rescinds and Replaces CR 7413)
79	Implementation Support and Payment Processing for the Multi-payer Advanced Primary Care Practice (MAPCP) Demonstration
80	Implementation Support and Payment Processing for the Multi-payer Advanced Primary Care Practice (MAPCP) Demonstration
	One Time Notification (CMS-Pub. 100-20)
910	VMS Utility Run for DME MACs identification of edits for ICD-10
911	Implementing the Recompetition Award for the Jurisdiction D DME Medicare Administrative Contractor (MAC) Workload
912	Durable Medical Equipment National Competitive Bidding: Correction to Permit Payment for Certain Grandfathered Accessories and Supplies
913	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
914	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
915	Additional Healthcare Common Procedure Coding System (HCPCS) Codes Subject to Clinical Laboratory Improvement Amendments (CLIA) Edits
916	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
917	October Common Edits and Enhancements Module (CEM) and Receipt, Control and Balancing Updates
918	HIPPA 5010 National Testing Day and Week
919	Add Patient Status Codes to Bypass DA02 Edit in Common Working File (CWF)
920	Expand the Fiscal Intermediary Shared System (FISS) End Stage Renal Disease (ESRD) Parameter Files, Hook Selection Files, and Medical Policy Parameter Files to Accommodate the Requirements for ICD-10.
921	Common Edits and Enhancements Modules (CEM) Code Set Update
922	Addition of Medical Severity Diagnosis Related Group (MS-DRG) 265 to the list subject to Inpatient Prospective Payment System (IPPS) Replaced Devices Offered Without Cost or With a Credit Policy
923	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
924	Implementing the Recompetition Award for the Jurisdiction A Durable Medical Equipment (DME) Medicare Administrative Contractor (MAC) Workload
925	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
926	Medicare Remit Easy Print (MREP) and PC Print User Guide Update for Implementation of version 5010A1
927	Populating REF Segment - Other Claim Related Adjustment - for Healthcare Claim Payment/Advice or Transaction 835 Version 5010A1
928	Systems Analysis of New Medicare Summary Notice (MSN) Design
929	Discontinuation of FISS Data Feed to Legacy Provider Statistical and Reimbursement (PSandR) System
930	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
931	Health Insurance Portability and Accountability Act (HIPAA) 5010 837 Institutional (837I) Edits and 5010 837 Professional (837P) Edits – January 2012 Version
932	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
933	Health Insurance Portability and Accountability (HIPAA) 5010/D.0 Fixes – January 2012
934	Issued to specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
935	Analysis CR - The Inclusion of Veterans Administration (VA) Skilled Nursing Facility (SNF) claims to the VA Medicare Remittance Advice (eMRA) Process
936	Expand the Expert Claims Processing System (ECPS) for the Fiscal Intermediary Shared System (FISS) to accommodate ICD-10
937	Issued to specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
938	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
939	Independent Laboratory Billing of Automated Multi-Channel Chemistry (AMCC) Organ Disease Panel Laboratory Tests for Beneficiaries who are not Receiving Dialysis for Treatment of End Stage Renal Disease (ESRD)
940	Reporting of Recoupment for Overpayment on the Remittance Advice (RA) with Patient Control Number
941	Common Working File (CWF) Editing Update for Pulmonary Rehabilitation Services (PR) and Cardiac and Intensive Cardiac Rehabilitation Services
942	Instructions to Accept and Process All Ambulance Transportation Healthcare Common Procedure Coding System (HCPCS) Codes
943	Issued to specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
944	Conference Calls and Research Hours to Identify an Automated Solution for Tracking and Reporting Recovery Auditor Reopening and Appeals throughout the Medicare Appeals Process
945	Informational Message on the 835
946	Implementation of the HIPAA Version 5010 276/277 Claim Status Edits January 2012 Release
947	Revisions to Change Request 7362: "Integrated Data Repository (IDR) Claims Sourcing from Shared Systems – Implementation" to Require Transmission of CMN History Data
948	Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program: Allowing Contract or Non-contract Suppliers to Maintain and Service the Enteral Nutrition Equipment that they Provided in the 15th Continuous Month of Rental
949	Medicare Fee-For-Service Claims Processing Guidance for Implementing International Classification of Diseases, 10th Edition (ICD-10)
950	Medicare Fee-For-Service Claims Processing Guidance for Implementing International Classification of Diseases, 10th Edition (ICD-10)
951	HITECH - Annual 1099 Address File – Requirements for Submitting Updated Address, TIN

Transmittal Number	Manual/Subject/Publication Number
	and Full Legal Name for all HITECH Payees Receiving EHR Incentive Payments During the Calendar Year
952	Fee For Service Common Eligibility Services Conference Calls and Research
953	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
954	Revise MCS System to Accommodate ICD-10
955	Analysis and Design for Documentation Status Data Feed from Shared Systems for (CR 7455)
956	Issued to specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
957	Request for Common Working File (CWF) System to Support the Automated Edit Project Field Test
958	Additional Fields for Additional Documentation Request (ADR) Automated Development System (ADS) Letters
959	Populating REF Segment - Other Claim Related Adjustment - for Healthcare Claim Payment/Advice or Transaction 835 version 5010A1
960	Update the existing ViPS Medicare System (VMS) Utilization Parameter files for ICD-10.
961	Issued to specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
962	HITECH - Annual 1099 Address File – Requirements for Submitting Updated Address, TIN and Full Legal Name for all HITECH Payees Receiving EHR Incentive Payments During the Calendar Year

Addendum II: Regulation Documents Published in the Federal Register (July through September 2011)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following Web site http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our Web site at: http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-3Q11QPU.pdf For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. The rulings can be accessed at http://www.cms.gov/Rulings/CMSR/list.asp#TopOfPage. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (July through September 2011)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site. For the purposes of this quarterly notice, we list only the specific updates that have occurred in the 3-month period. This information is available on our Web site at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Magnetic Resonance Imaging (MRI) in Medicare Beneficiaries with Implanted (PMs) or ICDs	220.1	R134NCD	07/07/2011	08/26/2011
Autologous Cellular Immunotherapy for Prostate Cancer	110.22	R133NCD	07/08/2011	06/30/2011
Magnetic Resonance Imaging (MRI) in Medicare Beneficiaries with Implanted (PMs) or ICDs	220.1	R135NCD	08/26/2011	08/26/2011
October Clinical Lab Edits	190	R2298	09/02/2011	10/03/2011

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (July through September 2011)

Addendum V includes listings of the FDA-approved investigational device exemption (IDE) numbers that the FDA assigns. The listings are organized according to the categories to which the devices are assigned (that is, Category A or Category B), and identified by the IDE number. For the purposes of this quarterly notice, we list only the specific updates to the Category B IDEs as of the ending date of the period covered by this notice and a contact person for questions or additional information. For questions or additional information, contact John Manlove (410-786-6877).

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved investigational device exemption (IDE). Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the notice published in the April 21, 1997 **Federal Register** (62 FR 19328).

IDE	Device	Start Date
G110107	DexCom G4 Continuous Glucose Monitoring System	07/06/11
G110008	Sonalleve MR-HIFU Fibroid Therapy System	07/06/11
G110064	Flexion Atrial Flutter Study with the Therapy Coolflex ablation Catheter	07/08/11
G110061	CELT ACD Vascular Closure Device	07/19/11
BB14755	Magnetic-Activated Cell Sorter (CliniMACS, Miltenyi)	07/19/11
G110091	NeuroStar TMS Therapy System	07/22/11
G100337	Absolute Pro and Absolute Pro LL Self-Expanding Peripheral Stent Systems	07/27/11
G100089	Essure Permanent Birth Control System	07/28/11
G110092	OMEGA Monorail Coronary Stent System	08/03/11
G110009	Biomet Stimulator System	08/04/11
G090229	Glaukos Suprachoroidal Stent Model G3	08/05/11
G110053	Venous Window Needle Guide (VWNG)	08/10/11
G080199	Coscal Adhesion Prevention Device	08/11/11
G100326	Glaukos Trabecular Micro-bypass Stent Injector System, Model G2-M-IS(with GTS400 stent)	08/11/11
G110031	XIENCE PRIME AND XIENCE PRIME LL Everolimus Eluting Coronary Stent System, XIENCE V Everolimus Eluting Coronary Stent System for EXCEL Clinical Trial	08/12/11
G110130	iFuse Implant System	08/18/11
G110022	AirXpander Tissue Expander System	08/23/11
G110138	ViKY UP - Uterine Positioner	08/24/11
G110132	Ex-vivo Perfusion and Ventilation of Lungs Recovered from Non-Heart-Beating Donors to Assess Transplant Suitability	08/25/11
G110067	Endologix Fenestrated Stent Graft System	08/25/11
G110133	Iowa Cochlear Implant Clinical Research Center Hybrid L24 and Standard Cochlear Implants in Profoundly Deaf Infants	08/26/11
BB14795	Miltenyi CliniMACS cell selection device	08/31/11
G110035	Viper System Fenestrated Polyaxial Screw Fixation Augmented with the Confidence Spinal Cement System	09/01/11
BB14796	ACP Double Syringe System	09/01/11
G110103	EXPERT CTO Clinical Trial - Evaluation of the Xience Coronary Stent, Performance and Technique in Chronic Total Occlusions Clinical Trial	09/02/11
G110157	Exaleenz Breath System	09/07/11
G110150	TECNIS Toric 1-Piece Intraocular Lens (IOL) Model ZCT100	09/08/11
G110153	Sirtex Technology Pty Ltd/Radioactive Yttrium Microspheres	09/09/11
G110080	Endovent Pulmonary Catheter Kit	09/15/11
G110012	Biomet Stimulator System	09/15/11
G110158	Lifecell Tissue Matrix	09/15/11
G110101	Zenith p-Branch Endovascular Graft	06/29/11
G110105	Intrauterine Seprafilm Slurry	06/30/11
G100196	GORE TIGRIS Vascular Stent	09/21/11
G100125	Cool-tip Radiofrequency Ablation System	09/26/11
BB14771	Magnetic-Activated Cell Sorter (CliniMACS, Miltenyi)	09/27/11
G110118	Perlane-L with 0.3% Lidocaine	09/29/11
G100283	PREVAIL Single Port Access Paragastric Implant System	09/30/11
BB14602	Magnetic-Activated Sorter (CliniMACS, Miltenyi)	09/30/11
G110051	Artisan Aphakia Lens for Correction of Aphakia in Children	09/30/11
G100014	Freedom Solo Heart Valve	09/30/11
G100093	AquoSys Microfistula Implant System	09/30/11

Addendum VI: Approval Numbers for Collections of Information (July through September 2011)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact Mitch Bryman (410-786-5258).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (July through September 2011)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available on our Web site at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage. For questions or additional information, contact Sarah J. McClain (410-786-2294).

Facility	Provider Number	Effective Date	State	Other Information
The following facilities are new listings for this quarter.				
West Chester Hospital 7700 University Drive West Chester, OH 45069	360354	07/05/2011	OH	
Memorial Hospital of Tampa 2901 Swann Avenue Tampa FL 33609-4057	1023098258	07/15/2011	FL	
Palms of Pasadena Hospital 1501 Pasadena Avenue South	100126	07/15/2011	FL	

Facility	Provider Number	Effective Date	State	Other Information
St. Petersburg, FL 33707				
EHCA – Emory Johns Creek Hospital 6325 Hospital Parkway Johns Creek, GA 30097	1679632137	08/04/2011	GA	
UW Medicine – Northwest Hospital 1550 North 115th Street Seattle, WA 98133	1700861580	08/04/2011	WA	
Aurora Sheboygan Memorial Medical Center 2629 N. 7th Street Sheboygan, WI 53083-4998	520035	08/26/2011	WI	
Baylor Medical Center at Irving 1901 N. MacArthur Boulevard Irving, TX 75061	450079	08/26/2011	TX	
Portland Adventist Medical Center 10123 SE Market St. Portland, OR 97216-2941	380060	09/15/2011	OR	
Lake Pointe Medical Center 6800 Scenic Drive Rowlett, TX 75088	450742	09/23/2011	TX	
Southeast Alabama Medical Center 1108 Ross Clark Circle Dothan, AL 36301-3088	1164403861	10/06/2011	AL	
The following facilities have been deleted for this quarter.				
Conroe Regional Medical Center 504 Medical Center Boulevard Conroe, TX 77304	450222		TX	
Columbia Hospital 2201 45th Street West Palm Beach, FL 33407	100234		FL	
University Hospital and Medical Center 7201 North University Drive Tamarac, FL 33321	100224		FL	
Editorial changes (shown in bold) were made to the facilities listed below.				
University of Colorado Hospital **12605 E. 16th Avenue** **Aurora, CO 80045**	060024	07/15/2005	CO	
From: Clarian Health Partners, Inc **To: Indiana University Health, Inc.** **340 West 10th Street** **Indianapolis, IN 46202**	150056	05/23/2005	IN	
From: Capital Health System - Mercer Campus **To: Capital Health Medical Center** **Hopewell** **One Capital Way** **Pennington, NJ 08534**	1073516183	09/28/2009	NJ	

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (July through September 2011)

Addendum VIII includes a list of the American College of Cardiology's National Cardiovascular Data Registry Sites. We cover implantable cardioverter defibrillators (ICDs) for certain clinical indications, as long as information about the procedures is reported to a central registry. Detailed descriptions of the covered indications are available in the NCD. In January 2005, CMS established the ICD Abstraction Tool through the Quality Network Exchange (QNet) as a temporary data collecton mechanism. On October 27, 2005, CMS announced that the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD Registry satisfies the data reporting requirements in the NCD. Hospitals needed to transition to the ACC-NCDR ICD Registry by April 2006.

Effective January 27, 2005, to obtain reimbursement, Medicare NCD policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare NCD Manual, which is on the CMS Web site at http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961 .

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the ACC-NCDR ICD registry. Therefore, for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry. The entire list of facilities that participate in the ACC-NCDR ICD registry can be found at www.ncdr.com/webncdr/common

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of Medicare-approved ICD facilities in the 3-month period. This information is available by accessing our Web site and clicking on the link for the American College of Cardiology's National Cardiovascular Data Registry at: www.ncdr.com/webncdr/common. For questions or additional information, contact Joanna Baldwin, MS (410-786-7205).

Facility Name	Address 1	City	State	Zip Code
The following facilities are new listings for this quarter.				
Advocate Trinity Hospital	2320 E. 93 Street	Chicago	IL	60617
Beth Israel Medical Center	First Avenue @ East 16th Street	New York	NY	10003
Central Michigan Community Hospital	1221 South Drive	Mount Pleasant	MI	48858
Children's Hospital and Medical Center	8200 Dodge Street	Omaha	NE	68114
Franciscan Healthcare	700 West Avenue S.	La Crosse	WI	54601
Horizon Medical Center	111 Highway 70E	Dickson	TN	37055
Indian River Surgery Center	1200 37th Street	Vero Beach	FL	32960
Indiana University Health West Hospital	1111 North Ronald Reagan Parkway	Avon	IN	46123
Kalispell Regional Medical Center	310 Sunnyview Lane	Kalispell	MT	59901

Facility Name	Address 1	City	State	Zip Code
Loma Linda University Medical Center - Murrieta	28062 Baxter Road	Murrieta	CA	92563
Matagorda Regional Medical Center	104 7th Street	Bay City	TX	77414
Methodist West Houston Hospital	18500 Katy Freeway	Houston	TX	77094
Nationwide Children's Hospital	700 Children's Drive	Columbus	OH	43205
Oakwood Southshore Medical Center	5450 Fort Street	Trenton	MI	48183
Outpatient Surgical and Laser Center	501 Glades Road	Boca Raton	FL	33432
Placentia Linda Hospital (TENET)	1301 Rose Drive	Placentia	CA	92870
The following facilities are no longer participants in the ACC-NCDR-ICD Registry as of this notice.				
Hualapai Mountain Medical Ctr.	3801 Santa Rosa Drive	Kingman	AZ	86401
Columbia Hospital	2025 E Newport Avenue	Milwaukee	WI	53211
Southern Maryland Hospital	7503 Surratts Road	Clinton	MD	20735
St. Luke's Patients Medical Center	4600 East Sam Houston Beltway	Pasadena	TX	77505
Trumbull Memorial Hospital	1350 E. Market Street	Warren	OH	44482
Waco Surgery Center	7003 Woodway Drive Suite 307	Waco	TX	76712
Wadley Regional Medical Center	1000 Pine Street	Texarkana	TX	75501
West Calcasieu Cameron Hospital	701 Cypress Street	Sulphur	LA	70663
Wuesthoff Medical Center Melbourne	250 N. Wickham Road	Melbourne	FL	32935

Addendum IX: Active CMS Coverage-Related Guidance Documents (July through September 2011)

There were no CMS coverage-related guidance documents published in the July through September 2011 quarter. To obtain full-text copies of these documents, visit the CMS Coverage Web site at http://www.cms.gov/mcd/index_list.asp?list_type=mcd_1 and click on the archives link. For questions or additional information, contact Lori Ashby (410-786-6322).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (July through September 2011)

There were no special one-time notices regarding national coverage provisions published in the July through September 2011 quarter. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact Lori Ashby (410-786-6322).

Addendum XI: National Oncologic PET Registry (NOPR) (July through September 2011)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry.

There were no new facilities that meet CMS's requirements for performing PET scans under National Coverage Determination CAG-00181N published in the July through September 2011 quarter.

This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage.

For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564)

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (July through September 2011)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of Medicare-approved facilities that meet our standards in the 3-month period. This information is available on our Web site at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Facility	Provider number	Date Approved	State
The following are new listings for this quarter.			
Piedmont Hospital 1968 Peachtree Road, NW Atlanta, GA 30309	110083	06/09/2011	GA
Albert Einstein Medical center 501 Old York road Philadelphis, PA 19141	390142	10/07/2011	PA
Editorial changes (shown in bold) were made to the facility listed below.			
From: University of Colorado Hospital **To: University of Colorado Authority** **12605 E. 16th avenue** **Aurora, CO 80045**	060024	07/23/2008	CO

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (July through September 2011)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no additions to the listing of facilities for lung volume reduction surgery published in the July through September 2011 quarter.This information is available on our Web site at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (July through September 2011)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

For the purposes of this quarterly notice, we list only the specific updates to Medicare-approved facilities that meet CMS's minimum facility standards for bariatric surgery and have been certified by ACS and/or ASMBS in the 3-month period. This information is available on our Web site at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Kate Tillman, RN, MAS (410-786-9252).

Facility Name	Provider Number	Date Approved	State	Other Information
The following facilities are new listings for this quarter.				
Bon Secours St. Francis Health System 135 Commonwealth Drive Suite 210 Greenville, SC 29615	420023	08/03/11	SC	ASMBS
Preston Memorial Hospital 300 South Price Street Kingwood, WV 26537	511312	08/03/11	WV	ASMBS

Facility Name	Provider Number	Date Approved	State	Other Information
Vista Medical Center East 1324 N. Sheridan Road Waukegan, IL 60087	1639120694	08/03/11	IL	ASMBS
The Hospital of Central Connecticut at New Britain General 100 Grand Street New Britain, CT 06050	1053477075	07/22/11	CT	ACS
Mount Sinai School of Medicine 5 East 98th Street, 15th Floor New York, NY 10029		07/15/11	NY	ACS
Bailey Medical Center, LLC 10502 N. 110th East Avenue Owasso, OK 74055	1205846037	06/06/11	OK	ACS
Lake Norman Regional Medical Center 171 Fairview Road Mooresville, NC	340129	08/03/11	NC	ASMBS
Bon Secours Mary Immaculate Hospital 12720 McManus Boulevard Newport News, VA 23602	49-0041	08/30/11	VA	ASMBS
Baylor Medical Center at Trophy Club 2850 East Highway 114 Trophy Club, TX 76262	450-883	08/30/11	TX	ASMBS
Memorial Hospital of Tampa 2901 Swann Avenue Tampa, FL 33609	10-0206	08/30/11	FL	ASMBS
Nassau University Medical Center 2201 Hempstead Turnpike East Meadow, NY 11554	33-0027	08/30/11	NY	ASMBS
Berkshire Medical Center 725 North Street Pittsfield, MA 01201	1295765261	08/11/11	MA	ACS
Mission Hospital 2 Medical Park Drive Asheville, NC 28803	340002	08/20/11	NC	ASMBS
Medical Center Hospital 500 West 4th Street Odessa, TX 79761	450132	09/27/11	TX	ASMBS
Editorial changes (shown in bold) were made to the facilities listed below.				
Barnes Jewish Hospital **216 South Kingshighway Boulevard St. Louis, MO 63110**	260032	08/29/06	MO	ASMBS
East Texas Medical Center 1000 South Beckham Street Tyler, TX 75701	450083	**02/24/06**	TX	ASMBS
Maine Medical Center **22 Bramhall Street Portland, Maine 04102**	200009	09/28/09	ME	ACS
Morristown Medical Center 100 Madison Avenue Morristown, NJ 07962	1053384776	01/25/07	NJ	ACS
Charleston Area Medical Center 800 Pennsylvania Avenue Charleston, WV 25302	510022	**04/04/07**	WV	ASMBS
Temple University Hospital 3401 North Broad Street Philadelphia, PA 19140	390027	**09/17/07**	PA	ASMBS
Flagler Hospital 400 Health Park Boulevard St. Augustine, FL 32086	100090	**07/21/08**	FL	ASMBS
From: Bridges Center at Tempe St. Luke's **To: Tempe St. Luke's Hospital - Bridges Center for Surgical Weight Loss** 1500 South Mill Avenue Tempe, AZ 85281	030037	**09/17/10**	AZ	ASMBS
From: St. Luke's Medical Center **To: St. Luke's Medical Center - Bridges Center for Surgical Weight Loss** 1800 E. Van Buren Street, Suite 307B Phoenix, AZ 85006	030037	03/10/06	AZ	ASMBS
From: West Hills Hospital **To: West Hills Hospital and Medical Center** 7300 Medical Center Drive West Hills, CA 91307	050481	**06/18/07**	CA	ASMBS
Orange Regional Medical Center **707 East Main Street Middletown, NY 10940**	33-0126	03/25/11	NY	ASMBS
St. Anthony's Hospital 2807 Little York Road **Houston**, TX 75224	450795	03/18/09	TX	ASMBS

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (July through September 2011)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the July through September 2011 quarter.

This information is available on our Web site at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage.

For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564)

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BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1586–N]

Medicare Program; First Semi-Annual Meeting of the Advisory Panel on Hospital Outpatient Payment (HOP—Formerly Known as the Advisory Panel on Ambulatory Payment Classification Groups—APC Panel)—February 27, 28, and 29, 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the first semi-annual meeting of the Advisory Panel on Hospital Outpatient Payment (HOP), formerly known as the Advisory Panel on Ambulatory Payment Classification Groups (the APC Panel) for 2012. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) on the clinical integrity of the APC groups and their associated weights, and hospital outpatient supervision issues.

DATES: *Meeting Date:* The first semi-annual meeting in 2012 is scheduled for the following dates and times:

- Monday, February 27, 2012, 1 p.m. to 5 p.m. eastern standard time (e.s.t.) [1]
- Tuesday, February 28, 2012, 9 a.m. to 5 p.m. (e.s.t.) [1]
- Wednesday, February 29, 2012, 9 a.m. to 5 p.m. (e.s.t.) [1]

Note: [1] The times listed in this notice are approximate times; consequently, the meetings may last longer than listed in this notice, but will not begin before the posted times.

Deadlines

Deadline for Presentations and Comments (which includes both hardcopy and email submissions)—5 p.m. (e.s.t.), Friday, December 30, 2011. (See below for submission instructions.)

Deadline for Meeting Registration (**Note:** Those who do not pre register may not be able to attend the meeting since seating space is limited)—5 p.m. (e.s.t.), Friday, January 27, 2012.

Deadline for Requests for Special Accommodations—5 p.m. (e.s.t.), Friday, January 27, 2012.

Submission Instructions for Presentations and Comments

Because of staffing and resource limitations, we cannot accept written comments and or presentations by FAX, nor can we print written comments and presentations received by email for dissemination at the meeting.

Presentations:

Presentations must be based on the scope of the Panel designated in the Charter. Any presentations outside of the scope of this Panel will be returned and or amendments requested. Unrelated topics include, but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments, correct coding, new technology applications (including supporting information/documentation), provider payment adjustments, and which types of practitioners are permitted to supervise hospital outpatient services.

All presentations will be considered public information and will be posted on the CMS Web site. Presenters should not send pictures of patients in any of the documents (unless their faces have been blocked out) or include any examples with patient identifiable information.

In order to consider presentation and/or comment requests, we will need to receive the following information:

1. A hardcopy of your presentation; only hardcopy comments and presentations can be reproduced for public dissemination. We note that all presentations are limited to 5 minutes per individual or organization.

2. An email copy of your presentations sent to the Panel mailbox, *APCPanel.cms.hhs.gov* or to the DFO, *Paula.Smith@cms.hhs.gov.*

3. Form CMS–20017 with complete contact information that includes name, address, phone, and email addresses for all presenters and a contact person that can answer any questions and or provide revisions that are requested for the presentation.

○ Presenters must clearly explain the actions that they are requesting CMS to take in the appropriate section of the form. A presenter's relationship to the organization that they represent must also be clearly listed.

○ The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf.*

ADDRESSES: *Meeting Location:* The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Woodlawn, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: For inquiries about the Panel, contact the Designated Federal Officier (DFO):

Paula Smith, 7500 Security Boulevard, Mail Stop C4–05–17, Woodlawn, MD 21244–1850. Phone: (410) 786–4709.

Mail hardcopies and email copies to the following addresses:

Paula Smith, DFO, CMS, CM, HAPC, DOC—HOPS Panel, 7500 Security Blvd., Woodlawn, MD 21244–1850, Mail Stop C4–05–17, *Paula.Smith@cms.hhs.gov* or *APCPanel@cms.hhs.gov*.

Note: We recommend that you advise couriers of the following information: When delivering hardcopies of presentations to CMS, if no one answers at the above phone number, call (410) 786–4532 or (410) 786–7267.

News media representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The phone numbers for the CMS Federal Advisory Committee Hotline are 1–(877) 449–5659 (toll free) and (410) 786–9379 (local).

Web Sites: For additional information on the Panel and updates to the Panel's activities, we are referring readers to view our Web site at the following: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage*. (Use control + click the mouse in order to access the previous URL.)

Note: There is an underscore after FACA/05 (like this_); there is no space.

You may also search information about the Panel and its membership in the FACA database at the following URL: *https://www.fido.gov/facadatabase/public.asp.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (DHHS) (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act) and section 222 of the Public Health Service Act (PHS Act) to consult with an expert outside advisory panel regarding the clinical integrity of the Ambulatory Payment Classification (APC) groups and relative payment weights. The Hospital Outpatient Payment (HOP) Panel (which was formerly known as the Advisory Panel on Ambulatory Payment Classification Groups) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels.

The Charter provides that the Panel shall meet up to 3 times annually. We consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the outpatient prospective payment system (OPPS) for the next calendar year.

II. Agenda

The agenda for the February 2012 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Evaluating APC group weights.
- Reviewing the packaging of OPPS services and costs, including the methodology and the impact on APC groups and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using single and multiple procedure claims data for CMS' determination of APC group weights.
- Addressing other technical issues concerning APC group structure.
- Addressing supervision of outpatient services.

The subject matter before the Panel will be limited to these and related topics. Unrelated topics include, but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments, correct coding, new technology applications (including supporting information/documentation), provider payment adjustments, and which types of practitioners are permitted to supervise hospital outpatient services.

The Panel may use data collected or developed by entities and organizations, other than the DHHS and CMS, in conducting its review. We recommend that organizations submit data for the Panel's and CMS staff's review. The Agenda will be posted on the CMS Web site before the meeting.

III. Oral Comments

In addition to formal oral presentations, which are limited to 5 minutes per individual or organization, there will be opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual.

IV. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Priority will be given to those who pre-register and attendance may be limited based on the number of registrants and the space available.

Persons wishing to attend this meeting, which is located on Federal property, must email the DFO as specified in the **FOR FURTHER INFORMATION CONTACT** section of the notice to register in advance no later than 5 p.m. (e.s.t.), January 27, 2012. A confirmation will be sent to the requester(s) by return email within 10 days of the meeting.

In the email request for registration, include the following information:

- Name(s) of attendees.
- Title(s).
- Organization.
- Office address, including city and State.
- Email address(es).
- Telephone number(s).

V. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting including presenters must be pre-registered and on the attendance list by the prescribed date.
- Individuals who are not pre-registered in advance may not be permitted to enter the building and may be unable to attend the meeting.
- Attendees must present photo identification (ID) to the Federal Protective Service or Guard Service personnel before entering the building. Without a current, valid photo ID, you may not be permitted entry to the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- All persons entering the building must pass through a metal detector.
- All items brought into CMS, including personal items for example, laptops and cell phones, are subject to physical inspection.
- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

VI. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by 5 p.m. (e.s.t.), Friday, January 27, 2012.

VII. Panel Recommendations and Discussions

The Panel's recommendations at any Panel meeting generally are not final until they have been reviewed and approved by the Panel on the last day of the meeting, before the final adjournment. These recommendations are posted on the CMS Web site after the meeting.

VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 1, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–32298 Filed 12–15–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care Quarterly Case Record Report—ACF–801.

OMB No.: 0970–0167.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option), include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. ACF uses disaggregate data to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of

the ACF–801. With this extension, ACF is proposing to add several new data elements as well as some minor changes and clarifications to the existing reporting requirements and instructions. These proposed revisions to the ACF–801 would allow OCC to capture child-level data on provider quality for each child receiving a child care subsidy.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	56	4	25	5,600

Estimated Total Annual Burden Hours: 5,600.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden 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. 2011–32242 Filed 12–15–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Anesthetic and Analgesic Drug Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anesthetic and Analgesic Drug Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 9, 2012, from 8:30 a.m. to 4 p.m.

Location: Hilton Washington DC/Silver Spring (scheduled to be renamed in January 2012 to DoubleTree by Hilton Hotel Washington DC/Silver Spring), 8727 Colesville Road, Silver Spring, MD 20910. The hotel's phone number is (301) 589–5200.

Contact Person: Philip Bautista, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, (301) 796–9001, *FAX:* (301) 847–8533, *email: AADPAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–(800) 741–8138 (301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss the available efficacy and safety data for supplemental new drug application (sNDA) 22395/S–013, QUTENZA (capsaicin 8%) Patch, by NeurogesX, Inc., for the proposed indication of management of neuropathic pain (nerve pain) related to HIV-associated peripheral neuropathy (nerve pain in the periphery of the body, such as the feet and legs).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 26, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 18, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably

accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 19, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Philip Bautista at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 6, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–32206 Filed 12–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on Monday, January 30, 2012 from 8 a.m. to 4 p.m. and on Tuesday, January 31, 2012 from 9 a.m. to 12 noon.

Location: Hilton Gaithersburg Hotel, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's phone number is (301) 977–8900.

Contact Person: Walter Ellenberg, Office of Pediatric Therapeutics, Office of the Commissioner, Food and Drug Administration, Bldg. 32, Rm. 5154, 10903 New Hampshire Ave., Silver Spring, MD 20993, (301) 796–8524, *email: Walter.Ellenberg@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–(800) 741–8138 ((301) 443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The Pediatric Advisory Committee will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act and the Pediatric Research Equity Act for Prevnar 13 (Pneumococcal 13-valent Conjugate Vaccine (Diphtheria CRM197 Protein), Cervarix (Human Papillomavirus Bivalent (Types 16 and 18) vaccine, recombinant, Focalin XR (dexmethylphenidate), Daytrana (methylphenidate), Seroquel (quetiapine), Pancreaze (pancrelipase), Zenpep (pancrelipase), Creon (pancrelipase), Xerese cream 5%/1% (acyclovir and hydrocortisone), Xolair (omalizumab), Benicar (olmesartan medoxomil), Atacand (candesartan cilexetil), Mirena (levonorgestrel—releasing intrauterine system), Plan B One Step (levonorgestrel), and Flomax (tamsulosin).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 24, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 16, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 17, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Walter Ellenberg at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 6, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–32205 Filed 12–15–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Bioengineering Models and Technologies.

Date: January 5, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Craig Giroux, Scientific Review Officer, BST IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, Bethesda, MD 20892, (301) 435–2204, *girouxcn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32314 Filed 12–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel,SBIR Topic 56 Blood Donor Screening Test for Babesia.

Date: January 9, 2012.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Program Project Grant Review in Vascular Medicine and Atherosclerosis.

Date: January 10, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shelley S Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, (301) 435–0303, *ssehnert@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32309 Filed 12–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Kidney and Urology Pathophysiology.

Date: January 10, 2012.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, (301) 435–1198, *sahaia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32306 Filed 12–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: January 24–25, 2012.

Closed: January 24, 2012, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Open: January 25, 2012, 8 a.m. to 1:15 p.m.

Agenda: Call to order and reports from the Director; discussion of future meeting dates; consideration of minutes from the last meeting; reports from the Task Force on Minority Aging Research, the Working Group on Program; council speaker; and Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: January 25, 2012, 1:15 p.m. to 1:45 p.m.

Agenda: To review and evaluate the Intramural Research Program.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robin Barr, Ph.D., Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32304 Filed 12–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, PAR09–247: Ancillary Studies to the ongoing Clincal Research Studies on IBSOS.

Date: January 26, 2012.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8894. *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 12, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–32300 Filed 12–15–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0902]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0004, United States Coast Guard Academy Application and Supplemental Forms. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 17, 2012.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2011–0902], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

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

(3) *Hand deliver:* 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.

(4) *Fax:* (202) 493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, a copy is available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St. SW., STOP 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone (202) 475–3652, or fax (202) 475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains

information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2011–0902], and must be received by January 17, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2011–0902], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *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 DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–0902'' in the ''Keyword'' box. If you submit them by mail or 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 will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice 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–2011–0902'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: [1625–0004].

Privacy Act

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

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (76 FR 62426, October 7, 2011) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: United States Coast Guard Academy Application and Supplemental Forms.

OMB Control Number: 1625–0004.

Type of Request: Revision of a currently approved collection.

Respondents: Approximately 4,500 applicants apply annually to the U.S. Coast Guard Academy.

Abstract: This collection contains the application and all supplemental forms required to be considered as an applicant to the U.S. Coast Guard Academy.

Forms: CGA–14, CGA–14A, CGA–14B, CGA–14C, CGA–14D.

Burden Estimate: The estimated burden has decreased from 8,100 annual hours to 6,750 annual hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 12, 2011.

C.A. Mathieu,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–32231 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0955]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of revisions to the following collections of information: 1625–0034, Ships' Stores Certification for Hazardous Materials Aboard Ships; and 1625–0043, Ports and Waterways Safety—Title 33 CFR Subchapter P. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before January 17, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0955] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(4) *Fax:* (a) To DMF, (202) 493–2251. (b) To OIRA at (202) 395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), *Attn:* Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St. SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone (202) 475–3652 or fax (202) 475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2011–0955], and must be received by January 17, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0955], indicate the specific section of the document to which each comment applies, providing a reason for each comment. If you submit a comment online via *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 DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–0955'' in the ''Keyword'' box. 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 comments 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 will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice 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–2011–0955'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0034 and 1625–0043.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (76 FR 63626, October 13, 2011) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

1. *Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.

OMB Control Number: 1625–0034.

Type of Request: Revision of a currently approved collection.

Respondents: Owners and operators of ships, and suppliers and manufacturers of hazardous materials used on ships.

Abstract: The information is used by the Coast Guard to ensure that personnel aboard ships are made aware of the proper usage and stowage instructions for certain hazardous materials. Provisions are made for

waivers of products in special Department of Transportation (DOT) hazard classes.

Forms: None.

Burden Estimate: The estimated burden has decreased from 12 hours to 8 hours a year.

2. *Title:* Ports and Waterways Safety—Title 33 CFR Subchapter P.

OMB Control Number: 1625–0043.

Type of Request: Revision of a currently approved collection.

Respondents: Master, owner, or agent of a vessel.

Abstract: This collection of information allows the master, owner, or agent of a vessel affected by these rules to request a deviation from the requirements governing navigation safety equipment to the extent that there is no reduction in safety.

Forms: None.

Burden Estimate: The estimated burden has decreased from 2,865 hours to 2,447 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 12, 2011.

C.A. Mathieu,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–32233 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0914]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0015, Bridge Permit Application Guide. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 17, 2012.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2011–0914], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

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

(3) *Hand deliver:* 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.

(4) *Fax:* (202) 493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and
5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, a copy is available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St. SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone (202) 475–3652, or fax (202) 475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2011–0914], and must be received by January 17, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2011–0914], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), 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 DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–0914'' in the ''Keyword'' box. If you submit them by mail or 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 will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice 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–2011–0914'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: [1625–0015].

Privacy Act

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

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (76 FR 61369, October 4, 2011) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: Bridge Permit Application Guide.

OMB Control Number: 1625–0015.

Type of Request: Revision of a currently approved collection.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Abstract: The collection of information is a request for a bridge permit submitted as an application for approval by the Coast Guard of any proposed bridge project. An applicant must submit to the Coast Guard a letter of application along with letter-size drawings (plans) and maps showing the proposed project and its location.

Forms: None.

Burden Estimate: The estimated burden is 10,760 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 12, 2011.

C.A. Mathieu,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–32232 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–1089]

Cooperative Research and Development Agreement: Usage of Biodiesel Fuel Blends Within Marine Inboard Engines

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for public comments.

SUMMARY: The Coast Guard announces its intent to enter into a Cooperative Research and Development Agreement (CRADA) with Cummins, Inc., to identify and investigate the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with using biodiesel fuel blends in marine inboard engines, with the overarching goal of reducing their Greenhouse Gas (GHG) emissions (i.e., lower carbon footprints). The Coast Guard invites public comment on the proposed CRADA and also invites other non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to consider entry into similar CRADAs.

DATES: Comments and related material on the proposed CRADA must either be submitted to our online docket via *http://www.regulations.gov* on or before January 17, 2012, or reach the Docket Management Facility by that date. Proposals from parties interested in participating as a non-Federal participant in a CRADA similar to the one described in this notice (investigating the use of biodiesel fuel blends in marine inboard engines) must reach the Docket Management Facility on or before January 17, 2012.

ADDRESSES: You may submit written comments identified by docket number USCG–2011–1089 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.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Potential, non-Federal CRADA participants should submit these documents to Mr. Richard Hansen, United States Coast Guard Research and Development Center; 1 Chelsea Street, New London, CT 06320, telephone: (860) 271–2866; email: *Rich.L.Hansen@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this notice or desire to submit a CRADA proposal, please contact Mr. Richard Hansen, United States Coast Guard Research and Development Center; 1 Chelsea Street, New London, CT 06320, telephone: (860) 271–2866; email: *Rich.L.Hansen@uscg.mil.*

If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on this notice. 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 notice (USCG–2011–1089) and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *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 telephone 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* and type ''USCG–2011–1089'' in the ''Keyword'' box. 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.

Viewing Comments and Related Material

To view the comments and related material, 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–2011–1089'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting 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, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Cooperative Research and Development Agreements

Cooperative Research and Development Agreements are authorized by the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, codified at 15 U.S.C. 3710(a)). A CRADA promotes the transfer of technology to the private sector for commercial use as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding. The Department of Homeland Security (DHS), as an executive agency under 5 U.S.C. 105, is a Federal agency for purposes of 15 U.S.C. 3710(a) and may enter into a CRADA. DHS delegated its authority to the Commandant of the Coast Guard (see DHS Delegation No. 0160.1, para. 2.B(34)), and the Commandant has delegated his authority to the Coast Guard's Research and Development Center (R&DC).

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with other types of agreements such as procurement contracts, grants, and cooperative agreements.

Goal of Proposed CRADA

Under the proposed CRADA, the Coast Guard's R&DC would collaborate with non-Federal participants. Together, the R&DC and the non-Federal participants would identify and investigate the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with using biodiesel fuel blends within marine inboard engines. Presently available information suggests that biodiesel (Fatty Acid Methyl Ester (FAME)) fuel produced from renewable sources has the potential to reduce the Coast Guard's boat forces carbon footprint while also reducing risks to their operational readiness. Biodiesel is widely available around the country. Several States are phasing in requirements or incentives to provide a biodiesel blend containing conventional diesel for retail sale. As a result, the R&DC has concluded that biodiesel warrants further investigation as an alternative fuel.

The R&DC, with the non-Federal participants, will create and employ a structured and collaborative test protocol to better understand the potential of biodiesel fuel blends within marine inboard engines. The non-Federal participants will investigate the use of at least one mutually agreed upon biodiesel fuel blend in representative inboard engines, via a sequential process that includes modifications to engine and fuel systems components to ensure compatibility with the biodiesel fuel, followed by controlled field tests, and finally longer-duration operational testing on actual Coast Guard boats.

Party Contributions

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Obtain, transport, and provide temporary storage for the selected biodiesel fuel blend required for the work to be accomplished under the CRADA;

(2) Lead the development of the test objectives and test plan for the specific work to be accomplished under the CRADA;

(3) Provide all required resources, and conduct the ''field testing'' analysis of the representative inboard engines using the selected biodiesel fuel blend, in accordance with the CRADA test plan;

(4) Provide all required resources, and conduct the ''operational testing'' analysis of representative inboard engines using the selected biodiesel fuel blend, in accordance with the CRADA test plan; and

(5) Develop the CRADA Final Report, which documents the methodologies, findings, conclusions, and recommendations of this CRADA work.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Provide input into the Coast Guard selection of the biodiesel fuel blend to be used during this CRADA investigation;

(2) Provide input into the Coast Guard-developed, CRADA test objectives and CRADA test plan;

(3) Provide replacement components for the field and operational testing;

(4) Provide recommendations to the R&DC for engine and fuel system modifications, such as fuel oil heaters and filters;

(5) Document the modifications and recommendations in an interim CRADA report;

(6) Provide inboard engine operation and performance monitoring support to the Coast Guard during the ''field testing'' analysis; and

(7) Provide input into the Coast Guard-developed CRADA Final Report.

Selection Criteria

The Coast Guard reserves the right to select for CRADA participants all, some, or none of the proposals in response to this notice. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals (or any other material)

submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than four single-sided pages (excluding cover page and resumes). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering Cummins, Inc., for participation in this CRADA. This consideration is based on the fact that Cummins, Inc.'s engines power Coast Guard boats in the 49-foot Buoy Utility Stern Loading (BUSL) class, which support the Short Range Aids to Navigation Mission. By virtue of the type of mission and number of boats in the class, the BUSL is considered the best candidate test platform; however, the Coast Guard does not wish to exclude other viable participants from similar CRADAs.

This is a technology transfer/development effort. Presently, the Coast Guard has no plan to procure inboard engines that operate on biodiesel fuel blends. Since the goal of this CRADA is ''to identify and investigate the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with using biodiesel fuel blends in marine inboard engines, with the overarching goal of reducing their Greenhouse Gas (GHG) emissions (i.e. lower carbon footprints),'' and not to set future Coast Guard acquisition requirements for same, non-Federal CRADA partners will not be excluded from any future Coast Guard procurements based solely on their participation within this CRADA.

Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S.

Authority: This notice is issued under the authority of 15 U.S.C. 3710(a), 5 U.S.C. 552(a), and 33 CFR 1.05–1.

Dated: December 6, 2011.

Alan N. Arsenault,

CAPT, USCG, Commanding Officer, U.S. Coast Guard Research and Development Center.

[FR Doc. 2011–32230 Filed 12–15–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–19]

Notice of Proposed Information Collection for Public Comment for the Housing Choice Voucher Program

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. New documents included in this submission are for the project-based voucher (PBV) program and include: (1) A notice from a public housing agency (PHA) to the field office of its intent to project-base any of its tenant-based vouchers; (2) a request from the owner of a PBV project to the field office for approval to terminate a PBV HAP contract if the owner's rent is adjusted below the initial rent; and (3) the owner's 12-month notice to the tenants of his/her intent to terminate a PBV housing assistance payments contract. In addition, financial form HUD–52663 has been re-instated.

DATES: *Comments Due Date:* February 14, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, ODAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone: (202) 402–0306 (this is not a toll-free number) or email her at *Colette.Pollard@hud.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; *telephone:* (202) 402–4109 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including collection through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

This Notice also lists the Following Information

Title of Proposal: Housing Choice Voucher (HCV) Program: Application, Allowances for Tenant-Furnished Utilities, Inspections, Financial Reports, Request for Tenancy Approval, Housing Voucher, Portability Information, Housing Assistance Payments (HAP) Contracts, Tenancy Addendum, Homeownership Obligations, Tenant Information for Owner, Voucher Transfers, Homeownership Contracts of Sale, Information Requirements for Additional Renewal Funding and the Project-Based Voucher program.

OMB Control Number: 2577–0169.

Description of the Need for the Information and Proposed Use: Public Housing Agencies (PHA) will prepare an application for funding which specifies the number of units requested, as well as the PHA's objectives and plans for administering the HCV program. The application is reviewed by HUD Headquarters and HUD Field Offices and ranked according to the PHA's administrative capability, the need for housing assistance, and other factors specified in the Notice of Funding Availability (NOFA). The PHAs must establish a utility allowance schedule for all utilities and other services. Units must be inspected using HUD-prescribed forms to determine if the units meet the housing quality standards (HQS) of the HCV program. PHAs are also required to maintain financial reports in accordance with accepted accounting standards. The PHA is required to submit one financial document into an Internet-based Voucher Management System twelve times a year. After the family is issued a HCV to search for a unit, the family must complete and submit to the PHA a Request for Tenancy Approval when it finds a unit which is suitable for its

needs. Initial PHAs will use a standardized form to submit portability information to the receiving PHA who will also use the form for monthly portability billing. PHAs and owners will enter into HAP Contracts each providing information on rents, payments, certifications, notifications, and owner agreement in a form acceptable to the PHA. A tenancy addendum is included in the HAP contract as well as incorporated in the lease between the owner and the family. Families that participate in the Homeownership option will execute a statement regarding their responsibilities and execute contracts of sale including an additional contract of sale for new construction units. PHAs that wish to voluntarily transfer their HCV programs will notify HUD for approval and, once approved, all affected families and owners of the divested PHA will be notified. PHAs participating in the project-based voucher (PBV) program will enter into Agreements with developing owners, HAP contracts with the existing and New Construction/Rehabilitation owners, Statement of Family Responsibility with the family and a lease addendum will be provided for execution between the family and the owner.

Agency form numbers: HUD–52515, HUD–52667, HUD–52580, HUD–52580–A, HUD–52681, HUD–52681–B, HUD–52672, HUD–52663, HUD–52517, HUD–52646, HUD–52665, HUD–52641, HUD–52641–A, HUD 52642, HUD 52649, HUD 52531A and B, HUD 52530A, HUD 52530B, HUD 52530C, HUD 52578B, HUD–52663.

Members of the Affected Public: State and Local Governments, businesses or other for-profits.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including the Number of Respondents, Frequency of response, and hours of response: The Number of respondents (2450 PHAs + 245,000 families + 245,000 tenant-based owners) = 492,450 total respondents. Hours per response varies for each form varies from annually, quarterly and on-occasion. Total annual burden hours 1,239,192.

Status of the Proposed Information Collection: Revision of a currently approved collection due to the addition of PBV documents and the reinstatement of financial form, HUD–52663.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 8, 2011.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2011–32334 Filed 12–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5487–N–21]

Notice of Proposed Information Collection for Public Comment for the Resident Opportunities and Self-Sufficiency Program

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 14, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4178, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll free number) or email Ms. Pollard at *Colette.Pollard@hud.gov* for information on the data collected. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette A. Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 470 L'Enfant Plaza SW., Suite 2206, Washington, DC 20024, telephone (202) 402–4109, (this is not a toll-free number) or email at *Arlette.A.Mussington@hud.gov.*

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

This Notice also lists the following information:

Title of Proposal: Resident Opportunities and Self-Sufficiency Program.

OMB Control Number: 2577–0229.

Description of the Need for the Information and Proposed Use: Section 538 of the Public Housing Reform Act (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) added a new section 34 to the U.S. Housing Act of 1937 which provides a mandate to link supportive services to help public housing residents achieve economic self-sufficiency. The Resident Opportunities and Self-Sufficiency Service Coordinator (ROSS–SC) Program responds to this requirement by providing funding to Public Housing Authorities, Tribes/Tribally Designated Housing Entities (TDHEs), resident organizations, and qualified nonprofit organizations to link residents of public housing to supportive services. For fiscal year 2012, Congress appropriated approximately $50 million for the ROSS–SC Program. Of this funding, HUD reserves $15 million for the Public Housing Family Self-Sufficiency program.

Section 23 of the 1937 Housing Act established the Family Self-Sufficiency (FSS) program in HUD's rental voucher and public housing programs. HUD operates two FSS programs, one for the voucher program (Housing Choice Voucher, or HCV FSS) and one for public housing. The purpose of both FSS programs is to promote the development of local strategies to coordinate the use of public housing assistance with public and private resources, to enable families eligible to achieve economic independence and self-sufficiency. OMB asked HUD to

more closely align the two programs, which includes the application process. HUD has modified the public housing program to more closely reflect the characteristics of the HCV FSS program. In so doing, HUD is proposing to replace the ROSS–FSS form (HUD–52767) with the HCV FSS form (HUD–52651). This form, two other program specific forms, and several standard forms outlined below, will be used to determine eligibility and evaluate capacity of prospective applicants for the PH FSS program.

The information provided to HUD by the eligible applicants will be reviewed and evaluated by HUD. Using a comprehensive, merit-based selection process, HUD will determine which organizations should receive awards under the ROSS–SC and PH FSS programs.

This notice lists all forms associated with both the ROSS–SC program and the PH FSS program. However, HUD is asking for public comment specifically on the replacement of the ROSS–FSS form with the HCV FSS form.

Agency Form Numbers

ROSS–SC Forms

- HUD–52752, Certification with Indian Housing Plan, (OMB Approval #: 2577–0229).
- HUD–52754, List of Resident Associations Supporting Nonprofit Applicants, (OMB Approval #: 2577–0229).
- HUD–52755, Sample Contract Administrator Partnership Agreement, (OMB Approval #: 2577–0229).
- HUD–52768, ROSS Service Coordinator Application Form, (OMB Approval #: 2577–0229).
- HUD–52769—ROSS Needs/Partners Form, (OMB Approval #: 2577–0229).

Public Housing FSS Forms

- HUD–52752, Certification with Indian Housing Plan, (OMB Approval #: 2577–0229).
- HUD–52755, Sample Contract Administrator Partnership Agreement, (OMB Approval #: 2577–0229).
- HUD–52651, HCV FSS Funding Request Form (OMB Approval #: 2577–0178).

** Additional Forms Used To Evaluate Both ROSS and PH FSS Applicants*

- SF–424 Application for Federal Assistance.
- SF–424 Supplement, Survey on Ensuring Equal Opportunity for Applicants.
- HUD–2880—Applicant Disclosure/Update Report (2510–0011).
- HUD–2991—Certification of Consistency with Consolidated Plan.
- SF–LLL–Disclosure of Lobbying Activities.
- HUD 96010—Logic Model (2535–0114).

Members of the Affected Public: Public Housing Agencies, Tribes/TDHEs, nonprofits, and Resident Associations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: HUD anticipates that there will be 400 applicants to the ROSS–SC program. For the ROSS SC program, the burden would be between 5 and 6 hours per application (depending on type of applicant), the average is 5.5, times 400 applications for a total of 2200 hours. Fewer forms are required for the FSS program than for the ROSS–SC program, the burden hours for this program would be .75 hours per application, times 300 applications for a total of 225 hours. The sum total average burden hours for both program applications is 2425.

There will be no additional costs to the respondents as application preparation and submission are part of the regular operation of Housing Authorities, Tribes, nonprofits, and resident organizations.

* Burden hours for forms showing zero burden hours in this collection are reflected in the OMB approval number cited or do not have a reportable burden. The burden hours for this collection is 2425.

Status of the Proposed Information Collection: Revision of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 8, 2011.

Merrie Nichols-Dixon,

Deputy Director for Policy, Program and Legislative Initiatives.

[FR Doc. 2011–32331 Filed 12–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–50]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at (800) 927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a

suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–(800) 927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047 *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, +-DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202: (571) 256–8145; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *COE:* Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street, NW., Washington, DC 20314; (202) 761–5542; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave., NW., 4th Floor, Washington, DC 20006: (202) 254–5522; *Navy:* Mr. Albert Johnson, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305 (These are not toll-free numbers).

Dated: December 8, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/16/2011

Suitable/Available Properties

Building

Alabama

Bldg. 8004
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201140050
Status: Unutilized
Comments: off-site removal only; 430 sq. ft.; current use: explosive testing; needs extensive repairs; possible asbestos and lead base paint

10 Bldgs.
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201140053
Status: Unutilized
Directions: 1402, 1402A, 1403, 1403A, 1404, 1404A, 1405, 1405A, 1406, 1406A
Comments: off-site removal only; possible asbestos and lead base paint; sq. ft. varies; extensive repairs needed; current use: military housing

Suitable/Available Properties

Building

Arkansas

8 Bldgs.
Pine Bluff Arsenal
Pine Bluff AR 71602
Landholding Agency: Army
Property Number: 21201140055
Status: Unutilized
Directions: 57240, 57230, 57210, 57160, 57150, 57120, 5743, 5739
Comments: off-site removal only; sq. ft. varies; current use: lab/test bldg.

Bldg. 57260
Pine Bluff Arsenal
Pine Bluff AR 71602
Landholding Agency: Army
Property Number: 21201140057
Status: Unutilized
Comments: off-site removal only; 9,474 sq. ft.; current use: CHM EQ/MAT Bldg.

Suitable/Available Properties

Building

California

Bldg. 5435
Davis Ave.
Barksdale CA 71101
Landholding Agency: Air Force
Property Number: 18201140041
Status: Underutilized
Comments: off-site removal only; 3,024 sq. ft.; current use: bank; need repairs

COLORADO

Bldg. 1425 and 143
Peterson AFB
Colorado Springs CO 80914
Landholding Agency: Air Force
Property Number: 18201140024
Status: Unutilized
Comments: off-site removal only; 1425–64,254 sq. ft.; 143–100 sq. ft.; current use: storage to base exchange; need repairs; possible asbestos

Suitable/Available Properties

Building

Colorado

AF Academy
8010 Sage Brush Dr.
USAF Academy CO 80840
Landholding Agency: Air Force
Property Number: 18201140026
Status: Unutilized
Comments: 2,670 sq. ft.; current use: unknown; 2007 Nat'l Register of Historic Places; fair conditions; possible asbestos

Kentucky

18 Bldgs.
Ft. Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21201140032
Status: Unutilized
Directions: 51, 52, 70, 73, 74, 76, 2961, 2963, 2964, 2969, 2970, 2971, 2972, 2973, 2974, 2975, 2979, 2316
Comments: off-site removal only; possible asbestos, mold, and lead base paint; sq. ft. varies; current use: office

Suitable/Available Properties

Building

Kentucky

12 Bldgs.

Ft. Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21201140033
Status: Unutilized
Directions: 77, 78, 80, 81, 85, 86, 92, 94, 96, 9248, 2995, 2996
Comments: off-site removal only; possible mold, asbestos, and lead base paint; sq. ft. varies; current use: office to storage

Maryland

4 Bldgs.
Naval Support Activity S. Potomac
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77201140016
Status: Excess
Directions: 696B, 745, 827, 945
Comments: off-site removal; need inspection for explosive contaminations; need repairs; possible lead based paint and asbestos; possible trigger disturbance of protected species and impact to coastal resources

Suitable/Available Properties

Building

Nebraska

Bldg. 5087
Capehart Housing Area
Offutt NE 68113
Landholding Agency: Air Force
Property Number: 18201140027
Status: Excess
Comments: 25LF-wide, 14LF-height, 30LF-length; current use: exchange store; good to fair condition

TEXAS

Band Center
Lackland
San Antonio TX
Landholding Agency: Air Force
Property Number: 18201140038
Status: Unutilized
Comments: off-site removal only; 15,669 sq. ft.; current use: band center; need repairs

Suitable/Available Properties

Land

Nevada

RBG Water Project Site
Bureau of Reclamation
Henderson NV 89011
Landholding Agency: GSA
Property Number: 54201140004
Status: Surplus
GSA Number: 9–I–AZ–0562
Comments: water easement (will not impact conveyance); 22+/-acres; current use: water sludge disposal site; lead from shotgun shells on <1 acre.

Unsuitable Properties

Building

Alabama

2 Bldgs.
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201140051
Status: Unutilized
Directions: 7850 and 8002
Comments: no potential to meet criteria-not economically feasible
Reasons: Extensive deterioration

Unsuitable Properties

Building

Alabama

19 Bldgs.
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201140052
Status: Unutilized
Directions: 3204, 3206, 3207, 3208, 3216, 3218, 3231, 3467, 3478, 3479, 3483, 5447, 5448, 5457, 7368B, 7373, 7374, 7384, 7600
Comments: no potential to meet criteria-not economically feasible
Reasons: Extensive deterioration

California

Fresno Yosemite Intern'l ANG
5323 E. McKinley Ave.
Fresno CA 93727
Landholding Agency: Air Force
Property Number: 18201140001
Status: Underutilized
Reasons: Secured Area

Unsuitable Properties

Building

California

17 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140008
Status: Unutilized
Directions: 8799, 8814, 8822, 8824, 8832, 9588, 9635, 4258, 4260, 304, 1865, 2585, 3501, 3512, 3523, 3735, 3742
Reasons: Extensive deterioration, Secured Area, Within airport runway clear zone
19 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140019
Status: Unutilized
Directions: 4271, 4261, 4264, 4267, 4268, 4272, 4273, 4274, 4280, 4281, 4402, 4904, 4953, 4962, 8668, 8701, 4241, 4242, 4243
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
10 Bldgs.
Edwards AFB
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140020
Status: Unutilized
Directions: 4244, 4245, 4246, 4247, 4252, 4255, 4254, 4248, 4256, 4257
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

California

Bldg. 283
483 N. Aviation Blvd.
El Segundo CA 90292
Landholding Agency: Air Force
Property Number: 18201140025
Status: Underutilized
Reasons: Secured Area, Extensive deterioration
38 Bldgs.
Cape Military Family Houses
Beale CA 95309
Landholding Agency: Air Force
Property Number: 18201140034
Status: Unutilized
Directions: 3945, 4097, 4126, 4138, 4141, 4156, 4160, 4300, 4334, 4350, 4352, 4374, 4346, 4379, 4381, 4394, 4396, 4406, 4408, 4591, 4593, 4594, 4596, 4599, 4601, 4602, 4604, 4623, 4625, 4630, 4631, 4632, 4633, 4634, 4645, 4647, 4648, 4649
Reasons: Extensive deterioration
27 Bldgs.
Cape Military Family Houses
Beale CA 95309
Landholding Agency: Air Force
Property Number: 18201140035
Status: Unutilized
Directions: 4650, 4651, 4653, 4656, 4658, 4667, 4669, 4672, 4674, 4676, 4678, 4696, 4698, 4704, 4707, 4712, 4714, 4720, 4721, 4722, 4723, 4728, 4730, 4736, 4738, 4756, 4758
Reasons: Extensive deterioration

Unsuitable Properties

Building

California

Bldg. 1359
Davis Ave.
Barkdale CA 71101
Landholding Agency: Air Force
Property Number: 18201140040
Status: Underutilized
Comments: Beyond repair
Reasons: Secured Area, within airport runway clear zone, Extensive deterioration
7 Bldgs.

Cape Military Family Houses
Beale CA 95309
Landholding Agency: Air Force
Property Number: 18201140051
Status: Unutilized
Directions: 3119, 3121, 3123, 3125, 3126, 3127, 3128
Reasons: Extensive deterioration
26 Bldgs.
Cape Military Family Houses
Beale CA 95309
Landholding Agency: Air Force
Property Number: 18201140052
Status: Unutilized
Directions: 5220A, 5220B, 5232A, 5232B, 5235A, 5235B, 5274A, 5247B, 5256A, 5256B, 5269A, 5269B, 5271A, 5271B, 5275A, 5275B, 5283A, 5283B, 5285A, 5285B, 5288A, 5288B, 5292A, 5292A, 5216A, 5296B
Reasons: Extensive deterioration

Unsuitable Properties

Building

California

Bldg. 2110
Fitzgerald Blvd.
Edwards CA 83524
Landholding Agency: Air Force
Property Number: 18201140053
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area
Bldg. 2111
107 Fitzgerald Blvd.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140054
Status: Underutilized
Reasons: Secured Area, Within airport runway clear zone
4 Bldgs.
Payne Ave.
Edwards CA
Landholding Agency: Air Force
Property Number: 18201140055
Status: Unutilized
Directions: 7197, 7198, 7199, 7200
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Unsuitable Properties

Building

California

Bldg. 12
Jones Road
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140056
Status: Underutilized
Reasons: Secured Area, Within airport runway clear zone
Bldgs. 7206 and 7208
Payne Ave.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140057
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material
4 Bldgs.
Payne Ave.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140058
Status: Unutilized
Directions: 7202, 7203, 7204, 7205
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Unsuitable Properties

Building

California

4 Bldgs.
Payne Ave
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140059
Status: Unutilized
Directions: 7193, 7194, 7195, 7196
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 7177 and 7197
401 and 405 14th Street
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140060
Status: Unutilized
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material
Bldgs. 7176 and 7178
400 and 404 13th St.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140061
Status: Underutilized
Reasons: Within airport runway clear zone, Secured Area, Extensive deterioration

Unsuitable Properties

Building

California

Bldg. 2425
215 Spiro Ave.
Edwards CA 93524
Landholding Agency: Air Force
Property Number: 18201140062
Status: Underutilized
Reasons: Secured Area
Bldg. 02474
Naval Air Weapons
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77201140018
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Building

District of Columbia

West Heating Plant
1051 29th St. NW
Washington DC 20007
Landholding Agency: GSA
Property Number: 54201140006
Status: Underutilized
GSA Number: DC–497–1
Reasons: Contamination, Secured Area, Other—legal constraints Floodway

Florida

Bldgs. 1021 and 1037
125 Fighter Wing
Jacksonville FL 32218
Landholding Agency: Air Force
Property Number: 18201140010
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Florida

Bldg. 90343
320 Tully St
Hurlburt FL 32544
Landholding Agency: Air Force
Property Number: 18201140023
Status: Underutilized
Reasons: Secured Area, Extensive deterioration
3 Bldgs.
Hurlburt Field
Hurburt Field FL 32544
Landholding Agency: Air Force
Property Number: 18201140037
Status: Underutilized
Directions: 90034, 900345, 90330
Reasons: Extensive deterioration

Unsuitable Properties

Building

Georgia

Facility 1413
Savannah Hilton Intern'l Airport
Garden City GA 31408
Landholding Agency: Air Force
Property Number: 18201140015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldgs. 1112 and 1114
Munitions Circle
Moody GA 31699
Landholding Agency: Air Force
Property Number: 18201140028
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
4 Bldgs.
3274 Georgia St.
Moody GA 31699
Landholding Agency: Air Force
Property Number: 18201140029

Status: Underutilized
Directions: 894, 895, 896, 897
Reasons: Extensive deterioration

Unsuitable Properties

Building

Illinois

Bldg. 3138
Scott AFB
Scott IL 62225
Landholding Agency: Air Force
Property Number: 18201140050
Status: Unutilized
Comments: Beyond economical repair
Reasons: Extensive deterioration
Bldg. 906
Fermi Nat'l Accelerator Lab
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41201140004
Status: Excess
Reasons: Extensive deterioration
2 Bldgs.
Naval Station
Great Lakes IL 60088
Landholding Agency: Navy
Property Number: 77201140011
Status: Unutilized
Directions: 128H and 129H
Reasons: Secured Area

Unsuitable Properties

Building

Kansas

20 Bldgs.
Riverside
Burlington KS 66839–8911
Landholding Agency: COE
Property Number: 31200340002
Status: Excess
Reasons: Extensive deterioration
6 Bldgs.
Santa Fe Trail/Outlet Channel
Council Grove KS 66846
Landholding Agency: COE
Property Number: 31200340004
Status: Excess
Reasons: Extensive deterioration
19 Toilets
John Redmond Lake
Burlington KS 66839
Landholding Agency: COE
Property Number: 31201040002
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Kansas

2 Storage Sheds
Admin. Area-Milford Lake
Junction City KS 66441
Landholding Agency: COE
Property Number: 31201140006
Status: Unutilized
Reasons: Extensive deterioration

Maryland

Maryland Air Nat'l Guard
2701 Eastern Blvd.
Baltimore MD
Landholding Agency: Air Force
Property Number: 18201140006
Status: Excess
Directions: Facility 1130
Reasons: Secured Area

Unsuitable Properties

Building

Maryland

9 Bldgs.
Naval Support Activity S. Potomac
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77201140013
Status: Excess
Directions: 1313, 1490, 1575, 1739, 1740, 1746, 1820, 1875, T–10
Reasons: Extensive deterioration
17 Bldgs.
Naval Support Activity S. Potomac
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77201140014
Status: Excess
Directions: 1192, 1204, 1206, 1211, 1212, 1228, 1263, 1265, 1266, 1267, 1269, 1270, 1271, 1272, 1274, 1277, 1310
Reasons: Extensive deterioration
7 Bldgs.
Naval Support Activity S. Potomac
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77201140015
Status: Excess
Directions: 1011, 1173, 1162, 1161, 1159, 1148, 1044
Comments: PCB's in some bldgs.
Reasons: Contamination, Extensive deterioration

Unsuitable Properties

Building

Massachusetts

5 Bldgs.
Cape Cod Nat'l Seashore
Chatham MA 02633
Landholding Agency: Interior
Property Number: 61201140007
Status: Excess
Directions: 80439, 80440, 80564, 80441, 237834
Comments: the structural integrity is under imminent threat of storm and beach erosion
Reasons: Extensive deterioration, Floodway

Minnesota

HazMat Storage Bldg.
1201 Minnesota Ave.
Duluth MN 55802
Landholding Agency: Coast Guard
Property Number: 88201140002
Status: Excess
Directions: OV9 and OV10
Reasons: Secured Area

Unsuitable Properties

Building

Mississippi

Facilities 178 and 179
Thompson Field
Jackson MS 39232
Landholding Agency: Air Force
Property Number: 18201140003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Storage, Liquid Oxygen
RPUID 455250
Meridian MS
Landholding Agency: Air Force
Property Number: 18201140004
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Missouri

Res Forces Opl Trng
Lambert-St. Louis
St. Louis MO 63044
Landholding Agency: Air Force
Property Number: 18201140007
Status: Unutilized
Directions: 18, 235, 131
Reasons: Secured Area, Extensive deterioration
Bldg. 34019
Orleans Trail Park
Stockton MO 65785
Landholding Agency: COE
Property Number: 31201140003
Status: Unutilized
Reasons: Extensive deterioration
Smithville Lake-82022
Camp Branch Privy
Smithville MO 64089
Landholding Agency: COE
Property Number: 31201140004
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Missouri

Smithville Lake-39001
2619 NE 188th Street
Smithville MO 64089
Landholding Agency: COE
Property Number: 31201140005
Status: Unutilized
Reasons: Extensive deterioration

Montana

4 Bldgs.
Malmstrom AFB
Malmstrom MT 59402
Landholding Agency: Air Force
Property Number: 18201140039
Status: Unutilized

Directions: 630, 1869, 8001, 1874
Reasons: Secured Area

Unsuitable Properties

Building

New Jersey

Bldg. 3305
JBMDL
McGuire NJ 08641
Landholding Agency: Air Force
Property Number: 18201140011
Status: Excess
Reasons: Secured Area, Floodway, Within 2000 ft. of flammable or explosive material, Extensive deterioration
20 Bldgs.
Weapons Racks-JBMDL
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140042
Status: Unutilized
Directions: 9126, 9189, 9064E, 9079C, 9083, 9091D, 9099F,9817, 9835, 9853, 9856A, 9706, 9722, 9737, 9544, 9536, 9477, 9459B, 9460A, 9419A
Comments: no potential to meet criteria— beyond economical repair
Reasons: Extensive deterioration
16 Bldgs.
Joint Base McGuire Dix Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140043
Status: Unutilized
Directions: 9169A, 9176, 9066D, 9703, 9765, 3531, 3532, 3533, 3534, 3535, 3536, 9482, 9464, 8548, 9487, 9425
Comments: no potential to meet criteria-not economically feasible
Reasons: Extensive deterioration

Unsuitable Properties

Building

New Jersey

3 Bldgs.
Joint Base McGuire Dix Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140044
Status: Unutilized
Directions: 9066C, 9196, 9855A
Comments: no potential to meet criteria-not economically feasible
Reasons: Extensive deterioration
8 Bldgs.
Joint base McGuire Dix Lakehurst
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140045
Status: Unutilized
Directions: 9139, 9157, 9860, 9868, 9462, 9462A, 9467, 9427
Comments: no potential to meet criteria-not economically feasible
Reasons: Extensive deterioration
6 Bldgs.
Ammunition Hut
Ft. Dix NJ 08640
Landholding Agency: Air Force
Property Number: 18201140047
Status: Unutilized
Directions: 9151, 9856, 9867, 9483, 9465, 9211
Comments: no potential to meet criteria-not economically feasible
Reasons: Extensive deterioration

Unsuitable Properties

Building

New Mexico

Bldgs. 1054 and 1070
251 Air Guard Dr. SE
Kirtland NM 87117
Landholding Agency: Air Force
Property Number: 18201140005
Status: Excess
Reasons: Secured Area
Bldg. 1059
Holloman AFB
Holloman NM 88310
Landholding Agency: Air Force
Property Number: 18201140032
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured Area
Bldg. 306
Holloman AFB
Holloman NM 88330
Landholding Agency: Air Force
Property Number: 18201140033
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Building

New Mexico

5 Bldgs.
Main Post
White Sands Missile NM 88002
Landholding Agency: Army
Property Number: 21201140048
Status: Unutilized
Directions: 34873, 34874, 34980, 23000, UNM1
Reasons: Extensive deterioration, Secured Area, Floodway
21 Bldgs.
Main Post
White Sands Missile NM 88002
Landholding Agency: Army
Property Number: 21201140049
Status: Unutilized
Directions: 1735, 1787A, 1871, 21236, 21560, 21562, 23456, 23460, 31725, 31754, 31766, 32280, 32970, 32971, 34180, 34181, 34182, 34183, 34186, 34870, 34871
Comments:
Reasons for unsuitability varies
Reasons: Secured Area, Extensive deterioration, Floodway, Within 2000 ft. of flammable or explosive material
Bldg. 00357
White Sands Missile Range
White Sands Missile NM 88002
Landholding Agency: Army
Property Number: 21201140059
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Floodway, Extensive deterioration

Unsuitable Properties

Building

New York

3 Bldgs.
AvFuels Circle
Niagara Falls NY 14304
Landholding Agency: Air Force
Property Number: 18201140014
Status: Unutilized
Directions:
919, 922, 2410
Reasons: Secured Area
Bldgs. 21 and 22
Air Nat'l Guard Road
Scotia NY 12302
Landholding Agency: Air Force
Property Number: 18201140016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

North Dakota

Bldg. 370
1400 32nd Ave. N.
Fargo ND 58102
Landholding Agency: Air Force
Property Number: 18201140002
Status: Underutilized
Reasons: Secured Area

Ohio

6 Bldgs.
Wright-Patterson AFB
WPAFB OH 45433
Landholding Agency: Air Force
Property Number: 18201140048
Status: Underutilized
Directions: 20455, 20456, 20451, 31244, 34046, 34059
Reasons: Secured Area

Unsuitable Properties

Building

Ohio

2 Bldgs.
Wright-Patterson AFB
WPAFB OH 45433
Landholding Agency: Air Force
Property Number: 18201140049
Status: Unutilized
Directions: 31197 and 20329
Reasons: Secured Area

Oklahoma

12 Bldgs.

Tinker AFB
Tinker OK 73145
Landholding Agency: Air Force
Property Number: 18201140018
Status: Excess
Directions: 2126, 2211, 2212, 3108, 3212, 3215, 3535, 3772, 5801, 5802, 5803, 5897
Reasons: Secured Area

Unsuitable Properties

Building

Oklahoma

9 Bldgs.
Tinker AFB
Tinker OK 73145
Landholding Agency: Air Force
Property Number: 18201140046
Status: Excess
Directions: 5927, 7013, 7035, 7036, 7042, 208, 935, 1084, 2113
Comments: Reasons of unsuitability varies
Reasons: Secured Area, Floodway
Canadian Recreation Area
Canton Lake
Canton OK 73724
Landholding Agency: COE
Property Number: 31201140002
Status: Excess
Directions: 19 Bldgs.
Reasons: Extensive deterioration

Unsuitable Properties

Building

Tennessee

Bldgs. 214 and 219
240 Knapp Blvd.
Nashville TN 37217
Landholding Agency: Air Force
Property Number: 18201140013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Texas

Port Arthur Resident Office
201 Pleasure Pier Blvd.
Port Arthur TX 77640
Landholding Agency: COE
Property Number: 31201140007
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

Utah

Bldg. 3002
Francis Peak ANG Station
Farmington UT 84025
Landholding Agency: Air Force
Property Number: 18201140012
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Vermont

4 Bldgs.
Burling IAP
Burling VT 05403
Landholding Agency: Air Force
Property Number: 18201140017
Status: Excess
Directions: 114, 115, 116, 117
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

Virginia

Bldg. 254
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201140030
Status: Underutilized
Reasons: Floodway, Secured Area
Bldgs. 244 and 253
Langley AFB
Langley VA 23665
Landholding Agency: Air Force
Property Number: 18201140031
Status: Underutilized
Reasons: Floodway, Secured Area
Bldg. 449
Joint Base Langley-Eustis
Ft. Eustis VA 23604
Landholding Agency: Air Force
Property Number: 18201140036
Status: Unutilized
Comments: Deteriorated beyond repair
Reasons: Extensive deterioration

Unsuitable Properties

Building

Virginia

Bldg. A2304
Ft. Pickett Training Ctr.
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201140054
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area
2 Bldgs.
Ft. Pickett Training Ctr.
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201140056
Status: Unutilized
Directions: T2806 and T2805
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
2 Bldgs.
Ft. Pickett Training Ctr.
Blackstone VA 23824
Landholding Agency: Army
Property Number: 21201140058
Status: Unutilized
Directions: T2802 and T2803
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable Properties

Building

Washington

Bldgs. 455 and 456
Paine Field ANG Station
Everett WA 98204
Landholding Agency: Air Force
Property Number: 18201140009
Status: Excess
Reasons: Within airport runway clear zone, Secured Area
Corrosion Test Facility
NAS
Whidbey Island WA 98278
Landholding Agency: Navy
Property Number: 77201140010
Status: Unutilized
Reasons: Secured Area

[FR Doc. 2011–31977 Filed 12–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–43]

Announcement of Funding Awards for Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2010 Mortgage Modification and Mortgage Scams Assistance Housing Counseling Under the Housing Counseling Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Awarded for HUD's Fiscal Year 2010 Mortgage Modification and Mortgage Scams Assistance (MMMSA) under the Housing Counseling Program.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545), this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2010 (FY 2010) Notice of Funding Availability (NOFA) for the Mortgage Modification and Mortgage Scams Assistance (MMMSA). Appendix A attached to this announcement lists the names and addresses of the agencies of this year's award recipients under the Housing Counseling Program.

FOR FURTHER INFORMATION CONTACT: Ruth Román, Director, Program Support Division, Room 2206, Office of Single Family Housing, Department of Housing and Urban Development, 470 L'Enfant Plaza East SW., Washington, DC, 20024–2135, telephone number 202–708–0317. Hearing- or speech-impaired individuals may access this number by calling the

Federal Information Relay Service at telephone number 800–877–8339. (This is a toll free number.)

SUPPLEMENTARY INFORMATION: The Housing Counseling Program is authorized by Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). Consistent with this authority, HUD enters into agreement with qualified public or private nonprofit organizations to provide housing counseling services to low- and moderate-income individuals and families nationwide. The housing counseling services supported by the Housing Counseling Program include providing information and assistance to the homeless, renters, first-time homebuyers, homeowners, and senior citizens in areas such as pre-purchase counseling, financial management, property maintenance and other forms of housing assistance to help individuals and families improve their housing conditions and meet the responsibilities of tenancy and homeownership.

HUD funding of approved housing counseling agencies is not guaranteed, and when funds are awarded, a HUD grant does not cover all expenses incurred by an agency to deliver housing counseling services. Counseling agencies must actively seek additional funds from other sources such as city, county, state and federal agencies and from private entities to ensure that they have sufficient operating funds. The availability of Housing Counseling grants depends upon appropriations and the outcome of the award competition.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), today's **Federal Register** publication lists in Appendix A the names, addresses, and amounts of each award made under the FY 2010 Housing Counseling NOFA. The requirements for the NOFA are found in the following documents: The General Section of HUD's FY 10 Notice of Funding Availability (NOFA) Policy Requirements and General Section HUD's FY 2010 NOFAs for Discretionary Programs printed on *http://www.grants.gov* on June 7, 2011, and Notice of Funding Availability (NOFA) for HUD's Fiscal Year 2010 Mortgage Modification and Mortgage Scams Assistance Housing Counseling under the Housing Counseling Program posted on the HUD Web site, *http://www.hud.gov/* with a deadline date of June 18, 2011. Applications were scored and selected for funding on the basis of selection criteria contained in the NOFA. HUD awarded more than $10 million to support 26 national and regional organizations, and 139 state and local housing counseling agencies. These agencies will provide counseling services to homeowners to prevent or resolve mortgage delinquency, default and foreclosure, with the primary objective to preserve homeownership.

The Catalog of Federal Domestic Assistance (CFDA) number for the Housing Counseling Program is 14.169.

Dated: December 2, 2011.

Carol J. Galante,

Acting, Assistant Secretary for Housing-Federal Housing Commissioner.

INTERMEDIARY (23) Intermediary

(MMMSA)

AFFORDABLE HOUSING CENTERS OF AMERICA
846 N Broad St, 2nd floor
Philadelphia, PA 19130–2234
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $350,030.64

CATHOLIC CHARITIES USA
Sixty-Six Canal Center Plaza
Suite 600
Alexandria, VA 22314–2720
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $307,164.74

CCCS OF GREATER ATLANTA—DBA CREDABILITY
270 PEACHTREE STREET
SUITE 1800
ATLANTA, GA 30303
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $307,164.74

CLEARPOINT FINANCIAL SOLUTIONS, INC.
8000 Franklin Farms Dr.
Richmond, VA 23229
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $250,010.21

HOMEFREE—U S A
3401 A East-West Highway
Hyattsville, MD 20782
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $328,597.69

HOMEOWNERSHIP PRESERVATION FOUNDATION
3033 Excelsior Blvd.
Suite 500
Minneapolis, MN 55416
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $314,309.07

HOUSING PARTNERSHIP NETWORK
160 State Street, 5th Fl
Boston, MA 02109–2502
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $371,463.59

MON VALLEY INITIATIVE
303–305 E. 8th Avenue Homestead, PA 15120–1517
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $314,309.07

MONEY MANAGEMENT INTERNATIONAL INC.
14141 Southwest Freeway
Suite 1000
Sugarland, TX 77478
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $328,597.69

NACA (NEIGHBORHOOD ASSISTANCE CORPORATION OF AMERICA) 3607 Washington Street
Jamaica Plain, MA 02130
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $264,298.85

NATIONAL CAPACD
1628 16th Street, NW.
4th Floor
Washington DC, CA 20009
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $292,876.11

NATIONAL COMMUNITY REINVESTMENT COALITION, INC.
727 15th Street, NW., Suite 900
Washington, DC 20005–6027
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $350,030.64

NATIONAL COUNCIL OF LA RAZA
Raul Yzaguirre Building
1126 16th Street, NW., Suite 600
Washington, DC 20036
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $328,597.69

NATIONAL COUNCIL ON THE AGING (NCOA)
1901 L Street, NW.
8th Floor
Washington, DC 20036
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $328,597.69

NATIONAL FEDERATION OF COMMUNITY DEVELOPMENT CREDIT UNIONS
39 Broadway, 21st Floor
New York, NY 10006

Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $328,597.69
NATIONAL FOUNDATION FOR CREDIT COUNSELING, INC.
2000 M St. NW.
Suite 505
Washington, DC 20036
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $321,453.38
NATIONAL URBAN LEAGUE
120 Wall Street
New York, NY 10005
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $321,453.38
NEIGHBORHOOD REINVESTMENT CORPORATION
1325 G. Street NW.
Suite 800
Washington, NY 20005
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $328,597.69
NUEVA ESPERANZA, INC.
4261 North 5th Street
Philadelphia, PA 19140–2615
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $271,443.16
RURAL COMMUNITY ASSISTANCE CORPORATION
3120 Freeboard Drive
Suite 201
West Sacramento, CA 95691
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $274,491.00
SPRINGBOARD NON–PROFIT CONSUMER CREDIT MANAGEMENT, INC
4351 Latham Street
Riverside, CA 92501
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $207,144.32
STRUCTURED EMPLOYMENT ECONOMIC DEVELOPMENT CO
915 Broadway, 17th Floor
New York, NY 10010
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $364,319.27
WEST TENNESSEE LEGAL SERVICES, INCORPORATED
210 West Main Street
Jackson, TN 38301
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $342,886.33

LHCA (139)

Atlanta (LHCA—MMMSA)

AFFORDABLE HOUSING ENTERPRISES, INC.
333 S. 9th Street
Griffin, GA 30224
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,696.54
ALLIANCE CREDIT COUNSELING, INC.
13777 Ballantyne Corporate Place
Suite 100
Charlotte, NC 28277
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,000.00
AREA COMMITTEE TO IMPROVE OPPORTUNITIES NOW, INC.
594 Oconee Street
Athens, GA 30605
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
B & D TRAINING SERVICES (INACTIVE)
2002 East 62nd Street
Indianapolis, IN 46220
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $29,287.17
BRIGHTON CENTER, INCORPORATED
741 Central Ave
Newport Ky 41071
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $28,665.99
BROWARD COUNTY HOUSING AUTHORITY
4780 North State Road 7
Main Office
Lauderdale Lakes, FL 33319
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,211.81
CCCS OF JACKSONVILLE D/B/A FAMILY FOUNDATIONS OF NORTHEAST FLORIDA, INC.
1639 ATLANTIC BLVD.
Jacksonville, FL 32207
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,317.72
CCCS OF WEST FL—MAIN OFFICE
14 Palafox Place
Pensacola, FL 32502
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,317.72
CCCS/FAMILY SERVICES INC.
4925 LaCross Road, Suite 215
North Charleston, SC 29406
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $28,044.81
CENTER FOR INDEPENDENT LIVING IN CENTRAL FLORIDA, INC.
720 N. Denning Drive
Winter Park, FL 32789
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,317.72
CENTER FOR PAN ASIAN COMMUNITY SERVICES, INC
3510 Shallowford Road NE.
Atlanta, GA 30341
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $26,802.35
CENTRAL FLORIDA COMMUNITY DEVELOPMENT CORPORATION
211 North Ridgewood Avenue
Daytona Beach, FL 32114
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,727.09
CITY OF TAMPA HOUSING AND COMMUNITY DEVELOPMENT DIVISION
2105 N. Nebraska Ave.
Tampa, FL 33602
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,969.45
COBB HOUSING, INCORPORATED
268 Lawrence ST, Suite 100
Marietta, GA 30060
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,727.09
CONSUMER CREDIT MANAGEMENT SERVICES, INC
315 NE 2nd Ave
Delray Beach, FL 33444
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
CREDIT CARD MANAGEMENT SERVICES, INC.
4611 Okeechobee Blvd.
Suite 114
West Palm Beach, FL 33417
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,727.09
CRISIS HOUSING SOLUTIONS, INC.
4700 SW 64th Avenue—Suite C
Davie, FL 33314
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE

Amount Awarded: $25,560.08
DUPAGE HOMEOWNERSHIP CENTER, INC
1600 E Roosevelt Road
Wheaton, IL 60187
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $28,044.81
FLORIDA COOPERATIVE EXTENSION
3001 McCarty Hall D
Gainesville, FL 32611
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,000.00
HIGHLAND FAMILY RESOURCE CENTER, INC
1008 Cameron Avenue
Gastonia, NC 28052
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,938.90
HOUSING AUTHORITY OF THE CITY OF JACKSON
2747 Livingston Rd
Jackson, MS 39213
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,242.36
HOUSING AUTHORITY, CITY OF ELKHART
1396 Benham Ave
Elkhart, IN 46516–3341
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,696.54
HOUSING EDUCATION AND ECONOMIC DEVELOPMENT, INC.
3405 Medgar Evers Blvd.
Jackson, MS 39213–6360
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $27,423.63
HOUSING PARTNERSHIP, INC.
2001 W. Blue Heron Blvd.
Riviera Beach, FL 33404
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $27,423.63
INCHARGE DEBT SOLUTIONS
5750 Major Blvd. Suite 175
Orlando, FL 32819
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $20,590.63
INTERFAITH HOUSING CENTER OF THE NORTHERN SUBURBS
614 Lincoln Avenue
Winnetka, IL 60093
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,348.27
JEFFERSON COUNTY COMMITTEE FOR ECONOMIC OPPORTUNITY
300 Eighth Avenue, West
Birmingham, AL 35204–3039
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
JEFFERSON COUNTY HOUSING AUTHORITY
3700 Industrial Parkway
Birmingham, AL 35217–5316
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,105.91
LATIN UNITED COMMUNITY HOUSING ASSOCIATION
3541 West North Avenue
Chicago, IL 60647–4808
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $26,181.26
MANATEE COMMUNITY ACTION AGENCY, INC. F/K/A MANATEE OPPORTUNITY COUNCIL, INCORPORATED
302 Manatee Avenue E
Suite 200
Bradenton, FL 34208
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,832.99
MID-FLORIDA HOUSING PARTNERSHIP, INC.
1834 Mason Avenue
Daytona Beach, FL 32117
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,863.54
MOBILE HOUSING BOARD
1555–B Eagle Drive
Mobile, AL 36605
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE Amount Awarded: $24,317.72
MONROE-UNION COUNTY COMMUNITY DEVELOPMENT CORPORATION 349 East Franklin Street
Monroe, NC 28111
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,000.00
PARTNERS IN CHARITY, INC.
613 W. Main St.
West Dundee, IL 60118
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,242.36
REFUGEE FAMILY ASSISTANCE PROGRAM
5405 Memorial Drive Suite 101
Stone Mountain, GA 30083
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,621.18
RELIABLE BUSINESS SOLUTIONS, INC. 933 Lee Road
Suite 100
Orlando, FL 32810
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $28,044.81
ROGERS PARK COMMUNITY DEVELOPMENT CORPORATION
1411 W. Lunt Ave.
Chicago, IL 60626
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,242.36
S & S DEVELOPMENT GROUP, NFP
6909 South Ashland
Chicago, IL 60636
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,348.27
SOLITA'S HOUSE INC
1475 Tampa Park Plaza
Tampa, FL 33605
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,938.90
SOUTH SUBURBAN HOUSING CENTER
18220 Harwood Avenue, Suite 1
Homewood, IL 60430–2151
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,317.72
SPANISH COALITION FOR HOUSING
4035 W North Ave
Chicago, IL 60639
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,969.45
ST. LUCIE COUNTY BOARD OF COUNTY COMMISSIONERS
2300 Virginia Avenue
Fort Pierce, FL 34982
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,242.36
TALLAHASSEE LENDERS CONSORTIUM, INC.
224 Office Plaza
Tallahassee, FL 32301
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,317.72
TAMPA BAY COMMUNITY DEVELOPMENT CORPORATION

2139 NE Coachman Road
Clearwater, FL 33765
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $28,665.99
TAMPA HOUSING AUTHORITY D/B/A CENTER FOR AFFORDABLE HOMEOWNERSHIP 1803 N. Howard Avenue, Suite 100
Tampa, FL 33607
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $22,454.18
THE CENTER FOR AFFORDABLE HOUSING, INC
2524 S. Park Drive
Sanford, FL 32773
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,863.54
WILL COUNTY CENTER FOR COMMUNITY CONCERNS
304 N. Scott Street
Joliet, IL 60432–4035
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $26,802.44

Denver (LHCA-MMMSA)

ANOKA COUNTY COMMUNITY ACTION PROGRAM, INC
1201 89th Ave NE. Ste 345
Blaine, MN 55434–3373
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,727.09
CARVER COUNTY CDA
705 N. Walnut Street
Chaska, MN 55318
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,832.99
COMMUNITY ACTION PARTNERSHIP OF SUBURBAN HENNEPIN
8800 Highway 7
Suite 401
St. Louis Park, MN 55426
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $25,560.08
COMMUNITY DEVELOPMENT INC (FORMERLY SCI-TECH DEVELOPMENT INC.)
6300 N. Port Washington Road
Lower Floor
Milwaukee, WI 53217
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $25,560.08
DAKOTA COUNTY COMMUNITY DEVELOPMENT AGENCY
1228 Town Centre Drive
Eagan, MN 55123
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,938.90
GREATER NEW ORLEANS FAIR HOUSING ACTION CENTER
404 South Jefferson Davis Parkway
New Orleans, LA 70119
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $26,802.44
INDEPENDENT LIVING RESOURCE CENTER
Pinetree Corporate Center
4665 Indian School Road NE.
Suite 100
Albuquerque, NM 87110
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $26,181.26
LUTHERAN SOCIAL SERVICES/CCCS OF DULUTH
424 West Superior Street
Suite 600
Duluth, MN 55802
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
NEIGHBORWORKS SALT LAKE
622 W 500 North
Salt Lake City, UT 84116
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,105.91
UNITED SOUTH BROADWAY CORPORATION
1500 Walter SE.
Suite 202
Albuquerque, NM 87102
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,348.27
WASHINGTON COUNTY HOUSING AND REDEVELOPMENT AUTHORITY
321 Broadway Ave
St Paul Park, MN 55071
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $26,802.44
WEST CENTRAL WISCONSIN COMMUNITY ACTION AGENCY, INC.
525 Second Street
Glenwood City, WI 54013–0308
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73

Philadelphia (LHCA—MMMSA)

ABAYOMI COMMUNITY DEVELOPMENT CORPORATION
24331 W. Eight Mile Road
Detroit, MI 48219
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,242.36
AFFORDABLE HOMES OF MILLVILLE ECUMENICAL
400 East Main St.
P.O. Box 241
Millville, NJ 08332
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,000.00
AFFORDABLE HOUSING ALLIANCE OF NEW JERSEY
59 Broad Street
Eatontown, NJ 07724
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,969.45
ARUNDEL COMMUNITY DEVELOPMENT SERVICE INC
2666 Riva Road
Suite 210
Annapolis, MD 21401
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,727.09
ASIAN AMERICANS FOR EQUALITY
108–110 Norfolk Street
New York, NY 10002
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $26,181.26
BURLINGTON COUNTY COMMUNITY ACTION PROGRAM
One Van Sciver Parkway
Willingboro, NJ 08046
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,863.54
CECIL COUNTY HOUSING AGENCY
200 Chesapeake Blvd. Suite 1800
Elkton, MD 21921
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,938.90
CENTRAL JERSEY HOUSING RESOURCE CENTER, INC.
600 First Avenue
Suite 3
Raritan, NJ 08869
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73
CHILDREN'S & FAMILY SERVICE A/K/A FAMILY SERVICE AGENCY
535 Marmion Avenue
Youngstown, OH 44502–2323
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE

Amount Awarded: $23,696.54
COMMISSION ON ECONOMIC OPPORTUNITY OF LUZERNE COUNTY
165 Amber Lane
Wilkes-Barre, PA 18702
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,348.27
COMMUNITY ACTION COMMITTEE OF LEHIGH VALLEY, INC.
1337 E. 5th Street
Bethlehem, PA 18015
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73
COMMUNITY DEVELOPMENT CORPORATION OF LONG ISLAND
2100 Middle Country Road, Suite 300
Centereach, NY 11720
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,242.36
COUNTY OF NASSAU ECONOMIC DEVELOPMENT—OFFICE OF HOUSING & INTERGOVERNMENTAL AFFAIRS
40 Main Street, Suite B
Hempstead, NY 11550
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $20,590.63
CREDIT COUNSELING CENTER
832 Second Street Pike
Richboro, PA 18954
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $25,560.08
FAIR HOUSING CONTACT SERVICE
441 Wolf Ledges Pkwy., Ste. 200
Akron, MO 44311
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,832.99
FAIR HOUSING RESOURCE CENTER
1100 Mentor Ave
Painesville, OH 44077
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,938.90
FAMILY GUIDANCE CENTER CORPORATION
1931 Nottingham Way
Hamilton, NJ 08619
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,621.18
FIRST HOME ALLIANCE
3138 Golansky Blvd.
Suite 202
Woodbridge, VA 22192
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73
FREDERICK COMMUNITY ACTION AGENCY
100 S Market St
Frederick, MD 21701–5527
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73
HAGERSTOWN NEIGHBORHOOD DEVELOPMENT PARTNERSHIP, INC.
21 East Franklin Street
Hagerstown, MD 21740
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,211.81
HARFORD COUNTY HOUSING AGENCY
15 South Main Street
Suite 106
Bel Air, MD 21014
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,348.27
HOME PARTNERSHIP, INCORPORATED
Rumsey Towers Building, Suite 301
626 Towne Center Drive
Joppatowne, MD 21085
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
HOME REPAIR SERVICES OF KENT COUNTY
1100 South Division
Grand Rapids, MI 49507–1024
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,348.27
HOUSING AUTHORITY OF THE CITY OF PATERSON
60 Van Houten Street
Paterson, NJ 07509
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,832.99
HOUSING COUNSELING SERVICES, INCORPORATED
2410 17th St NW
Adams Alley Entrance, Washington, DC 20009
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,696.54
HOUSING INITIATIVES PARTNERSHIP, INCORPORATED
6525 Belcrest Road
Suite 555
Hyattsville, MD 20782
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,832.99
HUMAN DEVELOPMENT SERVICES OF WESTCHESTER, INC.
930 Mamaroneck Avenue
Mamaroneck, NY 10543
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $22,454.18
INNER CITY CHRISTIAN FEDERATION
920 Cherry SE.
Grand Rapids, MI 49506
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
INTERCULTURAL FAMILY SERVICES, INCORPORATED
4225 Chestnut St.
Philadelphia, PA 19104–3014
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $22,454.18
LA CASA DE DON PEDRO
75 Park Avenue
Newark, NJ 07104
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73
LATINO ECONOMIC DEVELOPMENT CORPORATION
2316 18th Street NW.
Washington, DC 20009–0000
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,211.81
LIGHTHOUSE COMMUNITY DEVELOPMENT
46156 Woodward Ave.
Pontiac, MI 48342–5033
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,105.91
MARGERT COMMUNITY CORPORATION
325 Beach 37th Street
Far Rockaway, NY 11691–1510
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,696.54
MHANY MANAGEMENT, INC., A MUTUAL HOUSING ORGANIZATION
2–4 Nevins Street, 2nd Floor
Brooklyn, NY 11217
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,696.54
MID-OHIO REGIONAL PLANNING COMMISSION
111 Liberty Street, Suite 100
Columbus, OH 43215–5272
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE

Amount Awarded: $21,832.99
MT. AIRY, USA
6703 Germantown Ave–Suite 200
Philadelphia, PA 19119
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $27,423.63
NEIGHBORHOOD HOUSING SERVICES OF JAMAICA
89–70 162nd Street
Jamaica, NY 11432
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73
NEIGHBORHOOD HOUSING SERVICES OF NEW YORK CITY (NHS OF NYC)
307 West 36th St., 12 floor
New York, NY 10018–6495
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $22,454.18
NEIGHBORS HELPING NEIGHBORS, INC.
443 39th Street, Suite 202
Brooklyn, NY 11232
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,317.72
NEW JERSEY CITIZEN ACTION
744 Broad St., Ste. 2080
Newark, NJ 07102–3805
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $25,560.08
NORTHWEST OHIO DEVELOPMENT AGENCY
432 N. Superior Street
Toledo, OH 43604
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,696.54
NY STATE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES (OPWDD)
44 Holland Avenue
Albany, NY 12229–0001
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $22,454.18
OAKLAND COUNTY HOUSING COUNSELING
250 Elizabeth Lake Rd., Ste. 1900
Pontiac, MI 48341
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
OAKLAND LIVINGSTON HUMAN SERVICE AGENCY
196 Cesar E. Chavez Ave.
Pontiac, MI 48343
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,105.91
OCEAN COMMUNITY ECONOMIC ACTION NOW, INC. (O.C.E.A.N., INC.)
40 Washington Street
Toms River, NJ 08753
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,211.81
ORANGE COUNTY RURAL DEVELOPMENT ADVISORY CORP
PO Box 1224
59b Boniface Dr.
Pine Bush, NY 12566
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,832.99
PRINCE WILLIAM COUNTY VIRGINIA COOPERATIVE EXTENSION
8033 Ashton Ave., Ste. 105
Manassas, VA 20109–8202
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,317.72
PRO–HOME, INC.
40 Summer Street
Taunton, MA 02780
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,832.99
PROVIDENCE COMMUNITY ACTION PROGRAM, INC.
518 Hartford Avenue
Providence, RI 02909
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,000.00
PUERTO RICAN ACTION BOARD, INC. (HOUSING COALITION UNIT)
90 Jersey Ave.
New Brunswick, NJ 08901
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,863.54
PUTNAM COUNTY HOUSING CORPORATION
11 Seminary Hill Road
Carmel, NY 10512
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,348.27
QUIN RIVERS, INC
12025 Courthouse Cir.
New Kent, VA 23124–2242
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $26,181.26
ROCKLAND HOUSING ACTION COALITION
120–126 North Main Street
Annex First Floor
New City, NY 10956
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
SPRINGFIELD NEIGHBORHOOD HOUSING SERVICES
111 Wilbraham Rd.
Springfield, MA 01109
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73
THE HOUSING AUTHORITY OF THE CITY OF PERTH AMBOY
881 Amboy Avenue
Perth Amboy, NJ 08862
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
TRI–COUNTY COMMUNITY ACTION AGENCY
110 Cohansey St.
Bridgeton, NJ 08302
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,000.00
UNEMPLOYMENT INFORMATION CENTER
112 N. Broad Street, 11th Floor
Philadelphia, PA 19102
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
UNITED NEIGHBORHOOD CENTERS OF NORTHEASTERN PENNSYLVANIA
425 Alder St.
Scranton, PA 18505
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,938.90
WESTCHESTER RESIDENTIAL OPPORTUNITIES, INCORPORATED
470 Mamaroneck Ave, Suite 410
White Plains, NY 10605–1830
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73
WORKING IN NEIGHBORHOODS
1814 Dreman Avenue
Cincinnati, OH 45223
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $18,727.09

Santa Ana (LHCA—MMMSA)

CITY OF VACAVILLE DEPARTMENT OF HOUSING AND REDEVELOPMENT
40 Eldridge Avenue
Suite 2
Vacaville, CA 95688–6800

Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,938.90
COMMUNITY HOUSING COUNCIL OF FRESNO
4270 N. Blackstone Ave., Suite 110
Fresno, CA 93726
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $16,242.36
COMMUNITY HOUSING DEVELOPMENT CORPORATION OF NORTH RICHMOND
1535–A Fred Jackson Way
(formerly Third Street)
Richmond, CA 94801
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,832.99
COMMUNITY SERVICES AND EMPLOYMENT TRAINING, INC. (CSET)
312 NW. 3rd Avenue Visalia, CA 93291
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,348.27
CONSUMER CREDIT COUNSELING SERVICE OF ORANGE COUNTY
1920 Old Tustin AVE
———Santa Ana, CA 92705
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $29,287.17
CONSUMER CREDIT COUNSELING SERVICE OF SOUTHERN NEVADA
2650 S. Jones Blvd.
Las Vegas, NV 89146–0000
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
EDEN COUNCIL FOR HOPE AND OPPORTUNITY (ECHO)
770 A St
Hayward, CA 94541–3956
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,621.18
FAIR HOUSING COUNCIL OF RIVERSIDE COUNTY, INC
3933 Mission Inn Ave
Riverside, CA 92501
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $20,590.63
FAMILY HOUSING RESOURCES
1700N E Fort Lowell Rd
Suite 101
Tucson, AZ 85719–2321
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,317.72
HOUSING AUTHORITY OF THE CITY OF FRESNO
1331 Fulton Mall Fresno, CA 93721
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
LEGAL AID SOCIETY OF ORANGE COUNTY
2101 North Tustin Ave
Santa Ana, CA 92705
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $17,484.73
LOS ANGELES NEIGHBORHOOD HOUSING SERVICES, INC
3926 Wilshire Blvd. Suite 200
Los Angeles, CA 90010
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $24,938.90
MISSION ECONOMIC DEVELOPMENT ASSOCIATION (MEDA)
2301 Mission Street, Suite 301
San Francisco, CA 94110
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,969.45
NEIGHBORHOOD HOUSE ASSOCIATION 841 South 41st Street
San Diego, CA 92113
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $21,211.81
NEIGHBORHOOD HOUSING SERVICES OF THE INLAND EMPIRE, INC.
1390 North D Street
San Bernardino, CA 92405
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,075.36
NEIGHBORHOOD PARTNERSHIP HOUSING SERVICES, INC.
320 W. G St
Suite 103
Ontario, CA 91762
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $23,696.54
PROJECT SENTINEL
525 Middlefield Road
Suite #200
Redwood City, CA 94063
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $19,969.45
TAKE CHARGE AMERICA
20620 N 19th Ave
Phoenix, AZ 85027
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $15,000.00
THE SPANISH SPEAKING UNITY COUNCIL OF ALAMEDA COUNTY, INC. (THE UNITY COUNCIL)
3301 East 12th Street
Suite 101
Oakland, CA 94601
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $25,560.08
TRI–VALLEY HOUSING OPPORTUNITY CENTER
141 N. Livermore Avenue, Suite A
Livermore, CA 94550
Grant Type: MORTGAGE MODIFICATION AND MORTGAGE SCAMS ASSISTANCE
Amount Awarded: $20,590.63

[FR Doc. 2011–32338 Filed 12–15–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5591–N–01]

Manufactured Housing Consensus Committee; Notice Inviting Nominations of Individuals To Serve on the Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development invites the public to nominate individuals for appointment, with the approval of the Secretary, to the Manufactured Housing Consensus Committee (MHCC), a Federal advisory committee established by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000.

DATES: The Department will accept nominations on a continuing basis. The Department may make appointments from nominations on file or from nominations submitted in response to this Notice. Nominations not selected for appointments to a current vacancy will be retained for two years and may be considered for vacancies as they arise during that period. To be considered for appointment to a position of an MHCC member whose term expires on December 31, 2011, the nomination should be submitted by December 15, 2011.

ADDRESSES: *Submission Address:* Nominations must be in writing and may be submitted to: MHCC Nominations, National Fire Protection

Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101, *Attn:* Robert Solomon; or by email to *mhccaooffice@nfpa.org;* or by fax to MHCC Nomination at (617) 984–7110.

FOR FURTHER INFORMATION CONTACT: Henry S. Czauski, Acting Deputy Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Room 9164, Washington, DC 20410–8000; telephone number (202) 708–6401 (this is not a toll-free number). For hearing and speech-impaired persons, this number may be accessed via TTY by calling the Federal Relay Service at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 604 of the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569) amended the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (Act) to require the establishment of the MHCC, a Federal advisory committee, to: (1) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the manufactured housing construction and safety standards; and (2) to provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement manufactured housing regulations, including regulations specifying the permissible scope and conduct of monitoring. The Act authorizes the Secretary to appoint a total of twenty-two members to the MHCC. Twenty-one members have voting rights; the twenty-second member represents the Secretary and is a non-voting position. Service on the MHCC is voluntary. Travel and per diem for meetings is provided in accordance with Federal travel policy pursuant to 5 U.S.C. 5703.

HUD seeks highly qualified and motivated individuals who meet the requirements set forth in the Act to serve as voting members of the MHCC for up to two terms of three years. The MHCC expects to meet four times annually. Meetings may take place by conference call or in person. Members of the MHCC undertake additional work commitments on subcommittees and task forces regarding issues under deliberation.

Nominee Selection and Appointment

Members of the Consensus Committee are appointed to serve in one of three member categories. Nominees will be appointed to fill voting member vacancies in the following categories:

1. *Producers*—Seven producers or retailers of manufactured housing.

2. *Users*—Seven persons representing consumer interests, such as consumer organizations, recognized consumer leaders, and owners who are residents of manufactured homes.

3. *General Interest and Public Officials*—Seven general interest and public official members.

The Act provides that the Secretary shall ensure that all interests directly and materially affected by the work of the MHCC have the opportunity for fair and equitable participation without dominance by any single interest; and may reject the appointment of any one or more individuals in order to ensure that there is not dominance by any single interest. For purposes of this determination, dominance is defined as a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation.

Additional requirements governing appointment and member service include:

(1) Nominees appointed to the Producer category, and three of the individuals appointed to the General Interest and Public Official category shall not have a significant financial interest in any segment of the manufactured housing industry; or a significant relationship to any person engaged in the manufactured housing industry.

(2) Each member serving in the Producer category shall be subject to a ban disallowing compensation from the manufactured housing industry during the period of, and during the one year following, his or her membership on the MHCC.

(3) Nominees selected for appointment to the MHCC shall be required to provide disclosures and certifications regarding conflict-of-interest and eligibility for membership prior to finalizing an appointment.

All selected nominees will be required to submit certifications of eligibility under the foregoing criteria as a prerequisite to final appointment.

Consensus Committee—Advisory Role

The MHCC's role is solely advisory to the Secretary on the subject matter described above.

Federal Advisory Committee Act

The MHCC is subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix), and to the Presidential Memorandum, dated June 18, 2010, directing all heads of executive departments and agencies not to make any new appointments or reappointments of Federally registered lobbyists to advisory committees and other boards and commissions.''

Term of Office

Consensus Committee members serve at the discretion of the Secretary or for a three-year term and for up to two terms.

Nominee Information

Individuals seeking nomination to the MHCC should submit detailed information documenting their qualifications as addressed in the Act and this Notice. Individuals may nominate themselves. An application form is available at *http://www.nfpa.org/assets/files/PDF/CodesStandards/MHCCApplication.pdf*. HUD recommends that the application form be accompanied by a resume.

Additional Information

Appointments will be made at the Secretary's discretion.

Dated: December 8, 2011.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–32340 Filed 12–15–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N264; FXGO16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before January 17, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104

(telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government'' and ''The President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government'' (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Jacksonville Zoological Society, Jacksonville, FL; PRT–59935A

The applicant requests a permit to export three live, captive-born bonobos (*Pan paniscus*) to Germany, for the purpose of enhancement of the survival of the species.

Applicant: Turtle Survival Alliance Foundation, Fort Worth, TX; PRT–58695A

The applicant requests a permit to import from Hong Kong up to 20 angulated tortoises (*Astrochelys yniphora*) that were previously illegally removed from the wild in Madagascar. The import would be for the purpose of enhancement of the survival of the species.

Applicant: University of Georgia Research Foundation, Inc., Athens, GA; PRT–57273A

The applicant requests a permit to import biological samples from wild female leatherback sea turtles (*Dermochelys coriacea*) in Trinidad for the purpose of scientific research.

Applicant: Phoenix Herpetological Society, Scottsdale, AZ; PRT–57939A

The applicant requests a permit to import two (one male and one female) African slender snouted crocodiles (*Crocodylus cataphractus*) that were captive-hatched in South Africa. The import would be for the purpose of enhancement of the survival of the species.

Applicant: David Marovitz, University of Michigan, Ann Arbor, MI; PRT–59019A

The applicant requests a permit to acquire DNA cell cultures from gorilla (*Gorilla gorilla*) and Sumatran orangutan (*Pongo abelii*) through interstate commerce from Coriell Cell Repository, Camden, NJ, for the purpose of scientific research.

Applicant: Theodore Papenfuss, University of California, Berkeley, CA; PRT–59290A

The applicant requests a permit to import biological specimens of Cat Island slider turtle (*Trachemys terrapin*) and Inagua Island slider turtle (*T. stejnegeri malonei*) from wild turtles in the Bahamas for the purpose of scientific research.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–32208 Filed 12–15–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2011–N091; 1265–0000–10137–SC]

Hawaiian and Pacific Islands National Wildlife Refuge Complex; Wilderness Review and Legislative Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to conduct a wilderness review (WR) to evaluate lands and waters within the Hawaiian and Pacific Islands National Wildlife Refuge Complex (Refuge Complex), to identify Wilderness Study Areas (WSAs), and to determine if the WSAs are suitable for recommending Congressional designation as wilderness. We will also prepare a legislative environmental impact statement (LEIS), to evaluate the effects of various WR/LEIS alternatives. We provide this notice to advise the public, other agencies, and organizations of our intent, and to obtain public comments, suggestions, and information on the scope of issues to consider during development of the WR/LEIS.

DATES: To accommodate the holidays, we are providing a 45 day public comment period. Please send your written comments by January 30, 2012. We will announce future opportunities for public input on our Web site and through local news outlets.

ADDRESSES: Information about the Refuge Complex is available on our Web

site *http://www.pacificislands.fws.gov.* Send your written comments or requests for more information by any of the following methods.

Email: *FW1PlanningComments@fws.gov.* Include ''Wilderness LEIS'' in the subject line of the message.

Fax: Attn: Matthew Ching, (808) 792–9585.

U.S. Mail: Matthew Ching, Wilderness Coordinator, Hawaiian and Pacific Islands National Wildlife Refuge Complex, 300 Ala Moana Blvd., Room 5–231, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Matthew Ching, (808) 792–9540 (phone).

SUPPLEMENTARY INFORMATION:

Background

Under the direction and authorization of the Wilderness Act of 1964 (16 U.S.C. 1131–1136), the National Wilderness Preservation System (NWPS) was created, which included a process for Federal land management agencies to recommend areas to Congress for designation as wilderness. Wilderness, as defined by the Wilderness Act, is untrammeled (free from man's control), undeveloped, and natural, and offers outstanding opportunities for solitude or primitive and unconfined recreation. The National Wildlife Refuge System manages designated wilderness areas on national wildlife refuges in accordance with Service policies (610 FW 1–4) to secure an enduring resource of wilderness, and accomplish refuge purposes in a way that preserves wilderness character. Our policies on wilderness stewardship and refuge planning require us to conduct refuge wilderness reviews, which include the following.

- A wilderness inventory is conducted to identify refuge lands and waters that meet the definition of wilderness in the Wilderness Act.
- If refuge lands and waters meet the minimum criteria, one or more wilderness study areas (WSAs) may be established.
- A wilderness study is conducted to further evaluate and determine if each WSA is suitable for recommending Congressional designation as wilderness.

We will develop the WR/LEIS in compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321); its implementing regulations (40 CFR 1500–1508); the Wilderness Act of 1964; and Service policy on wilderness reviews and evaluations.

Refuge Complex Overview

The Refuge Complex manages the following national wildlife refuges: Baker Island, Guam, Hakalau Forest, Hanalei, Hawaiian Islands, Howland Island, Hulēʻia, James Campbell, Jarvis Island, Johnston Island, Kakahaiʻa, Keālia Pond, Kīlauea Point, Kingman Reef, Mariana Arc of Fire, Mariana Trench, Midway Atoll, Oʻahu Forest, Palmyra Atoll, Pearl Harbor, Rose Atoll, and Wake Atoll. These refuges are located in Hawai'i, Honolulu, Kauai, and Maui Counties, HI; U.S. Pacific Island Territories; and the Commonwealth of the Northern Mariana Islands. The Refuge Complex covers more than 54 million acres, and encompasses some of the best remaining wildlife habitat in the Pacific Ocean. The Refuge Complex is home to some of the rarest endangered flora and fauna in the world, and extraordinary biological, chemical, and geological phenomena. Several refuges contain significant cultural and historic resources as well. Some of the refuges, many located on the main Hawaiian Islands, offer recreational opportunities, educational programs, and guided tours to the public. However, a majority of the refuges in the Refuge Complex are closed to public access to protect their unique and fragile natural resources.

Refuges With Completed Wilderness Inventories

A brief summary and table of the Refuge Complex's existing WSAs and studies follow.

- We completed wilderness inventories and subsequent WSA studies for the Baker Island, Howland Island, and Jarvis Island Refuges in September 2008 as part of their comprehensive conservation plans (CCP). We determined that each refuge contains a WSA that is suitable for a possible wilderness recommendation. Since then, the jurisdictional boundaries of these refuges were expanded by Secretary's Order 3284; therefore, we will conduct inventories in the expansion areas, and if WSAs are identified, we will complete the wilderness review process for each new and existing WSA as part of our WR/LEIS.
- We completed a wilderness inventory and identified a WSA on the Hakalau Forest Refuge, as part of the refuge's CCP completed in September 2010. The WSA review process will be completed as part of our WR/LEIS.
- We completed the wilderness inventory and review process for the Hawaiian Islands Refuge in 1974. We will conduct a new wilderness inventory and review process as part of our WR/LEIS.

The following table summarizes the status of the wilderness review process for each WSA currently established within the Refuge Complex.

Refuge	Inventory date results	Date of study determination	Date of submission recommendation
Baker Island[1]	September 2008, WSA identified	September 2008, Suitable for possible wilderness recommendation.	Will be part of WR/LEIS.
Hakalau Forest	September 2010, WSA identified	Study will be part of WR/LEIS	To be determined during WSA Study.
Hawaiian Islands[2]	April 24, 1970, WSA identified	June 1974, Suitable for possible wilderness recommendation.	June 1974, Wilderness proposal submitted to Congress.
Howland Island[1]	September 2008, WSA identified	September 2008, Suitable for possible wilderness recommendation.	Will be part of WR/LEIS.
Jarvis Island[1]	September 2008, WSA identified	September 2008, Suitable for possible wilderness recommendation.	Will be part of WR/LEIS.

[1] As part of our WR/LEIS, we will also conduct an inventory of refuge expansion areas. If WSAs are identified, we will complete the review process for each WSA.

[2] As part of our WR/LEIS, we will conduct a new inventory of the refuge. If WSAs are identified, we will complete the wilderness review process for each WSA.

We have managed our existing WSAs in a manner that preserves wilderness character in accordance with (1) the Refuges' respective CCPs; (2) regulations on administration and use of areas under the jurisdiction of the Secretary of the Interior which may be designated as wilderness areas (43 CFR 35); and (3) Service policy on areas pending designation as wilderness. The documents containing the existing wilderness inventories and reviews are available on our Web site *http://www.fws.gov/pacificislandsrefuges/wilderness.html.*

Refuges With Special Considerations

Site visits by Service staff to Wake Atoll Refuge have been limited. We will conduct the Wake Atoll wilderness inventory as opportunities for site visits become available. If we identify a WSA at the Refuge, it will be evaluated in the Draft WR/LEIS.

The submerged lands that make up the Mariana Trench Refuge were established as a national wildlife refuge as part of the Mariana Trench Marine National Monument in accordance with Secretary's Order 3284. The Refuge will not be part of our WR/LEIS, because we are deferring its wilderness inventory and review until our technological capabilities can provide a viable assessment of the minimum criteria for wilderness on the Refuge.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified the following preliminary issues, concerns, and opportunities that we may consider during the development of the WR/LEIS. We may identify additional issues during the public comment period. We will consider and address public comments during development of the WR/LEIS.

- Which Refuge Complex lands and waters are of such quality that they should be included in wilderness proposals identified in the WR/LEIS alternatives?
- How would current or planned refuge uses, including natural resource management activities, public visitation, and scientific research, be affected in areas identified in potential wilderness recommendations?
- How would our management of refuge resources, including historic and cultural artifacts, biological resources, and physical attributes such as water quality and soils, be affected in areas identified in potential wilderness recommendations?
- How should global climate change and its potential impacts be considered in the evaluation of wilderness?

Public Involvement

We will develop the WR/LEIS in a manner that will provide participation opportunities for the public; Federal, State, Territorial, and local government agencies; and other interested parties. We request your input regarding issues and suggestions important to you and the evaluation of potential wilderness recommendations.

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.

Dated: December 12, 2011.

Richard Hannan,

Acting Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2011–32222 Filed 12–15–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–1111–8976; [2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 26, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by January 3, 2012. 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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Mobile County

Most Pure Heart of Mary School, The, 310 Sengstak St., Mobile, 11000988

CALIFORNIA

Los Angeles County

Hollywood High School Historic District, 1521 N. Highland Ave., Los Angeles, 11000989

San Diego County

RENOWN (yacht), San Diego Marriot Marina, A Dock, 333 W. Harbor Dr., San Diego, 11000990

MAINE

Knox County

Main Street Historic District (Boundary Increase), 428–497 Main St., Rockland, 11000991

NEW JERSEY

Camden County

Federal Building and Courthouse, 401 Market St., Camden, 11000992

NEW YORK

Albany County

Potter Hollow District No. 19 School, Cty. Rd. 53, Potter Hollow, 11000993

Cattaraugus County

Jefferson Street Cemetery, E. side of Jefferson St. between Martha St. & Aspen Dr., Ellicottville, 11000994

Temple B'Nai Israel, 127 S. Barry St., Olean, 11000995

Chemung County

Eustace, Alexander, House, 401 Maple Ave., Elmira, 11000996

Erie County

Pioneer Cemetery, W. side of N. Main St. between Gold St. & Beach Rd., Evans Center, 11000997

Sommers, John P. House (Lancaster, New York MPS), 33 Lake Ave., Lancaster, 11000998

Greene County

Haxton—Griffin Farm, 84 Howard Hall Rd., Athens, 11000999

Jefferson County

Wood, Amos, House, 7751 Cty. Rd. 120, North Landing, 11001000

Livingston County

Avon Five Arch Bridge, 2078 Avon Geneseo Rd., Avon, 11001001

Nassau County

Christ Building, 357–359 Sea Cliff Ave., Sea Cliff, 11001002

Oneida County

Tabernacle Baptist Church, 8 Hopper St., Utica, 11001003

Richmond County

Boardman—Mitchell House, 710 Bay St., Staten Island, 11001004

Rockland County

Stony Point District School No. 4, Central Dr. at Cedar Flats Rd., Stony Point, 11001005

Schenectady County

Mica Insulator Company, 797 & 845 Broadway, Schenectady, 11001007

Schoharie County

Lehman, John, House, 407 Kilts Rd., Sharon Springs, 11001008

Schuyler County

Watkins Glen Commercial Historic District, 108–400 & 201–317 N. Franklin St., 111 W. 4th St. & 215 S. Madison St., Watkins Glen, 11001009

St. Lawrence County

Knollwood, S. end of Inlet Rd. at Oswegatchie R., Star Lake, 11001006

Suffolk County

Rogers Mansion Museum Complex, 17 Meetinghouse Ln., Southampton, 11001010

NORTH CAROLINA

Franklin County

Franklin County Training School—Riverside Union School, 53 W. River Rd., Louisburg, 11001011

SOUTH DAKOTA

Charles Mix County

Marty Mission School Gymnasium and St. Therese Hall (Schools in South Dakota MPS), SW. corner of 303rd St. & 388th Ave., Marty, 11001012

WASHINGTON

Walla Walla County

Electric Light Works Building, 111 N. 6th Ave., Walla Walla, 11001013

Whatcom County

Broadway Park Historic District, Roughly bounded by Illinois, W. North, Summer & Ellis Sts., Bellingham, 11001014

WISCONSIN

Sauk County

Hahn, Otto Sr. and Lisette, House, 626 Water St., Sauk City, 11001015

Request for removal has been made for the following resources:

FLORIDA

Broward County

Dr. Kennedy Homes Historic District, 1010 W. Broward Blvd., Fort Lauderdale, 11000179

Palm Beach County

Bingham-Blossom House, 1250 S. Ocean Blvd., Palm Beach, 72000344

Brelsford House, 1 Lake Trail, Palm Beach, 74000653

Dixie Court Hotel, 301 N. Dixie Hwy., West Palm Beach, 86001723

Hibiscus Apartments, 619 Hibiscus St., West Palm Beach, 84000935

Palm Beach Winter Club, 951 US 2, North Palm Beach, 80000960

TEXAS

Dallas County

Seagoville School, 306 N. Kaufman St., Seagoville, 05000857

[FR Doc. 2011–32211 Filed 12–15–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Action Subject to Intergovernmental Review

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement, are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Abandoned Mine Land (AML) Reclamation Program. Additionally we are notifying the public that we intend to grant funds to eligible applicants for regulating coal mining within their jurisdictional borders. We will award these grants after October 1, 2011, because our award authority commences at the beginning of the fiscal year.

DATES: A state single point of contact and other interested state or local entities may submit written comments regarding AML and regulatory funding by December 30, 2011.

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

- *Electronic mail:* Send your comments to *jbautista@osmre.gov.*
- *Mail, hand-delivery, or courier:* Send your comments to Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252–SIB, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Jay Bautista, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., MS 124–SIB, Washington, DC 20240; Telephone (202) 208–7411.

SUPPLEMENTARY INFORMATION:

Grant Notification

We are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Abandoned Mine Land (AML) Reclamation Program. Additionally we are notifying the public that we intend to grant funds to eligible applicants for regulating coal mining within their jurisdictional borders. We will award these grants after October 1, 2011. Eligible applicants are those states and tribes with a regulatory program or reclamation plan approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.,* and the State of Tennessee. Under Executive Order (E.O.) 12372, we must provide state and tribal officials the opportunity to review and comment on proposed federal financial assistance activities. Of the eligible applicants, twenty states and tribes do not have single points-of-contact under the E.O.12372 review process; therefore, we are required to publish this notice as an alternate means of notification.

Description of the AML Program

SMCRA established the Abandoned Mine Reclamation Fund to receive the AML fees used to finance reclamation of AML coal mine sites. Grants to eligible states and tribes are funded from permanent (mandatory) appropriations. Recipients use these funds to reclaim the highest priority AML coal mine sites that were left abandoned prior to the enactment of SMCRA in 1977, eligible non-coal sites, and for non-reclamation projects.

Description of the Regulatory Program

Title VII of SMCRA authorizes us to provide grants to states and Indian tribes to develop, administer, and enforce State regulatory programs addressing surface coal mining operations. Title V and Title VII authorize states and tribes to develop regulatory programs pursuant to SMCRA, and upon approval of regulatory programs, to assume regulatory primacy and act as the regulatory authority, and to administer and enforce their respective approved SMCRA regulatory programs. Our regulations at 30 CFR Chapter VII implement the provisions of SMCRA.

Dated: December 2, 2011.

Joseph G. Pizarchik,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2011–32322 Filed 12–15–11; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–482–485 and 731–TA–1191–1194 (Preliminary)]

Circular Welded Carbon-Quality Steel Pipe From India, Oman, the United Arab Emirates, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. §§ 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India, Oman, the United Arab Emirates, and Vietnam of circular welded carbon-quality steel pipe, provided for in subheadings 7306.19, 7306.30, and 7306.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Governments of India, Oman, the United Arab Emirates, and Vietnam.[2]

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[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 David S. Johanson not participating.

Background

On October 26, 2011, a petition was filed with the Commission and Commerce by Allied Tube and Conduit, Harvey, IL; JMC Steel Group, Chicago, IL; Wheatland Tube, Sharon, PA; and United States Steel Corporation, Pittsburgh, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of circular welded carbon-quality steel pipe from India, Oman, the United Arab Emirates, and Vietnam. Accordingly, effective October 26, 2011, the Commission instituted countervailing duty investigation Nos. 701–TA–482–485 and antidumping duty investigation Nos. 731–TA–1191–1194 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 3, 2011 (76 F.R. 68208). The conference was held in Washington, DC, on November 16, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 12, 2011. The views of the Commission are contained in USITC Publication 4298 (December 2011), entitled *Circular Welded Carbon-Quality Steel Pipe from India, Oman, the United Arab Emirates, and Vietnam: Investigation Nos. 701–TA–482–485 and 731–TA–1191–1194 (Preliminary).*

By order of the Commission.
Issued: December 12, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–32223 Filed 12–15–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701 TA–481 and 731–TA–1190 (Preliminary)]

Crystalline Silicon Photovoltaic Cells and Modules From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of crystalline silicon photovoltaic cells and modules, provided for in subheading 8541.40.60 (statistical reporting numbers 8541.40.6020 and 8541.40.6030) of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of China.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Background

On October 19, 2011, a petition was filed with the Commission and Commerce by Solar World Industries America, Hillsboro, OR, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of crystalline silicon photovoltaic cells and modules from China. Accordingly, effective October 19, 2011, the Commission instituted countervailing duty investigation No. 701–TA–481 and antidumping duty investigation No. 731–TA–1190 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 27, 2011 (76 FR 66748). The conference was held in Washington, DC, on November 8, 2011, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 5, 2011. The views of the Commission are contained in USITC Publication 4295 (December 2011), entitled *Crystalline Silicon Photovoltaic Cells and Modules from China: Investigation Nos. 701–TA–481 and 731–TA–1190 (Preliminary).*

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–32224 Filed 12–15–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 12, 2011, a proposed Consent Decree in *United States of America and District of Columbia* v. *Washington Gas Light Company,* Civil Action No. 1:11–cv–02199–RMC, was lodged with the United States District Court for the District of Columbia.

In this action the United States and the District of Columbia sought to recover from Washington Gas Light Company response costs incurred or to be incurred by the National Park Service, the United States Department of the Interior, the United States Environmental Protection Agency, and the District Department of the Environment in responding to releases or threatened releases of hazardous substances at or from the Washington Gas East Station Site, located in Washington, DC (the ''Site'').

The Consent Decree requires Washington Gas to reimburse past response costs in the amounts of $500,000.00 to the National Park Service and the U.S. Department of the Interior; $160,000.00 to the U.S. Environmental Protection Agency; and $70,673.62 to the District of Columbia. The Consent Decree also requires Washington Gas to pay all future costs incurred by the United States and the District of Columbia in connection with the Site.

Washington Gas is required to implement a soil remedy at the Site set forth in a Record of Decision issued by the National Park Service in 2006 (''ROD''). As set forth in the ROD, Washington Gas is required to continue operating its existing pump-and-treat system for the control and removal of hazardous substances in groundwater. Washington Gas will perform a remedial investigation and feasibility study to further determine the nature and extent of Site contamination in the groundwater and surface water and sediments in the Anacostia River. The feasibility study will identify and evaluate remedial alternatives and, if necessary, identify a further remedial action for the groundwater and River. The Consent Decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* (''CERCLA''), and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive for a period of sixty (60) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental 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 of America and District of Columbia* v. *Washington Gas Light Company,* Civil Action No. 1:11–cv–02199–RMC (D.D.C.), D.J. Ref. 90–11–2–08557/2. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

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 number (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 $71.25 (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. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $13.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–32241 Filed 12–15–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Wright Brothers Construction Co. & Georgia Dep't of Transportation,* No. 2:11–CV–321–WCO, was lodged with the United States District Court for the Northern District of Georgia on December 12, 2011.

The proposed Consent Decree concerns a complaint filed by the United States of America against Wright Brothers Construction Company, Inc., of Charleston, Tennessee and the State of Georgia's Department of Transportation to obtain injunctive relief and civil penalties against the defendants for violating sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344. The proposed Consent Decree resolves these allegations by requiring the defendants to restore streams, purchase mitigation credits, and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Andrew J. Doyle and Martha C. Mann, Attorneys, Environment and Natural Resources Division, Environmental

Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and refer to *United States* v. *Wright Brothers Construction Co. & Georgia Dep't of Transportation,* DJ #90–5–1–1–17946.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Georgia, 121 Spring Street SE., Room 201, Gainesville, GA 30501. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 2011–32225 Filed 12–15–11; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 17, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: (301) 837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, National Records Management Program (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* (301) 837–1799. *Email: request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–10–70, 1 item, 1 temporary item). Master files of electronic information systems used to manage supply and material life cycle operations.

2. Department of Commerce, National Telecommunications and Information Administration (N1–417–11–1, 2 items, 1 temporary item). Records relating to the Institute for Telecommunications Sciences, including routine administrative and working papers. Proposed for permanent retention are the legal program subject files of the Chief Counsel, including program and policy documents, legal filings, official opinions, and legal interpretations and activities.

3. Department of Defense, Defense Contract Audit Agency (N1–372–11–1, 8 temporary items). Documents related to hotline reports of financial malfeasance.

4. Department of Health and Human Services, Centers for Medicare & Medicaid Services (DAA–0440–2012–0001, 2 items, 1 temporary item). Records include policy and precedent files, including records that support the development of formal policy issuances, responses to inquiries, and comments on proposed legislation, regulations, and standards. Proposed as permanent are the official recordkeeping copies of formal policy memorandums, interpretations, clarifications, and similar records which serve as current policy and as precedent for future policy determinations.

5. Department of Homeland Security, U. S. Secret Service (N1–87–11–3, 4 items, 4 temporary items). Name check logs, delivery logs, and crime scene case files from the Uniformed Services Division.

6. Department of Housing and Urban Development, Office of Field Policy and Management (N1–207–10–1, 3 items, 3 temporary items). Records include management and strategic planning files, regional and field office correspondence, and subject files containing responses, inquiries, memos, and booklets.

7. Department of Justice, Federal Bureau of Investigation (N1–65–10–18, 3 items, 3 temporary items). Master files and statistical reports of an electronic information system used to automate workflow processes.

8. Department of Justice, Federal Bureau of Investigation (N1–65–10–37. 2 items, 2 temporary items). Records related to potential confidential human sources in the Directorate of Intelligence. The record copy of confidential human source records were previously scheduled as permanent.

9. Department of Justice, Federal Bureau of Investigation (N1–65–11–16, 3 items, 3 temporary items). Master files and outputs of an electronic information system that tracks complaints and develops referrals related to cyber crime.

10. Department of Justice, Federal Bureau of Prisons (N1–129–10–4, 4 items, 4 temporary items). Master files of an electronic information system used to document inmate involvement in violent activities.

11. Department of Justice, Office of the Inspector General (N1–60–09–65, 3 items, 1 temporary item). Inputs and master files for electronic information systems used to track Inspector General correspondence. Proposed for permanent retention are hard copy controlled correspondence files and a master file of all correspondence.

12. Department of the Treasury, Internal Revenue Service (N1–58–11–2, 3 items, 3 temporary items). Master files and system documentation of an electronic information system used to locate tax payments.

13. Department of the Treasury, Internal Revenue Service (N1–58–11–6, 3 items, 3 temporary items). Master files and system documentation of an electronic information system used to track mail sent to taxpayers.

14. Department of the Treasury, Internal Revenue Service (N1–58–11–9, 3 items, 3 temporary items). Inputs, master files, and system documentation for an electronic information system used to convert paper checks to electronic transactions.

15. Agency for International Development, Office of the Inspector General (N1–286–09–3, 2 items, 2 temporary items). Master files of an electronic information system used to track the status of investigations as well as related paper case files. If the agency becomes aware of any significant or precedent-setting case files they will notify NARA and an independent appraisal of these cases will be conducted.

16. Social Security Administration, Office of Facilities Management (DAA–0047–2012–0001, 1 item, 1 temporary item). Records consist of security surveillance recordings of inside and outside activities at agency headquarters and field offices.

Dated: December 12, 2011.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2011–32297 Filed 12–15–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that eleven meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506 as follows (ending times are approximate):

Media Arts (application review): January 10–12, 2012 in Room 627. This meeting, from 9 a.m. to 6 p.m. on January 10th and 11th and from 9 a.m. to 5 p.m. on January 12th, will be closed.

Folk and Traditional Arts (nomination review): January 10–13, 2012 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on January 10th–12th and from 9 a.m. to 1 p.m. on January 13th, will be closed.

State and Regional (state partnership agreements review): January 18–19, 2012 in Room 716. This meeting, from 10 a.m. to 5 p.m. on January 18th and from 9 a.m. to 3:30 p.m. on January 19th, will be open.

Design (application review): January 19, 2012 by teleconference. This meeting, from 1 p.m. to 5 p.m. EST, will be closed.

State and Regional/Folk and Traditional Arts (state partnership agreements/folk arts projects review): January 19–20, 2012 in Room 714. This meeting, from 3 p.m. to 5:30 p.m. on January 19th and from 9 a.m. to 5:30 p.m. on January 20th, will be open.

Innovation (application review): January 20, 2012 by teleconference. This meeting, from 1 p.m. to 2 p.m. EST, will be closed.

State and Regional (regional partnership agreements review): January 25, 2012, by teleconference. This meeting, from 1 p.m. to 2:05 p.m. EST, will be open.

State and Regional (regional partnership agreements review): January 25, 2012, by teleconference. This meeting, from 3 p.m. to 4:05 p.m. EST, will be open.

State and Regional (national services partnership agreements review): January 30, 2012, by teleconference. This meeting, from 4 p.m. to 5 p.m. EST, will be open.

Accessibility (application review): January 24, 2012 by teleconference. This meeting, from 3 p.m. to 4:30 p.m. EST, will be closed.

Research (application review): January 24–26, 2012 in Room 627. This meeting, from 9 a.m. to 5:30 p.m. on January 24th and 25th, and from 9 a.m. to 12 p.m. on January 26th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2011, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need any accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call (202) 682–5691.

Dated: December 13, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–32302 Filed 12–15–11; 8:45 am]

BILLING CODE 7537–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Senior Executive

Resource Services, Executive Resources and Employee Development, Employee Services, (202) 606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between October 1, 2011, and October 31, 2011. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/*. A consolidated listing of all authorities as of September 30 is also published each year. The following Schedules are *not* codified in the Code of Federal Regulations. These are agency-specific exceptions.

Schedule A

No Schedule A authorities to report during October 2011.

Schedule B

No Schedule B authorities to report during October 2011.

Schedule C

The following Schedule C appointments were approved during October 2011.

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF AGRICULTURE.	Risk Management Agency	Confidential Assistant	DA110137	10/3/2011
	Office of the Assistant Secretary for Congressional Relations.	Confidential Assistant	DA120006	10/25/2011
	Natural Resources Conservation Service.	Assistant Chief	DA120007	10/26/2011
DEPARTMENT OF COMMERCE.	Office of the Assistant Secretary for Economic Development.	Senior Advisor	DC110135	10/7/2011
	Office of the Deputy Secretary	Special Assistant	DC120003	10/17/2011
	Office of the Chief of Staff	Executive Assistant	DC120005	10/21/2011
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant (International Security Affairs).	DD110133	10/25/2011
	Office of Assistant Secretary of Defense (Public Affairs).	Speechwriter	DD110134	10/21/2011
	Office of the Secretary of Defense	Deputy White House Liaison	DD120001	10/13/2011
	Office of the Assistant Secretary of Defense (Global Strategic Affairs).	Special Assistant (Global Strategic Affairs).	DD120005	10/25/2011
DEPARTMENT OF EDUCATION.	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and School Turnaround.	DB120003	10/18/2011
	Office of Legislation and Congressional Affairs.	Confidential Assistant	DB120007	10/25/2011
	Office of Communications and Outreach.	Confidential Assistant	DB120008	10/20/2011
DEPARTMENT OF ENERGY	Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Specialist	DE110148	10/6/2011
	Office of Management	Deputy Director of Scheduling and Advance.	DE120005	10/25/2011
	National Nuclear Security Administration.	Special Assistant	DE120009	10/25/2011
	Office of Public Affairs	New Media Specialist	DE120013	10/21/2011
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Intergovernmental and External Affairs.	Regional Director, Chicago, Illinois-Region V.	DH110135	10/4/2011
	Office of the Secretary	Deputy Director for Scheduling and Advance.	DH110140	10/21/2011
DEPARTMENT OF HOMELAND SECURITY.	Federal Emergency Management Agency.	Senior Advisor	DM110274	10/11/2011
	Office of the Assistant Secretary for Policy.	Deputy Executive Director	DM110275	10/11/2011
	U.S. Customs and Border Protection	Policy Advisor	DM120004	10/17/2011
	Office of the Assistant Secretary for Policy.	Director	DM120007	10/21/2011
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Senior Advisor	DI110087	10/3/2011
	Assistant Secretary—Indian Affairs	Senior Advisor-Indian Affairs	DI110090	10/3/2011
	Secretary's Immediate Office	Communications Advisor	DI110094	10/6/2011
	Bureau of Ocean Energy Management.	Science Advisor	DI110097	10/4/2011
	Bureau of Safety and Environmental Enforcement.	Special Assistant	DI110098	10/4/2011
	Office of the Deputy Secretary	Advisor	DI120001	10/12/2011
	Bureau of Ocean Energy Management.	Senior Advisor	DI120003	10/6/2011
	Bureau of Ocean Energy Management.	Special Assistant	DI120007	10/20/2011
DEPARTMENT OF JUSTICE	Office of Public Affairs	Press Assistant	DJ110121	10/6/2011
	Office of Public Affairs	Confidential Assistant	DJ120003	10/17/2011
DEPARTMENT OF LABOR	Office of the Secretary	Special Assistant	DL120001	10/6/2011
	Office of the Secretary	Policy Advisor	DL120002	10/14/2011
	Office of the Assistant Secretary for Administration and Management.	Special Assistant	DL120003	10/14/2011

Agency name	Organization name	Position title	Authorization number	Effective date
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION.	Office of General Counsel	Special Assistant	NN120002	10/7/2011
NATIONAL MEDIATION BOARD.	National Mediation Board	Confidential Assistant	NM120001	10/11/2011
SMALL BUSINESS ADMINISTRATION.	Office of Field Operations	Senior Advisor for Field Operations	SB120002	10/19/2011
	Office of the Administrator	Policy Advisor	SB120003	10/19/2011
DEPARTMENT OF STATE	Bureau of Arms Control, Verification, and Compliance.	Public Affairs Specialist	DS110112	10/4/2011
	Office of the Deputy Secretary for Management and Resources.	Senior Advisor	DS110135	10/14/2011
DEPARTMENT OF TRANSPORTATION.	Assistant Secretary for Governmental Affairs.	Deputy Assistant Secretary for Governmental Affairs.	DT120002	10/7/2011

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR parts 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry, Director.

[FR Doc. 2011–32285 Filed 12–15–11; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–80; Order No. 1029]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Harris, Iowa 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: *Deadline for notices to intervene:* January 3, 2011, 4:30 p.m., Eastern Time. *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 23, 2011, the Commission received a petition for review of the Postal Service's determination to close the Harris post office in Harris, Iowa. The petition for review was filed by Jeff Loring, Mayor of the City of Harris (Petitioner) and is postmarked November 17, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–80 to consider Petitioner's appeal. If Petitioner would like to further explain his 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 28, 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 it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (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)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is 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 to this Notice 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 January 3, 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, Pamela Thompson 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.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

November 23, 2011	Filing of Appeal.
December 8, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 8, 2011	Deadline for the Postal Service to file any responsive pleading.
January 3, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
December 28, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 17, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 1, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 8, 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 16, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–32198 Filed 12–15–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–81; Order No. 1030]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Phippsburg, Colorado 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: Deadline for notices to intervene: January 3, 2011, 4:30 p.m., Eastern Time. *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) the Commission received two petitions for review of the Postal Service's determination to close the Phippsburg post office in Phippsburg, CO. The first petition for review was filed by Michael Williams on November 23, 2001, and the second petition for review was filed by John Bergstrom on November 29, 2011. The earliest postmark is November 18, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–81 to consider Petitioner's appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 28, 2011.

Categories of issues apparently raised. Petitioner's contend 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)); and (2) the Postal Service failed to consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is within 15 days after the date on 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 to this notice is also within 15 days after the date on 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 January 3, 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 Postal Service shall file the applicable administrative record regarding this appeal within 15 days of the filing of the first petition for review.

2. Any responsive pleading by the Postal Service to this notice is due within 15 days of the filing of the first petition for review.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Katrina R. Martinez is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

November 23, 2011	Filing of Appeal.
December 8, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 8, 2011	Deadline for the Postal Service to file any responsive pleading.
January 3, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
December 28, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 17, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 1, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 8, 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 16, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–32216 Filed 12–15–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–82; Order No. 1031]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the South Greenfield, Missouri 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: January 3, 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 28, 2011 the Commission received a petition for review of the Postal Service's determination to close the South Greenfield post office in South Greenfield, Missouri. The petition for review was filed by Kitty Ayres (Petitioner) and is postmarked November 12, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–82 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 January 3, 2011.

Categories of Issues Apparently Raised

Petitioner contends that the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is December 13, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is December 13, 2011.

Availability; Web site Posting

The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.*

Additional filings in this case and 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 January 3, 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 Postal Service shall file the applicable administrative record regarding this appeal no later than December 13, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than December 13, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Tracy Ferguson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

November 28, 2011	Filing of Appeal.
December 13, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
December 13, 2011	Deadline for the Postal Service to file any responsive pleading.
January 3, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
January 3, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 23, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
February 7, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 14, 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 9, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–32245 Filed 12–15–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request;

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 489 and Form F–N; SEC File No. 270–361; OMB Control No. 3235–0411.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 489 (17 CFR 230.489) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires foreign banks and foreign insurance companies and holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are exempted from the definition of ''investment company'' by virtue of rules 3a–1 (17 CFR 270.3a–1), 3a–5 (17 CFR 270.3a–5), and 3a–6 (17 CFR 270.3a–6) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) to file Form F–N (17 CFR 239.43) to appoint an agent for service of process when making a public offering of securities in the United States.

During calendar year 2010, approximately 13 entities were required by rule 489 to make 15 Form F–N submissions. The Commission has previously estimated that the total annual burden associated with information collection and Form F–N preparation and submission is one hour per filing. Based on the Commission's experience with disclosure documents generally, the Commission continues to believe that this estimate is appropriate.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the

costs of Commission rules and forms. The collection of information under rule 489 and Form F–N is mandatory. The information provided under rule 489 and Form F–N will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*.

December 12, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32221 Filed 12–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65940; File No. SR–Phlx–2011–162]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols

December 12, 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 December 1, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the single contra-side order Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I, Part A of the Exchange's Fee Schedule. The Exchange also proposes to amend the rebates and fees applicable to electronic auctions and the opening process.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section I of the Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' at Part A, entitled ''Single contra-side orders,'' to amend certain Rebates for Adding Liquidity and Fees for Removing Liquidity to both attract additional order flow to the Exchange and recoup costs for offering certain rebates to attract liquidity.

Currently, Section I of the Fee Schedule applies to certain select symbols.[3] Section I is comprised of a Part A, single contra-side order fees, and a Part B, Complex Order fees.[4] By way of example of the application of Parts A and B, if one component of a Complex Order is a buy order that trades with a sell order, the sell order is a ''simple'' or non-Complex Order subject to the fees in Part A of Section I of the Fee Schedule and the buy order is a Complex Order subject to the fees in Part B of Section I of the Fee Schedule.

The Exchange is also proposing to amend the rebates and fees for electronic auctions and the opening process by defining the electronic auctions and the opening process as either Complex or non-Complex and applying Part B rebates and fees to the Complex electronic auctions and Part A rebates and fees to the non-Complex electronic auctions, including the opening process. The Exchange proposes these amendments to align the fees for electronic auctions and the opening process with other rebates and fees, as either Complex or non-Complex. The Exchange is not proposing to amend the Complex Order fees in Part B, but does propose a technical amendment to Part B as described below.

There are currently several categories of market participants: Customers, Directed Participants,[5] Specialists,[6] Registered Options Traders,[7] SQTs,[8] RSQTs,[9] Broker-Dealers, Firms and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Select symbols shall be defined as options overlying the following symbols: AA, AAPL, ABX, AIG, ALL, AMD, AMR, AMZN, AXP, BAC, BRCD, C, CAT, CIEN, CSCO, DELL, DIA, DRYS, EBAY, EK, F, FAS, FAZ, FXI, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, NOK, NVDA, ORCL, PFE, PG, POT, QCOM, QQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SLW, SMH, SNDK, SPY, T, TBT, TZA, UAL, UNG, USO, UUP, UYG, V, VALE, VXX, VZ, WYNN, X, XLF, XOM, XOP, XRX and YHOO (''Select Symbols''). These symbols are Multiply-Listed.

[4] The Rebates and Fees for Adding and Removing Liquidity in Select Symbols will continue to apply only to electronic orders.

[5] A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

[6] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[7] A Registered Options Trader (''ROT'') includes a Streaming Quote Trader (''SQT''), a Remote Streaming Quote Trader (''RSQT'') and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Exchange Rule 1014 (b)(i) and (ii).

[8] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[9] An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such

Professional.[10] Currently, the following rebates and fees apply to Single contra-side orders:

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	$0.20	$0.25	$0.23	$0.00	$0.00	$0.20
Fees for Adding Liquidity	0.00	0.00	0.00	0.05	0.05	0.00
Fee for Removing Liquidity	0.25	0.33	0.33	0.45	0.45	0.40

The Exchange is proposing to amend the rebates and fees that apply to Single contra-side orders as follows:

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	$0.26	$0.23	$0.23	$0.00	$0.00	$0.26
Fees for Adding Liquidity	0.00	0.00	0.00	0.05	0.05	0.00
Fee for Removing Liquidity	0.29	0.35	0.37	0.45	0.45	0.45

In addition, the Exchange is proposing to amend its rebates and fees applicable to electronic auctions and the opening process. To add clarity to the rebates and fees surrounding electronic auctions and the opening process, the Exchange proposes to amend the text of the Fee Schedule to define ''Complex electronic auctions'' and ''non-Complex electronic auctions.'' The Exchange proposes to define a ''Complex electronic auction'' as one that includes, but is not limited to COLA. The Exchange proposes to define a ''non-Complex electronic auction'' as one that includes the Quote and Market Exhaust auction.[11] The Exchange also proposes to include the opening process within the definition of ''non-Complex electronic auction'' for purposes of assessing the Rebate for Adding Liquidity and the Fees for Removing Liquidity. The Exchange proposes to delete the current text related to the applicability of the Customer Rebate for Adding Liquidity and the Fees for Removing Liquidity in Part C and instead replace that text with an explanation of the rebates and fees as it relates to Complex or non-Complex electronic auctions.

Currently, a Customer Complex Order receives a Rebate for Adding Liquidity (as set forth in Part B) as part of a Complex Order Live Auction (''COLA''). Excluding COLA, during all other electronic auctions and the Exchange's opening process, a Customer Complex Order receives a Rebate for Adding Liquidity (as set forth in Part B) when such Customer Complex Order is executed against a non-Customer (Specialist, ROT, SQT, RSQT, Professional, Firm or Broker-Dealer) contra-side Complex Order, or a non-Customer individual order or quote. For Customer orders that are not Complex Orders, a Customer receives a Rebate for Adding Liquidity of $0.22 per contract for executions that occur as part of an electronic auction, including but not limited to the Exchange's opening process, except when contra to another Customer order. A Customer will not be assessed a Fee for Removing Liquidity in an electronic auction and during the Exchange's opening process. A Directed Participant is assessed a Fee for Removing Liquidity of $0.25 per contract during the Exchange's opening process.

The Exchange proposes to pay Customer executions that occur as part of a Complex electronic auction a Rebate for Adding Liquidity as set forth in Part B, as is the case today. Customer executions that occur as part of a non-Complex electronic auction would receive the Rebate for Adding Liquidity as set forth in Part A, except when contra to another Customer order. Today they receive a rebate of $.22 per contract. Customers will not be assessed a Fee for Removing Liquidity for transactions that occur in either Complex electronic auctions or non-Complex electronic auctions as is the case today.

Currently, a Directed Participant is assessed a Fee for Removing Liquidity of $0.25 per contract during the Exchange's opening process. A Specialist, ROT, SQT and RSQT are assessed a Fee for Removing Liquidity of $0.27 per contract during the Exchange's opening process. Professional, Firm and Broker-Dealer Fees for Removing Liquidity (as set forth in Part B) apply to transactions resulting during the Exchange's opening process. The Exchange now proposes to assess the Fees for Removing Liquidity to all participants, except Customer, the fees in Part A for transactions during the opening process.[12] Today, Professional, Directed Participant, Firm, Broker-Dealer and Specialist, ROT, SQT and RSQT Fees for Removing Liquidity (as set forth in Part B) will apply to transactions resulting from electronic auctions.[13] The Exchange now proposes to assess Professionals, Directed Participants, Firms, Broker-Dealers and Specialists, ROTs, SQTs and RSQTs the Fees for Removing Liquidity in Part B

quotations electronically from off the floor of the Exchange.

[10] The Exchange defines a ''professional'' as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter ''Professional'').

[11] While PIXL is a non-Complex electronic auction, it is covered by a different pricing scheme. *See* Section IV of the Exchange's Fee Schedule.

[12] The Exchange is defining the opening process as a non-Complex Order auction.

[13] Today, electronic auctions include, without limitation, the Complex Order Live Auction (''COLA''), and Quote and Market Exhaust auctions. See Exchange Rules 1017 and 1082.

for executions that occur as part of a Complex Order electronic auction. The Exchange proposes to assess Professionals, Directed Participants, Firms, Broker-Dealers and Specialists, ROTs, SQTs and RSQTs the Fees for Removing Liquidity in Part A for executions that occur as part of a non-Complex electronic auction.

Finally, the Exchange proposes to remove language in Part B of the Section I. Specifically, the Exchange is removing ''in all Select Symbols'' language. The entire Part B applies to all Select Symbols and therefore the extra language is unnecessary.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(4) of the Act [15] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to increase the Rebate for Adding Liquidity for Customers is reasonable because the increase should incentivize Broker-Dealers to route Customer orders to the Exchange, which in turn should increase liquidity and benefit all market participants. The Exchange believes that the rate change is equitable and not unfairly discriminatory because it would apply uniformly to all Customers and also increase liquidity to the benefit of all participants. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to increase the Rebate for Adding Liquidity for Professionals to a rate that is equal to that of Customer, which is also the highest rebate available for a Single contra-side order. While the Exchange is increasing the Professional rebate to $.26 per contract, it is also increasing the Professional Fee for Removing Liquidity to the highest fee assessed for a Single contra-side order along with Firms and Broker-Dealers. The Exchange believes that it is reasonable to pay a lower rebate to Directed Participants because market makers [16] should benefit from increased Customer volume as well as other Broker-Dealers engaged in proprietary trading. In addition, the Rebate for Adding Liquidity is equitable and not unfairly discriminatory for Directed Participants because it is the same for all market makers,[17] $0.23 per contract.

The Exchange believes that it is reasonable to increase the Customer Fee for Removing Liquidity because the Exchange is seeking to recoup the cost associated with paying an increased rebate to Customers. The Customer Fee for Removing Liquidity is also equitable and not unfairly discriminatory because it would remain at a lower rate as compared to other market participants. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to also increase the Fees for Removing Liquidity for Directed Participants and Specialists, ROTs, SQTs and RSQTs, to $0.35 and $0.37 respectively. The Exchange is not increasing the rebate for market makers even though it is increasing the fee because the Exchange does not believes that Specialists, ROTs SQTs and RQSTs need to be incentivized to add liquidity in the same way as a Directed Participant. As between these market makers, Directed Participants are being assessed the lower fee because Directed Participants, as compared to other market makers, have higher quoting obligations.[18] The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess a Professional the same Fee to Remove Liquidity as Firms and Broker Dealers. The Exchange is increasing both the Professional Rebate to Add Liquidity and the Fee for Removing Liquidity in its proposal. Also, the Professional is obtaining a rebate while Firms and Broker-Dealers do not receive a rebate. This is the case with the Fee for Removing Liquidity in all Select Symbols for Complex Orders.[19] In addition, the Exchange's Fees for Removing Liquidity are within the range of fees assessed by other options exchanges.[20]

The Exchange is proposing to amend rebates and fees related to electronic auctions and the opening process in order that the applicability of the rebates and fees is consistent with whether the electronic auction or opening process involves a Complex Order. The Exchange proposes to pay rebates and assess fees for electronic auctions and the opening process by defining each electronic auction as either a Complex or a non-Complex electronic auction. Complex electronic auctions would be paid the rebates and assessed the fees in Part B and non-Complex electronic auctions would be paid the rebates and assessed the fees in Part A. The opening process will be defined for purposes of the fees and rebates as non-Complex and would be subject to the fees and rebates in Part A.

Therefore, the Exchange's proposal to eliminate the $.22 rebate for single contra-side Customer executions that occur as part of an electronic auction, including but not limited to the opening process, except when contra to another Customer order and instead pay the increased Rebate for Adding Liquidity in Part A is reasonable because the Exchange will pay the rebate for a single contra-side order which is $.26 per contract. The proposal is also equitable and not unfairly discriminatory because the Customer currently does not pay a Fee for Removing Liquidity and would be awarded the highest rebate among all market participants so long as the transaction is not contra another Customer and this would continue to be the case. In the event that the transaction is contra to another Customer, the rebate would not be paid and also no fee would be assessed to remove liquidity.

Similarly, the proposal to assess Professionals, Directed Participants, Firms, Broker-Dealers, Specialists, ROTs, SQTs and RSQTs for transactions that occur as part of an electronic auction, except for COLA, the fees in Part A, instead of Part B is reasonable because those auctions do not relate to Complex Orders and should therefore be assessed the fees in Part A for single contra-side orders. The Exchange believes that the proposal is also equitable and not unfairly discriminatory because all other market participants, other than Customers, will be assessed fees based on whether the auction involves a Complex Order. The Exchange's proposal to assess the fees in Part B for COLA is reasonable, equitable and not unfairly discriminatory because COLA is a Complex Order electronic auction and therefore the fees in Part B, which relate to Complex Orders, are consistent with the type of auction where the transactions take place. The Exchange also believes the same is true for Customers with respect to

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] The Exchange market maker category includes Specialists (*see* Rule 1020) and Registered Options Traders (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders or SQTs (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders or RSQTs (*see* Rule 1014(b)(ii)(B)). The term ''Directed Participant'' applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

[17] The Exchange market maker category includes Specialists (*see* Rule 1020) and Registered Options Traders (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders or SQTs (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders or RSQTs (*see* Rule 1014(b)(ii)(B)).

[18] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[19] *See* Section I, Part B of the Exchange's Fee Schedule.

[20] *See* NASDAQ Stock Market LLC Rule 7050. *See also* NYSE ARCA, Inc. Fee Schedule.

distinguishing between Complex electronic auctions and non-Complex electronic auctions. In addition, the Exchange proposes to pay rebates and assess fees for the opening process as a non-Complex auction. The opening process would not involve a Complex Order and therefore would be paid rebates and assessed fees consistent with the Exchange's proposal to assess electronic auctions based on whether it relates to a Complex Order. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay the rebates and assess the fees in Part A, related to single contra-side orders, for the opening process.

The Exchange believes that the technical amendments proposed herein are reasonable, equitable and not unfairly discriminatory because they would add clarity to the Fee Schedule.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges and rebates it pays for options overlying the various Select Symbols remain competitive with fees and rebates charged/paid by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–162 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–Phlx–2011–162. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2011–162 and should be submitted on or before January 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32220 Filed 12–15–11; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65931; File No. SR–NASDAQ–2011–168]

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Option Fee Disputes

December 9, 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 30, 2011. The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDAQ. 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 NASDAQ Stock Market LLC proposes to amend Rule 7056 entitled ''NASDAQ Options Fee Disputes'' to specify that the Options Regulatory Fee is subject to Rule 7056.

The text of the proposed rule change is set forth below. Proposed new text is italicized and deleted text is in brackets.

* * * * *

7056. NASDAQ Options Fee Disputes

(a) All fee disputes concerning fees which are billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation.

(b) All fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice.

(c) This Rule applies to the following NASDAQ Options Market fees:

(1) Rule 7050 ''NASDAQ Options Market—Fees''; [and]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(2) Rule 7053 ''NASDAQ Options Market—Access Services,'' with the exception of the TradeInfo Fee[.]*; and*

(3) Rule 7059 ''NASDAQ Options Regulatory Fee.''

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. 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

NASDAQ proposes to amend Rule 7056 entitled ''NASDAQ Options Fee Disputes'' to list Rule 7059 entitled ''NASDAQ Options Regulatory Fee'' as a fee subject the fee dispute Rule.[3] Currently, Rule 7056 requires NOM Participants to submit all fee disputes to the Exchange in writing[4] and accompanied by supporting documentation within sixty days of receipt of an invoice.[5] Exchange Rule 7056 applies to the fees in Rule 7050 entitled ''NASDAQ Options Market'' and Rule 7053 entitled ''NASDAQ Options Market—Access Services'' with the exception of the TradeInfo Fee. The Exchange is now proposing to also apply Rule 7056 to the Options Regulatory Fee.[6]

The Exchange believes that this practice will conserve Exchange resources which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the transaction occurred. The Exchange believes that NOM Participants should be aware of any billing errors within two months of receiving an invoice. The Exchange provides NOM Participants with the ability to sign-up to receive certain daily reports.[7] These reports allow NOM Participants to view trade data and fees prior to receiving a billing invoice. In addition, NOM Participants have access to a password protected Web site, which provides NOM Participants an electronic copy of current and historical invoices, as well as the supporting details for assessed charges.[8] NOM Participants have the ability to retrieve trade information from this Web site on a T +1 basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed 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, by providing a uniform practice for disputing fees.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to impose a requirement on the ORF, similar to other fees, concerning fee disputes. The Exchange believes the requirement that all fee disputes, for certain specified fees, must be submitted to the Exchange within sixty days from receipt of the invoice is reasonable because the Exchange provides ample tools to properly and timely monitor and account for various charges incurred in a given month.[11] The proposal is equitable and not unfairly discriminatory because it equally applies to all NOM Participants who have the ability to access various reports, which include the information concerning ORF. Phlx has a similar rule which is applicable to its ORF fees.[12] Also, the Exchange's administrative costs would be lowered as a result of this policy.

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[13] and Rule 19b–4(f)(6)[14] 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 change is consistent with the Act. Comments may be submitted by any of the following methods:

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[3] The Exchange recently filed a proposed rule change to adopt an Options Regulatory Fee operative on January 3, 2012. *See* SR–NASDAQ–2011–163.

[4] The Exchange invoice specifies the Exchange contact persons with whom to dispute the invoice.

[5] Rule 7056 will be operative on January 3, 2012 and would first apply to invoices related to transactional billing in January 2012 and would apply thereafter. *See* Securities Exchange Act Release No. 65718 (November 9, 2011), 76 FR 71088 (November 16, 2011) (SR–NASDAQ–2011–147).

[6] NASDAQ OMX PHLX LLC (''Phlx'') applies the same fee dispute rule to its Options Regulatory Fee. *See* Phlx's Fee Schedule.

[7] These reports include, but are not limited to, daily traded against report and daily cancel fee reports.

[8] The Web site is MyNASDAQOMX.com. *See* Options Trader Alert #2011–60.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] The Exchange provides NOM Participants with the ability to sign-up to receive certain daily reports. These reports allow NOM Participants to view trade data and fees prior to receiving a billing invoice.

[12] *See* Securities Exchange Act Release No. 62661 (August 6, 2010), 75 FR 49544 (August 13, 2010) (SR–Phlx–2010–110). *See also* Phlx's Fee Schedule.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 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.

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–2011–168 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–2011–168. 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–2011–168 and should be submitted on or before January 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–32238 Filed 12–15–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7717]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State's Advisory Committee on International Communications and Information Policy (ACICIP) will hold a public meeting on January 12, 2012 from 9 a.m. to 12 p.m. in the Loy Henderson Auditorium of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Thomas Wheeler of Core Capital Partners and Ambassador Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy. The meeting's agenda will include discussions pertaining to various upcoming international telecommunications meetings and conferences, as well as bilateral and multilateral meetings that have taken place recently. In addition, the Committee will discuss key issues of importance to U.S. communications policy interests including privacy, and security and law enforcement access issues related to cloud computing, as well as recent private sector efforts focused on the ICT aspects of international disaster response.

Members of the public may submit suggestions and comments to the ACICIP. Comments concerning topics to be addressed in the agenda should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of the meeting. All comments must be submitted in written form and should not exceed one page. Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-clearance. For placement on the pre-clearance list, please submit the following information no later than 5 p.m. on Tuesday, January 10, 2012. (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. State That You Are Requesting Pre-Clearance to a Meeting

II. Provide the Following Information

1. Name of meeting and its date and time.
2. Visitor's full name.
3. Date of birth.
4. Citizenship.
5. Acceptable forms of identification for entry into the U.S. Department of State include:
   - U.S. driver's license with photo
   - Passport
   - U.S. government agency ID
8. ID number on the form of ID that the visitor will show upon entry.
9. Whether the visitor has a need for reasonable accommodation. Such requests received after January 4, 2012, might not be possible to fulfill.

Send the above information to Joseph Burton by fax (202) 647–7407 or email *BurtonKJ@state.gov.*

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

For further information, please contact Joseph Burton, Executive Secretary of the Committee, at (202) 647–5231 or *BurtonKJ@state.gov.* General information about ACICIP and the mission of International Communications and Information Policy is available at: *http://www.state.gov/e/eb/adcom/acicip/index.htm.*

Dated: December 12, 2011.

Joseph Burton,

ACICIP Executive Secretary, Department of State.

[FR Doc. 2011–32318 Filed 12–15–11; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2011–0183]

Access to Aircraft Situation Display to Industry (ASDI) and National Airspace System Status Information (NASSI) Data

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of Interim Policy on Limiting Aircraft Data Displayed Via ASDI.

SUMMARY: As a result of recent legislation, the FAA has begun the process of amending the circumstances in which aircraft owners or operators can limit the dissemination of their aircraft data via the FAA's ASDI program. This Notice describes the immediate changes that the FAA has implemented. In a future Notice, the FAA will propose specific procedures by which owners or operators who want the FAA to block their aircraft data can express their preference regarding the FAA's release of that information via ASDI. At that time, the FAA will invite comments on the FAA's proposed procedures. In the interim, any aircraft that the FAA previously blocked under the Certified Security Concerns program published on June 3, 2011, will remain blocked. The FAA will address the future procedures concerning the blocking of those aircraft in its upcoming proposed and final procedures. In addition, the FAA is now accepting and implementing all direct requests of aircraft owners or operators to block their aircraft data from public display of ASDI and NASSI information.

DATES: This interim policy is already in effect and will remain in effect until the FAA adopts final procedures.

FOR FURTHER INFORMATION CONTACT: You may direct any questions on adding aircraft to and removing aircraft from the ASDI block list to Mr. John McClure by telephone at (540) 422–4648 or by electronic mail at *john.mcclure@faa.gov.*

SUPPLEMENTARY INFORMATION: On November 18, 2011, the President signed into law H.R. 2112, the ''Consolidated and Further Continuing Appropriations Act, 2012,'' which provides the U.S. Department of Transportation's appropriation for the balance of fiscal year 2012. Section 119A of that statute provides that:

> [n]otwithstanding any other provision of law, none of the funds made available under this Act or any prior Act may be used to implement or to continue to implement any limitation on the ability of any owner or operator of a private aircraft to obtain, upon a request to the Administrator of the [FAA], a blocking of that owner's or operator's aircraft registration number from any display of the [FAA's ASDI] data that is made available to the public, except data made available to a Government agency, for the noncommercial flights of that owner or operator.

Pub. L. 112–55, § 119A, 125 Stat. 552, 649.

In light of this appropriation language, the FAA is withdrawing the policy that it published on June 3, 2011, which required owners or operators to submit a Certified Security Concern in order to have their aircraft blocked from the public's view on public ASDI displays. The FAA will not reinstate those limitations on aircraft owners or operators at the conclusion of the current fiscal year. Instead, in early 2012, the FAA will propose and solicit comments on procedures for all aircraft owners and operators to request that the FAA block their aircraft data from the FAA's public ASDI data feed.

In the interim until the FAA finalizes the blocking procedures, the FAA is currently accepting and implementing requests that aircraft owners or operators make directly to the FAA to have their aircraft blocked from public display of ASDI and NASSI information, including those not accompanied by a Certified Security Concern. Moreover, during this period, any aircraft that the FAA previously blocked under the Certified Security Concerns program that took effect in August 2011 will remain blocked, and the FAA will specifically address the future treatment of those aircraft in its upcoming proposed and final procedures.

In order to ensure that the FAA has sufficient information to act on a blocking request, an aircraft owner or operator should specify the registration number of the aircraft, whether the requestor is an owner or operator of the aircraft, and whether the requestor desires ASDI blocking at the FAA data source or at the ASDI Subscriber level. The FAA will construe any request that does not specify whether the request is for blocking at the FAA data source or at the ASDI Subscriber level as a request to block the information at the FAA data source.

Aircraft owners and operators are advised that they may need to re-submit their blocking request at a later date, depending on the specific procedures arrived at after the FAA considers the public views expressed on the upcoming FAA proposal. Aircraft owners and operators are further advised that all ASDI information will remain available without blocking to government users of ASDI and NASSI data.

The FAA's updates to the ASDI aircraft block lists currently take effect on the first Thursday of each month. It is possible that the volume of requests and their timeliness will preclude the FAA from processing some requests in time for them to take effect during the month following their submission. Nevertheless, the FAA will process requests in the order in which the FAA receives them.

Until the FAA adopts final procedures for submitting ASDI block requests, aircraft owners or operators can submit their ASDI block requests via the electronic mail address for the prior program: *CertifiedSecurityConcern@faa.gov.* Alternatively, aircraft owners or operators can submit their request via regular mail at the mailing address specified in the June 3, 2011, final notice for the Certified Security Concerns program. For requests submitted by regular mail, the FAA prefers to receive those mail requests at: FAA ASDI Blocking Request; ATO System Operations Services, AJR–0; Wilbur Wright Building, Room 3E1500; 600 Independence Avenue SW., Washington, DC 20597.

Given the possibility that additional aircraft owners or operators will elect to have their aircraft data blocked at the ASDI Subscriber level, the FAA expects to amend its current Memorandum of Agreement with the ASDI Subscribers to reflect more specifically the new procedures. Such an amendment will not take place until after the FAA finalizes the procedural changes, however. In the meantime, ASDI Subscribers are advised that the existing Memorandum of Agreement will remain in effect insofar as it requires ASDI Subscribers to block requests based upon Certified Security Concerns, and further, that the FAA construes the Memorandum of Agreement to obligate ASDI Subscribers to filter any other aircraft data at the direction of the FAA.

Issued in Washington, DC, on December 12, 2011.

Michael P. Huerta,

Acting Administrator.

[FR Doc. 2011–32237 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee; Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Thursday, January 5, 2012, starting at 11 a.m. Eastern Standard Time. Individuals who plan to participate should contact Susan Lender, Designated Federal Officer (DFO), (the Contact Person listed below) by phone or email for the teleconference call in number. The proposed agenda for this teleconference is to review and accept a report providing input to the United Nations Office of Outer Space Affairs. This report summarizes industry input to the United Nations Committee on Peaceful Uses of Outer Space (UN COPOUS). COMSTAC members will receive a copy of the final report on approximately January 3, 2012. Members of the public may request a copy from Susan Lender, DFO (the Contact Person listed below).

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or email) by December 29, 2011, so that the information can be made available to COMSTAC members for their review and consideration before the January 5, 2012, teleconference. Written statements should be supplied in the following formats: One hard copy with original signature or one electronic copy via email.

An agenda will be posted on the FAA Web site at *http://www.faa.gov/go/ast.*

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–5), Office of Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–8029; Email *susan.lender@faa.gov.* Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011–32212 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Martin County Airport, Stuart, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the Martin County Board of County Commissioners for Martin County Airport under the provisions of 49 U.S.C. 47501 *et. Seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is December 6, 2011.

FOR FURTHER INFORMATION CONTACT: Allan Nagy, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, Extension 130.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Martin County Airport are in compliance with applicable requirements of Title 14 Code of Federal Regulations (CFR) part 150, effective December 6, 2011. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (the Act), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the airport operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by the Martin County Board of County Commissioners. The documentation that constitutes the ''Noise Exposure Maps'' as defined in Section 150.7 of 14 CFR part 150 includes: Table 4–2 Total and Average Annual Day Aircraft Operations, Base Year 2010 and Five-Year Forecast 2015; Table 4–3 Day-Night Split of Operations; Table 4–4 Total and Average Annual Day Aircraft Operations by Aircraft Category Base Year 2010 and Five-Year Forecast 2015; Table 4–5 Total Runway Utilization Rates, Fixed Wing Aircraft; Table 4–6 Night Runway Utilization Rates, Fixed Wing Aircraft; Table 4–7 Total and Night Utilization Rates, Helicopter Aircraft; Figure 4–4 Jet Arrival Flight Tracks ; Figure 4–5 Jet Departure Flight Tracks; Figure 4–6 Propeller Arrival Flight Tracks; Figure 4–7 Propeller Departure Flight Tracks; Figure 4–8 Helicopter Arrival Flight Tracks; Figure 4–9 Helicopter Departure Flight Tracks; Figure 4–10 Touch and Go Flight Tracks; Figure 5–2 2010 Existing Conditions Contours (2010 NEM); Figure 5–3 2015 Five-Year Forecast Conditions Contours (2015 NEM); Attachment 3, January 25, 2010 FAA Letter Approving 2010 Airport Master Plan Update Forecasts of Aviation Activity; Attachment 4, June 11, 2010 FAA AEE Approval Letter for the Use of Aircraft Substitutions in INM; Attachment 5, Modeled Average Daily Aircraft Operations Existing Conditions 2010 and Five-Year Forecast 2015 Conditions; Attachment 6, Figures A6–1 through A6–7, Flight Tracks by Aircraft Type with Track Assignments; Attachment 7, Flight Track Utilization Rates Existing Conditions 2010 and Five-Year Forecast 2015.

The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on December 6, 2011.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of 14 CFR part 150, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, on December 6, 2011.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 2011–32213 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–52]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 5, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–1271 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at (202) 493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frances Shaver, ARM–207, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 29, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–1271.

Petitioner: Gulfstream Aerospace LP.

Section of 14 CFR Affected: § 21.213(a).

Description of Relief Sought: Gulfstream requests relief from § 21.213(a). Gulfstream is a limited partnership company established and wholly owned by Gulfstream Aerospace Corporation to manage the Type Certificate of Gulfstream Aerospace airplane models manufactured in Israel by Israel Aerospace Industries. If granted, the exemption would allow Gulfstream to apply for a Class II provisional airworthiness certificate for the model G280 airplane.

[FR Doc. 2011–32248 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA–2011–53]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 5, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–1220 using any of the following methods:

• *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at (202) 493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frances Shaver, ARM–207, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

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

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–1220.

Petitioner: Indigenous Peoples Technology and Education Center, Inc. (ITEC).

Section of 14 CFR Affected:

14 CFR part 21, § 21.191(i)

Description of Relief Sought: The relief sought would permit an additional weight allowance for operation of a powered parachute (PPC), experimental light-sport aircraft (ELSA), intended for flight operations and operation on public roadways, similar to the weight allowance for LSA intended for operation on water. An exemption would enable ITEC to issue a statement of compliance (FAA Form 8130–15) for each ITEC ''Maverick'' PPC ELSA ''kit'' for operation at the same weight prescribed for LSA intended for operation on water. In addition, the relief sought would allow any ITEC ''Maverick'' PPC special category LSA (SLSA) to be converted to ELSA for operation in accordance with § 21.191(i)(3).

[FR Doc. 2011–32259 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jackson County, NC

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project from NC 107 to US 23–74 east of Sylva, Jackson County, North Carolina. (TIP Project R–4745).

FOR FURTHER INFORMATION CONTACT: Mr. Mitch Batuzich, Preconstruction and Environment Specialist, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601–1418, *Telephone:* (919) 747–7033.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on the proposed NC 107 Connector from NC 107 to US 23–74 east of Sylva. A notice of intent was previously published in the **Federal Register** on October 1, 2008 (Volume 73, Number 191) with the following purpose description:

''The purpose of this project is to relieve traffic congestion in the Sylva area. The proposed action is consistent with the Sylva Thoroughfare Plan adopted in 1994 and the Jackson County Comprehensive Transportation Plan that is anticipated for adoption in 2009.''

NC 107 is the major north/south transportation corridor in Jackson County and several municipalities. It is a link in NCDOT's Strategic Highway Corridors Vision Plan as part of the 70-mile long Corridor 05 between Anderson, SC and Knoxville, TN. It is an important route for regional mobility. There are no major parallel routes within 4 miles of NC 107 that could serve as an alternative for north/south through traffic. During current peak hours, portions of NC 107 between US 23 Business and NC 116 in the Sylva area have reached their traffic carrying capacity.

The purpose of the project is being revised. Traffic studies show that substantial upgrades to existing NC 107/US 23 Business are needed to provide acceptable levels of traffic service in the future. The purpose of the proposed action is to develop a transportation solution that improves the NC 107 north/south vehicular mobility by increasing average speeds for through traffic between US 23–74 and NC 107 south of Sylva. Alternatives to be studied may include: (1) The 'no-build' alternative, (2) improve existing facilities, and (3) a highway on new location.''

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. Citizens Informational Workshops and meetings with local officials and neighborhood groups will be held in the study area. Public hearings will also be held. Information on the time and place of the workshops and hearings will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing.

An interagency project team is being assembled to obtain input on major milestones during the project's development. These include the purpose and need, detailed study alternatives, bridge lengths, alignment reviews, the preferred alternative, and avoidance and minimization of environmental impacts.

The purpose and need statement for the project is being developed. To ensure that the full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program.)

Issued on: December 12, 2011.

Clarence W. Coleman, Jr.,

Director of Preconstruction & Environment, Raleigh, North Carolina.

[FR Doc. 2011–32234 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by California Department of Transportation (Caltrans) pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*) (1). The actions relate to a proposed highway project, Interstate 15 at Base Line Road (post mile [PM] 6.3 to 7.1) in the City of Rancho Cucamonga (west of I–15) and the City of Fontana (east of I–15) in San Bernardino County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*) (1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 13, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Kurt Heidelberg, Senior Environmental Planner, Environmental Studies ''D'' Branch Chief, California Department of Transportation, District 8, 464 W. 4th Street, 6th Floor MS–820, San Bernardino, CA 92401–1400; weekdays 8 a.m. to 4 p.m. (Pacific Time); telephone (909) 388–7028; email *Kurt_Heidelberg @dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and the California Department of Transportation (Caltrans) assumed environmental review and consultation responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The proposed project will Improve Interstate 15 (I–15)/Base Line Road Interchange from KP 10.1 (PM 6.3) to KP 11.4 (PM 7.1) in the City of Rancho Cucamonga (west of I–15) and the City of Fontana (east of I–15) in San Bernardino County, California. The proposed I–15/Base Line Road Interchange Project includes widening Base Line Road from 4–6 lanes by adding right and left turn lanes at East Avenue; widening East Avenue from 2–4 lanes by adding right and left turn lanes at Base Line Road; realigning and widening the southbound and the northbound diamond ramps from 1–2 lanes; adding a southbound loop On-Ramp; and adding I–15 acceleration/deceleration lanes.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on September 30, 2011, and in other documents in the FHWA project records. The EA/FONSI and other project records are available by contacting Caltrans at the address provided above. The EA/FONSI is also available for viewing at California Department of Transportation, District 8, 464 West Fourth Street, San Bernardino, California 92401–1400.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Farmland: Farmland Protection Policy Act.
3. Hazards: Resource Conservation and Recovery Act of 1976; Comprehensive Environmental Response, Compensation and Liability Act of 1980; Toxic Substances Control Act; Community Environmental Response Facilitation Act of 1992; Occupational Safety and Health Act.
4. Social: Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Title VI of the Civil Rights Act; Americans with Disabilities Act.
5. Cultural Resources/National Landmarks/Paleontology: National Historic Preservation Act of 1966; Historic Sites Act of 1935; Antiquities Act of 1906.
6. Air: Clean Air Act (amended 1990).
7. Biological Resources: Federal Endangered Species Act; Fish and Wildlife Coordination Act; Migratory Bird Treaty Act.
8. Wetlands and Water Resources: Clean Water Act; Safe Drinking Water Act; Flood Disaster Protection Act.
9. Executive Orders: 11990, Protection of Wetlands; 11988, Floodplain Management; 12088, Federal Compliance with Pollution Control; 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; 13112, Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. § 139(*l*)(1).

Issued on: December 9, 2011.

Tay Dam,

Sr. Transportation Engineer, State Program, Federal Highway Administration—Cal South Office, Los Angeles, California.

[FR Doc. 2011–32235 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Amended Notice of Limitation on Claims Against Proposed Public Transportation Project

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Amended Notice of Limitation on Claims.

SUMMARY: This notice amends the notice of final environmental actions taken by the Federal Transit Administration (FTA) for the project in the following location: King County, WA. The purpose of this amended notice is to correct a prior notice of limitation of claims for this project and provide notice of a finding of Section 106 adverse impacts by the project. This amended notice will act to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before June 13, 2012.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief

Counsel, Office of Chief Counsel, (312) 353–2577, or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The prior notice of limitation of claims at 26 **Federal Register** 72746 (November 25, 2011) is amended to read that the project has a Section 106 adverse impact instead of no impact. The project and actions that are the subject of this notice are:

1. *Project name and location:* East Link Light Rail Transit Project, King County, WA. *Project sponsor:* Central Puget Sound Regional Transit Authority (Sound Transit). *Project description:* The project extends the current light rail system an additional 18 miles from Downtown Seattle to Mercer Island and Bellevue along Interstate 90 (I–90), and then through Bellevue to Overlake and Redmond in the Puget Sound region of Washington State. The project includes 12 stations, four park-and-ride lots, and supporting facilities. The project also includes storage tracks and facilities located just north of the Hospital Station to allow for overnight storage of vehicles and daily startup operations. *Final agency actions:* Section 4(f) determination; Section 106 finding of adverse effect; regional and project-level air quality conformity; and Record of Decision, dated November 2011. *Supporting documentation:* East Link Final Environmental Impact Statement, dated July 2011.

Issued on: December 13, 2011.

Lucy Garliauskas,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2011–32305 Filed 12–15–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Request for Comment

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

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting public comments on the following information collection was published on January 13, 2011 (**Federal Register**/Vol. 76, No. 9/pp. 2442–2444).

DATES: Submit comments to the Office of Management and Budget (OMB) on or before January 17, 2012.

FOR FURTHER INFORMATION CONTACT: Alan Block at the National Highway Traffic Safety Administration, Office of Behavioral Safety Research (NTI–131), W46–499, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Block's phone number is (202) 366–6401 and his email address is *alan.block@dot.gov*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2127–New.

Title: Demonstration Tests of Different High Visibility Enforcement Models.

Form No.: NHTSA Forms 1121 and 1122.

Type of Review: Regular.

Respondents: Telephone interviews will be administered to residents in each of five selected communities who are drivers, age 18 and older, have access to a residential landline and/or a personal cell phone, and have consumed alcohol in the past year. In-person interviews will be conducted in each of the five selected communities with bar patrons age 21 and older.

Estimated Number of Respondents: 18,750 telephone interviews and 6,000 bar patron interviews.

Estimated Time per Response: 10 minutes per interview.

Total Estimated Annual Burden Hours: 4,125 hours.

Frequency of Collection: There will be three survey waves at each of the five community sites. For the telephone survey, most respondents will be interviewed once. A small subset will be re-interviewed during the second and third survey waves. For the bar patron survey, which also will involve three survey waves at each of the five community sites, each respondent will be interviewed once. That interview will be split such that questions will be asked of each respondent both during entry and exit from the bar.

Abstract: Highly visible enforcement (HVE) has had the strongest support in the research literature for effectiveness in reducing alcohol-impaired driving. The unknown at this time is the relationship of the amount of HVE to perceived risk within a community of an alcohol-impaired driver being stopped by law enforcement. In particular, does the perceived risk increase as the amount of HVE increases? And is the optimum effect on awareness and perceived risk achieved through an integrated program where HVE is integrated into regular law enforcement operations? NHTSA proposes to answer those questions by selecting community sites that will engage in different levels of HVE activity during a one-year intervention period, and monitoring community awareness of those enforcement programs and the perceived risk of an alcohol-impaired driver being stopped by law enforcement. Five sites will be selected encompassing integrated, intermediate, and more limited HVE programs.

Data collection to assess program awareness and perceived risk will be of two forms. A telephone survey will be conducted in each of the five communities prior to the onset of the intervention, at an interim point in the program, and at its conclusion, for a total of three survey waves per community. Most respondents will be interviewed once; however, a subset will be re-interviewed during the second and third survey waves to examine individual changes in perceptions and awareness over time. The initial survey wave in each community will be composed of 1,200 completed interviews. One hundred respondents in each community from the first survey wave will be re-interviewed during the second survey wave. The second wave will also include interviews with 1,200 new respondents per community for a total of 1,300 interviews. Fifty respondents re-interviewed during the second survey wave will be interviewed a final time during the third survey wave. They will be added to 1,200 new survey respondents per community for a total of 1,250 interviews.

The second form of data collection will be in-person interviews with bar patrons. The intent here is to collect information on program awareness and perceived risk from a population with a heavier concentration of individuals at-risk of driving at illegal blood alcohol concentrations (BACs) than one would find in a general population survey. Similar to the telephone surveys, there will be a baseline, interim and final data collection wave at each of the five community sites. Four hundred bar patrons will be interviewed per community per survey wave.

Respondents will be asked a few questions both upon entry and exit from the bar. Breath samples will also be taken in order to correlate BAC with awareness and perceived risk. The breath test results will not be available on-site but will be downloaded later.

In conducting the telephone interviews, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. The data collection at bars would be anonymous; no personal information that would allow anyone to identify respondents will be collected. The telephone interviews during the initial survey wave will include collection of personally identifying information from a subset of respondents in order to conduct a small number of re-interviews with them during the two subsequent survey waves. However, that information will be held exclusively by the survey contractor, protected from disclosure to any other parties, and destroyed once no longer needed for re-contacting prospective respondents. Moreover, the personally identifiable information will be separated from the survey responses.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, *Attention:* Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, or by email at *oira_submission@omb.eop.gov*, or *fax:* (202) 395–5806.

Comments Are Invited On: whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2011–32289 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2011–0170]

Reports, Forms, and Record Keeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 14, 2012.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2011–0068 using any of the following methods:

Electronic submissions: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

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

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 1–(202) 493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Carole Guzzetta, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46–499, Washington, DC 20590. Ms. Guzzetta's phone number is (202) 366–6401 and her email address is *carole.guzzetta@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How 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.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Effectiveness of Child passenger Safety Information for the Safe Transportation of Children

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—NHTSA Form.

Requested Expiration Date of Approval—3 years from date of approval.

Summary of the Collection of Information—The National Highway Traffic Safety Administration (NHTSA) proposes to collect information from parents and caregivers of children less than 13 years of age about their knowledge, behavior, and perceptions of various child passenger safety messages. Participation in the study will be voluntary. Parents and caregivers will be recruited at various locations where they often go with child passengers (*e.g.,* child care centers). They will be asked to participate in the study which will require them to go to a computer lab center and read and respond to Child Passenger Safety (CPS) messages and questions on a personal computer. A project assistant will be present to answer all questions that participants

might have. The following data will be collected: demographic information on parents/caregivers and their children; parent/caregiver understanding of the CPS messages shown to them; and parent/caregiver perception of safest behavior to follow for properly restraining their children depending on their children's age. At the conclusion of the survey, participants will receive information on child passenger safety and specific information regarding the locations of inspection stations and car seat check events that are available in the area. An incentive will also be given to all participants.

The participants would respond to the proposed surveys using touch-screen computers to reduce survey length and minimize recording errors. No personally identifiable information will be collected during the surveys.

Description of the Need for the Information and Proposed Use of the Information—NHTSA was established to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

In support of this mission, NHTSA proposes to collect information from parents and caregivers on their understanding and perceptions of child passenger safety messages. The response information is necessary to determine the most effective CPS messages that would influence parents and caregivers to seek the most appropriate restraint systems for their children (less than 13 years of age). In addition, NHTSA will publish the findings of this research study to provide information to States, localities, and other interested organizations in support of their efforts to reduce and prevent injuries among child occupants.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—NHTSA proposes to conduct computer-generated response tests with 600 parents and caregivers of young children less than 13 years of age. Data collection is expected to take place over a 3 month period in the Summer and Fall of 2012.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information—Each of the 600 participant testing sessions will last approximately 75 minutes including the initial introduction and instruction. Data collection is expected to take place over a three-month period during 2012. Therefore, the estimated annual burden is 750 hours. The participants would not incur any reporting cost from the information collection. The participants also would not incur any record keeping burden or record keeping cost from the information collection.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Jeffrey Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2011–32295 Filed 12–15–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35564 (Sub-No. 1)]

North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division—Lease Amendment Exemption—Norfolk Southern Railway Company

North Carolina & Virginia Railroad, LLC, Chesapeake & Albemarle Railroad Division (NCVR), a Class III carrier, has filed a verified notice of exemption under 49 CFR1150.41 to amend a lease with Norfolk Southern Railway Company (NSR). The Lease and Option to Purchase Agreement, dated February 28, 1990, as amended, (the Original Lease) covers 66 miles of railroad. The line runs between approximately milepost NS–8.0 at Chesapeake, Va., and approximately milepost NS–74.00 at Edenton, N.C., including related branch lines and trackage as defined in the Original Lease (the Line). The Line runs through North Hampton County, Va., and Chowan County, N.C.

NCVR states that it and NSR have agreed to extend the terms of the Original Lease and to strike and render null and void all provisions relating to the option to purchase the Line included in the Original Lease. NCVR certifies that its projected annual revenues as a result of this transaction will not exceed those that would make it a Class II rail carrier, but states that its projected annual revenue will exceed $5 million. Accordingly, NCVR is required, at least 60 days before the exemption is to become effective, to post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected line, serve a copy of the notice on the national offices of the labor unions with employees on the affected line, and certify to the Board that it has done so. 49 CFR 1150.42(e).

On December 1, 2011, NCVR certified that it posted notice of the proposed transaction at the workplace of employees on the Line on November 29, 2011, and that it served a copy of the notice on the national office of International Machinist Association of Aerospace Workers Union on November 30, 2011. Concurrent with its notice of exemption, NCVR filed a petition for waiver of the 60-day notice requirement of 1150.42(e). The Board will address NCVR's petition for waiver by separate decision, and will establish in that decision the earliest this transaction may be consummated.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed at least seven days before the exemption becomes effective.

An original and ten copies of all pleadings, referring to Docket No. FD 35564 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Scott G. Williams, 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256, and Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: December 13, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2011–32239 Filed 12–15–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Identification of Additional Entities Pursuant to Executive Order 13469

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two entities that have been identified as entities in which the Zimbabwe Mining Development Corporation, a person whose property and interests in property are blocked pursuant to Executive Order 13469 of July 25, 2008,

''Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe,'' owns, directly or indirectly, a 50 percent or greater interest. Therefore, all property and interests in property of such entities are blocked.

DATES: The identification by the Director of OFAC of the two entities named in this notice, pursuant to Executive Order 13469 of July 25, 2008, is effective December 9, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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

Background

On July 25, 2008, the President issued Executive Order 13469 with respect to Zimbabwe pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13288 of March 6, 2003, and relied upon for additional steps taken in Executive Order 13391 of November 22, 2005, in order to address the continued political repression and the undermining of democratic processes and institutions in Zimbabwe.

Section 1 of the Order blocks, with certain exceptions, all property, and interests in property, that are in, or hereafter come within, the United States or the possession or control of United States persons for persons determined by the Director of OFAC, after consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (a)(i) through (a)(viii) of Section 1.

On December 9, 2011, the Director of OFAC identified two entities in which the Zimbabwe Mining Development Corporation, an entity whose property and interests in property are blocked pursuant to Executive Order 13469, owns, directly or indirectly, a 50 percent or greater interest. Therefore, all property and interests in property of such entities are blocked.

The list of blocked entities is as follows:

Entities

- *Marange Resources (Private) Limited* (a.k.a. Marange Resources; a.k.a. Marange Resources Ltd; a.k.a. Block Wood Mining), MMCZ Building, 90 Mutare Road, Harare, Zimbabwe; P.O. Box 4101, Harare, Zimbabwe; [Zimbabwe].
- *Mbada Diamonds (Private) Limited* (a.k.a. Mbada Diamond Mining; a.k.a. Mbada Diamonds; a.k.a. Mbada; a.k.a. Condurango Investments Pvt Ltd; a.k.a. Condurango), New Office Park, Block C, Sam Levy's Village, Borrowdale, Harare, Zimbabwe; P.O. Box CY1342, Causeway, Harare, Zimbabwe; [Zimbabwe].

Dated: December 9, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–32321 Filed 12–15–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE., Form 1040A, Form 1040EZ, Form 1040NR, Form 1040NR–EZ, Form 1040X, and All Attachments to These Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR–EZ; Form 1040X; and all attachments to these forms (see the Appendix to this notice).

DATES: Written comments should be received on or before February 14, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to The OMB Unit, SE:W:CAR:MP:T:T:SP, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Chief, RAS:R:TAM, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each ''collection of information'' that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. Burden estimates for each control number are displayed in (1) PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) OMB's database of approved information collections.

Taxpayer Burden Model

The Individual Taxpayer Burden Model (ITBM) estimates burden experienced by individual taxpayers when complying with Federal tax laws and incorporates results from a survey of tax year 2007 individual taxpayers, conducted in 2008 and 2009. The approach to measuring burden focuses on the characteristics and activities undertaken by individual taxpayers in meeting their tax return filing obligations.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers in complying with the Federal tax system and are estimated separately. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples include tax return preparation fees, the purchase price of tax preparation software, submission fees, photocopying costs, postage, and phone calls (if not toll-free).

The methodology distinguishes among preparation method, taxpayer activities, taxpayer type, filing method, and income level. Indicators of tax law and administrative complexity, as reflected in the tax forms and instructions, are incorporated into the model.

Preparation methods reflected in the model are as follows:

- Self-prepared without software,
- Self-prepared with software, and
- Use of a paid preparer or tax professional.

Types of taxpayer activities reflected in the model are as follows:

- Recordkeeping,
- Tax planning,
- Gathering tax materials,
- Use of services (IRS and other),
- Form completion, and
- Form submission (electronic and paper).

Taxpayer Burden Estimates

Summary level results using this methodology are presented in Table 1 below. The data shown are the best forward-looking estimates available for income tax returns filed for tax year 2011. Note that the estimates presented in this table differ from those published in the tax form instructions and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

Table 1 shows burden estimates based upon current statutory requirements as of October 21, 2011 for taxpayers filing a 2011 Form 1040, 1040A, or 1040EZ tax return. Time spent and out-of-pocket costs are presented separately. Time burden is broken out by taxpayer activity, with record keeping representing the largest component. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples include tax return preparation and submission fees, postage and photocopying costs, and tax preparation software costs. While these estimates do not include burden associated with post-filing activities, IRS operational data indicate that electronically prepared and filed returns have fewer arithmetic errors, implying lower post-filing burden.

Reported time and cost burdens are national averages and do not necessarily reflect a ''typical'' case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. For instance, the estimated average time burden for all taxpayers filing a Form 1040, 1040A, or 1040EZ is 18 hours, with an average cost of $230 per return. This average includes all associated forms and schedules, across all preparation methods and taxpayer activities. The average burden for taxpayers filing Form 1040 is about 22 hours and $290; the average burden for taxpayers filing Form 1040A is about 10 hours and $120; and the average for Form 1040EZ filers is about 7 hours and $50.

Within each of these estimates there is significant variation in taxpayer activity. For example, non-business taxpayers are expected to have an average burden of about 12 hours and $150, while business taxpayers are expected to have an average burden of about 32 hours and $410. Similarly, tax preparation fees and other out-of-pocket costs vary extensively depending on the tax situation of the taxpayer, the type of software or professional preparer used, and the geographic location.

The estimates include burden for activities up through and including filing a return but do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer arithmetic errors, implying a lower associated post-filing burden.

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR–EZ, Form 1040X; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Current Actions: The change in estimated aggregate compliance burden can be explained by three major sources—technical adjustments, statutory changes, and discretionary agency (IRS) actions.

Technical Adjustments—The largest adjustments are from incorporation of new taxpayer data, updated forecasting targets, and refinements to the estimation methodology. The incorporation of new taxpayer data to better reflect the impact of the current economic environment provides the largest adjustment.

Statutory Changes—The primary drivers for the statutory changes are credits provided in the American Recovery and Reinvestment Act (ARRA) of 2009 and implementation of new reporting requirements in the Emergency Economic Stabilization Act of 2008. The provisions listed below are more than offset by the impact of the expiring ARRA provision.

Primary examples include:

New or Changed Provisions

Capital Gains and Losses: In most cases, transactions for capital gains and losses must now be entered on the new Form 8949 and the subtotal of the sales price, basis, and adjustment amounts from Form 8949 are carried to the Schedule D. Up to six separate Forms 8949 could be required depending on the holding period of the assets, whether or not basis related to the transaction was reported by the broker, and whether a reporting document was received for the transaction. These changes were made to coincide with the new Form 1099–B basis reporting.

The number of filers affected: 21,000,000.

Alternative Minimum Tax: The AMT exemption amount was increased to $48,450 ($74,450 if married filing jointly or a qualified widow; $37,225 if married filing separately).

Had this legislation not been enacted, at least 20 million additional taxpayers would have been required to file Form 6251, Alternative Minimum Tax.

Expired Provisions

The Making Work Pay Credit expired.

The number of filers who claimed this provision in 2010: 100,000,000.

IRS Discretionary Changes—IRS discretionary changes include expanded e-file availability, registration fees for paid preparers, and fees for a new competency exam for certain preparers.

Discretionary changes also include a change for the repayment of the first-time homebuyer credit. Repayment may now be made without attaching Form 5405.

The number of filers affected: 550,000.

These initiatives have a net effect of a slight decrease in time that is not shown due to rounding as well as a net effect of increasing money burden.

Total—Taken together, the changes discussed above have decreased the total reported burden by 22,000,000 hours.

Type of Review: Revision of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 153,200,000.

Total Estimated Time: 2.679 billion hours (2,679,000,000 hours).

Estimated Time Per Respondent: 17.49 hours.

Total Estimated Out-of-Pocket Costs: $34.131 billion ($34,131,000,000).

Estimated Out-of-Pocket Cost per Respondent: $230.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 12, 2011.

Yvette Lawrence,

IRS Supervisory Tax Analyst.

TABLE 1—ESTIMATED AVERAGE TAXPAYER BURDEN FOR INDIVIDUALS BY ACTIVITY

[The average time and costs required to; complete and file Form 1040, Form 1040A, Form 1040EZ, their schedules, and accompanying forms will vary depending on individual circumstances. The estimated averages are:]

Primary form filed or type of taxpayer	Percentage of returns	Average time burden (hours)						
		Total time *	Record keeping	Tax planning	Form completion	Form submission	All other	Average cost (dollars) **
All taxpayers Primary forms filed	100	18.0	8.0	2.0	4.0	1.0	3.0	$230
1040	68	22.0	10.0	3.0	4.0	1.0	3.0	290
1040A	19	10.0	4.0	1.0	3.0	1.0	2.0	120
1040EZ	13	7.0	2.0	1.0	2.0	1.0	1.0	50
Nonbusiness ***	70	12.0	5.0	2.0	3.0	1.0	2.0	150
Business ***	30	32.0	16.0	4.0	6.0	1.0	4.0	410

Detail may not add to total time due to rounding. Dollars rounded to the nearest $10.

* A ''business'' filer files one or more of the following with Form 1040: Schedule C, C–EZ, E, F, Form 2106, or 2106–EZ. A ''non-business'' filer does not file any of these schedules or forms with Form 1040 or if you file Form 1040A or 1040EZ.

TABLE 2—ICB ESTIMATES FOR THE 1040/A/EZ/NR/NR–EZ/X

[Series of returns and supporting forms and schedules]

	FY 2012				
	Previously approved FY11	Program change due to adjustment	Program change due to new legislation	Program change due to agency	FY12
Number of Taxpayers	146,700,000	6,500,000			153,200,000
Burden in Hours	2,701,000,000	16,000,000	(37,000,000)		2,679,000,000
Burden in Dollars	35,193,000,000	(673,000,000)	(418,000,000)	29,000,000	34,131,000,000

APPENDIX

Forms	Filed by individuals and others	Title
673		Statement for Claiming Exemption From Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911.
926	X	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	X	Application To Use LIFO Inventory Method.
972	X	Consent of Shareholder To Include Specific Amount in Gross Income.
982	X	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
1040		U.S. Individual Income Tax Return.
1040 SCH A		Itemized Deductions.
1040 SCH B		Interest and Ordinary Dividends.
1040 SCH C	X	Profit or Loss From Business.
1040 SCH C–EZ	X	Net Profit From Business.
1040 SCH D		Capital Gains and Losses.
1040 SCH D–1		Continuation Sheet for Schedule D.
1040 SCH E	X	Supplemental Income and Loss.
1040 SCH EIC		Earned Income Credit.
1040 SCH F	X	Profit or Loss From Farming.
1040 SCH H	X	Household Employment Taxes.
1040 SCH J		Income Averaging for Farmers and Fishermen.
1040 SCH R		Credit for the Elderly or the Disabled.
1040 SCH SE		Self-Employment Tax.
1040 A		U.S. Individual Income Tax Return.
1040ES (NR)		U.S. Estimated Tax for Nonresident Alien Individuals.
1040ES (PR)		Estimated Federal Tax on Self Employment Income and on Household Employees (Residents of Puerto Rico).

APPENDIX—Continued

Forms	Filed by individuals and others	Title
1040 ES–OCR–V		Payment Voucher.
1040 ES–OTC		Estimated Tax for Individuals.
1040 EZ		Income Tax Return for Single and Joint Filers With No Dependents.
1040 NR		U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ		U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
1040 V		Payment Voucher.
1040 V–OCR–ES		Payment Voucher.
1040 X		Amended U.S. Individual Income Tax Return.
1045	X	Application for Tentative Refund.
1116	X	Foreign Tax Credit.
1127	X	Application For Extension of Time For Payment of Tax
1128	X	Application To Adopt, Change, or Retain a Tax Year.
1310		Statement of Person Claiming Refund Due a Deceased Taxpayer.
2106		Employee Business Expenses.
2106 EZ		Unreimbursed Employee Business Expenses.
2120		Multiple Support Declaration.
2210	X	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
2210 F	X	Underpayment of Estimated Tax by Farmers and Fishermen.
2350		Application for Extension of Time To File U.S. Income Tax Return.
2350 SP		Solicitud de Prórroga para Presentar la Declaración del Impuesto Personal sobre el Ingreso de los Estados Unidos.
2439	X	Notice to Shareholder of Undistributed Long-Term Capital Gains.
2441		Child and Dependent Care Expenses.
2555		Foreign Earned Income.
2555 EZ		Foreign Earned Income Exclusion.
2848	X	Power of Attorney and Declaration of Representative.
3115	X	Application for Change in Accounting Method.
3468	X	Investment Credit.
3520	X	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
3800	X	General Business Credit.
3903		Moving Expenses.
4029		Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4070 A		Employee's Daily Record of Tips.
4136	X	Credit for Federal Tax Paid On Fuels.
4137		Social Security and Medicare Tax on Unreported Tip Income.
4255	X	Recapture of Investment Credit.
4361		Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4562	X	Depreciation and Amortization.
4563		Exclusion of Income for Bona Fide Residents of American Samoa.
4684	X	Casualties and Thefts.
4797	X	Sales of Business Property.
4835		Farm Rental Income and Expenses.
4852	X	Substitute for Form W–2, Wage and Tax Statement or Form 1099–R, Distributions From Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
4868		Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4868 SP		Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos.
4952	X	Investment Interest Expense Deduction.
4970	X	Tax on Accumulation Distribution of Trusts.
4972	X	Tax on Lump-Sum Distributions.
5074		Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5213	X	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
5329		Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
5405		First-Time Homebuyer Credit.
5471	X	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5471 SCH J	X	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
5471 SCH M	X	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH O	X	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5695		Residential Energy Credits.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
5713	X	International Boycott Report.
5713 SCH A	X	International Boycott Factor (Section 999(c)(1)).
5713 SCH B	X	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	X	Tax Effect of the International Boycott Provisions.
5754	X	Statement by Person(s) Receiving Gambling Winnings.
5884	X	Work Opportunity Credit.
6198	X	At-Risk Limitations.
6251		Alternative Minimum Tax—Individuals.
6252	X	Installment Sale Income.
6478	X	Credit for Alcohol Used As Fuel.
6765	X	Credit for Increasing Research Activities.
6781	X	Gains and Losses From Section 1256 Contracts and Straddles.
8082	X	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
8275	X	Disclosure Statement.
8275 R	X	Regulation Disclosure Statement.
8283	X	Noncash Charitable Contributions.
8332		Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379		Injured Spouse Claim and Allocation.
8396		Mortgage Interest Credit.
8453		U.S. Individual Income Tax Declaration for an IRS e-file Return.
8582	X	Passive Activity Loss Limitations.
8582 CR	X	Passive Activity Credit Limitations.
8586	X	Low-Income Housing Credit.
8594	X	Asset Acquisition Statement.
8606		Nondeductible IRAs.
8609–A	X	Annual Statement for Low-Income Housing Credit.
8611	X	Recapture of Low-Income Housing Credit.
8615		Tax for Certain Children Who Have Investment Income of More Than $1,800.
8621	X	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8621–A	X	Late Deemed Dividend or Deemed Sale Election by a Passive Foreign Investment Company.
8689		Allocation of Individual Income Tax To the Virgin Islands.
8693	X	Low-Income Housing Credit Disposition Bond.
8697	X	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8801	X	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
8812		Additional Child Tax Credit.
8814		Parents' Election To Report Child's Interest and Dividends.
8815		Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
8818		Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8820	X	Orphan Drug Credit.
8821	X	Tax Information Authorization.
8822	X	Change of Address.
8824	X	Like-Kind Exchanges.
8826	X	Disabled Access Credit.
8828		Recapture of Federal Mortgage Subsidy.
8829		Expenses for Business Use of Your Home.
8832	X	Entity Classification Election.
8833	X	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)
8834	X	Qualified Electric Vehicle Credit.
8835	X	Renewable Electricity and Refined Coal Production Credit.
8838	X	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8839		Qualified Adoption Expenses.
8840		Closer Connection Exception Statement for Aliens.
8843		Statement for Exempt Individuals and Individuals With a Medical Condition.
8844	X	Empowerment Zone and Renewal Community Employment Credit.
8845	X	Indian Employment Credit.
8846	X	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8847	X	Credit for Contributions to Selected Community Development Corporations.
8853		Archer MSAs and Long-Term Care Insurance Contracts.
8854		Initial and Annual Expatriation Information Statement.
8858	X	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8858 SCH M	X	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
8859		District of Columbia First-Time Homebuyer Credit.
8860	X	Qualified Zone Academy Bond Credit.
8861	X	Welfare-to-Work Credit.
8862		Information To Claim Earned Income Credit After Disallowance.
8863		Education Credits.
8864	X	Biodiesel Fuels Credit.
8865	X	Return of U.S. Persons With Respect to Certain Foreign Partnerships.
8865 SCH K–1	X	Partner's Share of Income, Credits, Deductions, etc.
8865 SCH O	X	Transfer of Property to a Foreign Partnership.
8865 SCH P	X	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
8866	X	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8873	X	Extraterritorial Income Exclusion.
8874	X	New Markets Credit.
8878		IRS e-file Signature Authorization for Form 4868 or Form 2350.
8878 SP		Autorizacion de firma para presentar por medio del IRS e-file para el Formulario 4868(SP) o el Formulario 2350(SP).
8879		IRS e-file Signature Authorization.
8879 SP		Autorizacion de firma para presentar la Declaracion por medio del IRS e-file.
8880		Credit for Qualified Retirement Savings Contributions.
8881	X	Credit for Small Employer Pension Plan Startup Costs.
8882	X	Credit for Employer-Provided Childcare Facilities and Services.
8885		Health Coverage Tax Credit.
8886	X	Reportable Transaction Disclosure Statement.
8888		Allocation of Refund (Including Savings Bond Purchases.
8889		Health Savings Accounts (HSAs).
8891		U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.
8896	X	Low Sulfur Diesel Fuel Production Credit.
8898		Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
8900	X	Qualified Railroad Track Maintenance Credit.
8903	X	Domestic Production Activities Deduction.
8906		Distills Spirits Credit.
8907		Nonconventional Source Fuel Credit.
8908		Energy Efficient Home Credit.
8910		Alternative Motor Vehicle Credit.
8911		Alternative Fuel Vehicle Refueling Property Credit.
8914		Exemption Amount for Taxpayers Housing Midwestern Displaced Individuals.
8915		Qualified Hurricane Retirement Plan Distribution and Repayments.
8917		Tuition and Fees Deduction.
8919		Uncollected Social Security and Medicare Tax on Wages.
8925	X	Report of Employer-Owned Life Insurance Contracts.
8931	X	Agricultural Chemicals Security Credit.
8932	X	Credit for Employer Differential Wage Payments.
9465		Installment Agreement Request.
9465 SP		Solicitud para un Plan de Pagos a Plazos.
Notice 2006–52		
Notice 160920–05		Deduction for Energy Efficient Commercial Buildings.
Pub 972 Tables		Child Tax Credit.
REG–149856–03		Notice of Proposed Rulemaking Dependent Child of Divorced or Separated Parents or Parents Who Live Apart.
SS–4	X	Application for Employer Identification Number.
SS–8	X	Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
T (Timber)	X	Forest Activities Schedules.
W–4		Employee's Withholding Allowance Certificate.
W–4 P		Withholding Certificate for Pension or Annuity Payments.
W–4 S		Request for Federal Income Tax Withholding From Sick Pay.
W –4 SP		Certificado de Exencion de la Retencion del Empleado.
W–4 V		Voluntary Withholding Request.
W–7		Application for IRS Individual Taxpayer Identification Number.
W–7 A		Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W–7 SP		Solicitud de Numero de Identicacion Personal del Contribuyente del Servicio de Impuestos Internos.

Forms Removed From this ICR:

Reason for Removal:

Forms Added to This ICR:

9465–FS, 9465–FS (SP) Installment Agreement Request

Justification for Addition:

[FR Doc. 2011–32303 Filed 12–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2011–65

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2011–65, Alabama Low-Income Housing Relief Credit.

DATES: Written comments should be received on or before February 14, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Alabama Low-Income Housing Relief Credit.

OMB Number: 1545–2216.

Notice Number: Notice 2011–65.

Abstract: The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States to provide emergency housing relief needed as a result of the devastation caused by severe storms, tornadoes, straight-line winds and flooding in Alabama beginning on April 15, 2011.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 600.

Estimated Average Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–32307 Filed 12–15–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 10, 2012.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–(888) 912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be held Tuesday, January 10, 2012, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–(888) 912–1227 or (954) 423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: December 12, 2011.

Linda Rivera,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–32311 Filed 12–15–11; 8:45 am]

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Part II

Department of Housing and Urban Development

24 CFR Parts 91 and 92

HOME Investment Partnerships Program: Improving Performance and Accountability; and Updating Property Standards; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 92

[Docket No. FR–5563–P–01]

RIN 2501–AC94

HOME Investment Partnerships Program: Improving Performance and Accountability; and Updating Property Standards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: HUD's HOME Investment Partnerships Program (HOME program or HOME) provides formula grants to states and units of local government to fund a wide range of activities directed to producing or maintaining affordable housing, both homes and rental housing. This proposed rule would amend the HOME regulations to address many of the operational challenges facing participating jurisdictions, particularly challenges related to recent housing market conditions and the alignment of federal housing programs. The proposed rule would also clarify certain existing regulatory requirements and establish new requirements designed to enhance accountability by States and units of local government in the use of HOME funds, strengthen performance standards and require more timely housing production. The proposed rule would also update property standards applicable to housing assisted by HOME funds.

DATES: *Comment Due Date:* February 14, 2012

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

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

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

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

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

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Deputy Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7164, Washington, DC 20410; telephone number (202) 708–2684 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The HOME Program

The HOME program was authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 *et seq.*), known as NAHA, and has been in operation for 20 years. The HOME program provides grants to states and local jurisdictions (collectively, participating jurisdictions) used, often in partnership with local nonprofit groups, to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership or to fund direct rental assistance to low-income people. HOME program funds are awarded annually as formula grants to participating jurisdictions. HUD establishes a HOME Investment Trust Fund for each grantee, providing a line of credit that the jurisdiction may draw upon as needed. The participating jurisdictions are allowed to use their HOME funds as grants, direct loans, loan guarantees, or other forms of credit enhancement, or as rental assistance or security deposits.

The HOME program is the largest federal block grant to States and local governments that is designed exclusively to create affordable housing for low-income households. Each year, the program allocates approximately $1 to $2 billion among the states and hundreds of localities nationwide. The program was designed to reinforce several important values and principles of community development. First, the HOME program's flexibility empowers people and communities to design and implement strategies tailored to their own needs and priorities. Second, the HOME program's emphasis on consolidated planning expands and strengthens partnerships among all levels of government and the relationship with the private sector in the development of affordable housing. Third, the HOME program's technical assistance activities and set-aside for qualified community-based nonprofit housing groups helps to build the capacity of these partners. Fourth, the HOME program's requirement that participating jurisdictions match 25 cents of every dollar in program funds helps to mobilize community resources in support of affordable housing.

The regulations for the HOME program are codified in 24 CFR part 92 and were last substantively revised by final rule issued on September 16, 1996 (61 FR 48750). In the 15 years since the promulgation of the 1996 final rule, many HOME participating jurisdictions have adopted more complex program designs. They have encountered new challenges in administering their programs and in managing their growing portfolios of older HOME projects. These challenges include reduced availability of states or local funding sources, reduced private lending, changes in housing property standards, and energy codes and reductions in states and local government workforces throughout the Nation. These challenges have been magnified by current housing and credit market conditions. Since establishment of the HOME program, HUD has monitored participating

jurisdictions' use of HOME funds and measured participating jurisdictions' performance. Through such monitoring and audits by HUD's Office of Inspector General (OIG), HUD has identified and corrected compliance problems and has gained a fuller understanding of regulatory provisions that need to be strengthened or clarified to help avoid noncompliance and maximize effectiveness.

HUD has invested significant time and resources in helping participating jurisdictions correct financial and physical problems that threaten the viability of some HOME-assisted rental projects in their portfolios. HUD has determined that participating jurisdictions need additional tools and flexibility to effectively address troubled projects. Over the last several years, HUD has developed numerous publicly available reports that measure the performance and effectiveness of each participating jurisdiction. HUD's review of these reports has identified performance and reporting problems among participating jurisdictions that cannot be addressed effectively under the current regulations.

Accordingly, through this rule, HUD proposes regulatory changes to address many of the operational challenges facing participating jurisdictions, improve understanding of HOME program requirements, update property standards to which housing funded by HOME funds must adhere, and strengthen participating jurisdictions' accountability for both compliance with program requirements and performance.

II. This Proposed Rule

A. Changes to HUD's Consolidated Plan Regulations

Action Plan Amendments (§§ 91.220, 91.320)

This proposed rule would make several changes to the action plan sections of HUD's Consolidated Plan regulations in 24 CFR part 91, as well as those in HUD's HOME program regulations in 24 CFR part 92.

Sections 91.220(l)(i) and (ii) of the Consolidated Plan regulations and §§ 92.205(b) and 92.254(a)(5) of the HOME program regulations would be revised to clarify that HUD's approval (or failure to disapprove) a consolidated plan does not automatically approve forms of investment of HOME funds other than those described in § 92.205(b), or of resale or recapture guidelines submitted by the participating jurisdiction. Because the HOME regulations at § 92.205(b)(1) require that HUD determine that other forms of investment proposed by a participating jurisdiction be consistent with the purposes of 24 CFR part 92, the other forms of investment must be approved in writing by HUD separate from the consolidated plan approval letter. The consistency of other forms of investment with HOME program purposes is not indirectly established simply by HUD's approval of a consolidated plan that proposes such other forms of investment.

This proposed rule also amends § 91.220 to provide participating jurisdictions with some flexibility in determining the maximum purchase price for single family housing assisted with HOME funds for homebuyer assistance or rehabilitation of owner-occupied single family housing. Section 215(b) of NAHA requires that the value of homeownership units assisted with HOME funds not exceed 95 percent of the area median purchase price for single family housing, as determined by HUD. HUD's current regulations at § 92.254(a)(2)(iii) permits participating jurisdictions to use the single family mortgage limits of the Federal Housing Administration (FHA) that are established under section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) to determine the area median purchase price. The proposed rule would provide that a participating jurisdiction that opts not to use the HUD-issued 95 percent of median purchase price for the purpose of determining ''modest housing'' for homebuyer assistance or rehabilitation of owner-occupied single family properties may instead calculate a limit based upon recent sales within the jurisdiction. The current regulations at 24 CFR 92.254(a)(2)(ii) require these participating jurisdictions to submit the limit and supporting sales price documentation to HUD. However, the regulations do not specify that this information be submitted as part of the consolidated plan annual action plan, making it possible for the participating jurisdiction to submit new limits at any point in its program year. HUD has concluded that it is most appropriate for this calculation to be just prior to the start of, and for the resulting value limit to be made applicable to, a participating jurisdiction's program year. Consequently, HUD proposes to amend §§ 91.220(l)(2)(iv) and 91.320(k)(2)(iv) to require such a participating jurisdiction to include in its action plan its calculation of 95 percent of the median area purchase, in accordance with the criteria and formula provided in § 92.254(a)(2)(iii).

The proposed rule would require participating jurisdictions to include more information about the expenditure of HOME program funds in their action plans. The inclusion of more information about the participating jurisdiction's planned expenditure of HOME funds not only assists HUD in its monitoring of the jurisdiction's expenditure of taxpayers' funds, but allows the citizens of the jurisdiction to weigh in with their views on the proposed expenditures as part of citizens' participation in the development and review of the consolidated plan. For example, the participating jurisdiction would be required under §§ 91.220(l)(2)(v) and 91.320(k)(2)(v) to describe the applicants that are eligible to apply for the HOME program, as well as the jurisdiction's process for soliciting and funding applications or proposals. Sections 91.220(l)(2)(vi) and 91.320(k)(2)(vi) of the proposed rule would also permit the participating jurisdiction to limit the beneficiaries or give preferences in its programs to a particular segment of the low-income population.

Participating jurisdictions have asked if they could limit rental projects to artists or nurses, or if they could limit a homebuyer program to persons in a specific occupation (*e.g.,* artists, police officers, or teachers). Under HUD's authority to determine appropriate categories of persons to be targeted for housing assistance under the HOME program, the proposed rule would expressly permit these limitations. However, a participating jurisdiction would not be permitted to limit participation in a HOME-funded program or occupancy in a HOME-assisted project solely to its own employees of the jurisdiction because doing so would create at least the appearance of a conflict of interest and would require that the participating jurisdiction seek an exception to the conflict-of-interest provisions pursuant to 24 CFR 92.356(d) for every potential beneficiary. A rental project could be limited to a particular subpopulation only if the jurisdiction described the limitation or preference in its action plan, and specifically authorized the project owner to limit tenant selection in its written agreement with the owner, in accordance with the proposed revisions at § 92.253(d). A limitation or preference must not violate such nondiscrimination laws as the Fair Housing Act (42 U.S.C. 3601–19), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d–4) (Nondiscrimination in Federally Assisted Programs), the Age Discrimination Act (42 U.S.C. 6101–6107), section 504 of the Rehabilitation

Act of 1973 (29 U.S.C. 794), and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), and the implementing regulations of these statutes.

B. Changes to the HOME Program Regulations

1. Definitions (§ 92.2)

For the convenience in use of the HOME program regulations, HUD proposes to add cross-references for the definitions of ''public housing,'' ''Community Development Block Grant (CDBG) program,'' and ''Consolidated Plan'' in § 92.2. These terms are used in the HOME regulations, and HUD determined that it would be helpful to readers to include cross-references to where these terms are defined in HUD regulations.

Commitment. HUD proposes to make several changes to the definition of ''commitment'' in § 92.2. This term is currently defined to mean, generally, that a participating jurisdiction has executed a legally binding agreement with a state recipient, a subrecipient, or a contractor to use a specific amount of HOME funds for a specified use or for a specified local project.

First, a revision is proposed to include an agreement with a state recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to provide downpayment assistance. Participating jurisdictions commonly fund such entities to produce affordable housing, provide downpayment assistance, or administer a tenant-based rental assistance program, but the regulation did not expressly include them in the definition of ''commitment.''

Second, the definition of commitment is being revised to remove references to reserving funds to community housing development organizations (CHDOs), so that such reservations, which are not project-specific, would no longer be considered a commitment under the HOME regulation. This change is discussed further below with other proposed changes affecting funding for CHDOs under subpart G of the HOME program regulations.

HUD has encountered situations in which participating jurisdictions have produced agreements without dated signatures as evidence of a commitment before the 24-month deadline. The HOME statute and regulations require HOME funds to be committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement. The lack of a dated signature calls into question when the commitment was made, therefore making it difficult to determine whether the funds have been committed within the 24-month deadline. Accordingly, the definition of ''commitment'' is proposed to be amended to require that the signature of each party to the agreement must be dated. The definition is also proposed to be amended to include a cross-reference to the requirements for written agreements in § 92.504(c), which will help ensure that the agreements evidencing commitment meet the standards for written agreements as provided in § 92.504(c).

HUD further proposes to revise the definition of ''commitment'' to expressly exclude: (1) An agreement between a participating jurisdiction and a subrecipient that the participating jurisdiction controls, *e.g.,* an agency whose officials or employees are officials or employees of the participating jurisdiction, and (2) an agreement between the jurisdiction that is the lead member of the consortium and local government that is a member of the consortium. The existing definition provides that a commitment is a legally binding agreement between the participating jurisdiction and another entity to provide funds to undertake specified HOME activities. In both of these instances, the participating jurisdiction is essentially entering into an agreement not with a separate entity, but with an entity that is part of the participating jurisdiction, such that a legally binding agreement with another entity is not created.

Community housing development organization. The definition of ''community housing development organization'' (CHDO) in § 92.2 would be amended to add a reference to the Internal Revenue Service (IRS) regulations that implement section 501(c)(4) of the Internal Revenue Code, which was inadvertently omitted from the regulation.

The CHDO definition is also proposed to be revised to clarify the relationship between the CHDO and the organization that may create the CHDO. New paragraph (3)(iv) of the definition would clarify that if a for-profit entity creates or sponsors a nonprofit entity that seeks designation as a CHDO, the officers and employees of the for-profit entity would be prohibited from serving as officers or employees of the CHDO, and the nonprofit entity would be prohibited from using the office space of the for-profit entity. This requirement would add to the existing regulatory provisions that are intended to prevent the nonprofit entity from being influenced by the profit motive of the for-profit entity.

The proposed rule would also revise paragraph (5) of the definition to clarify that the CHDO must be separate from and not under the control of a governmental entity, in keeping with the statutory requirement that a CHDO maintain accountability to the low-income community it serves through its governing board make-up and otherwise. A governmental entity would still be permitted to create a CHDO, but it would not be permitted to control the CHDO by providing its employees to the CHDO as staff or officers.

Paragraph (9) of the existing definition of CHDO at § 92.2 permits a nonprofit organization to meet the demonstrated capacity requirement for CHDO designation if the organization has engaged a consultant who will carry out activities while also training key CHDO staff. This provision was intended to facilitate capacity building of community-based nonprofit organizations transitioning into the role of housing developer. HUD is concerned that some CHDOs have continued to rely on the use of expert consultants for core development experience and have not developed the internal capacity to function effectively in the developer role. This proposed rule would revise paragraph (9) of the definition to strengthen the requirement that CHDOs must have paid employee staff with housing development experience in order to be designated as a CHDO. Nonprofit organizations would no longer be able to meet the demonstrated capacity requirement through the use of consultants and through a plan for staff to be trained by the consultants.

The proposed rule would also provide that the demonstrated capacity requirement cannot be met through the use of volunteers. The continued use of consultants or volunteers to fill occasional skill gaps or undertake activities that are required only on a periodic basis (*e.g.,* project underwriting) continues to be appropriate, but cannot be the basis of a determination that a CHDO has demonstrated capacity to develop affordable housing.

Homeownership. The proposed rule would rearrange existing provisions in the definition of ''homeownership'' in § 92.2 for improved organization of the definition. In addition, the revised definition would provide that a right to possession under a contract for deed, installment contract, or land sales contract (pursuant to which the deed is not given until the final payment is made) is not homeownership. These mechanisms, which are common in

certain areas of the country, are financing arrangements through which interested homebuyers enter into a payment arrangement directly with the seller. In most cases, there is no language in the contract protecting the homebuyer in the event of a late or missed payment. Whereas mortgage principal payments increase the homeowner's equity in the property over time, and the title is transferred to the homebuyer at the closing, payments made under a land sales contract arrangement typically do not constitute equity, and the title is not required to be transferred to the homebuyer until the very last payment has been made. Even in states that have statutes recognizing the equitable interest of the homebuyer, the protections given to homebuyers under these financing mechanisms are not equal to those given to homebuyers who receive title to the housing and finance the purchase through a mortgage. For these reasons, land sales contracts are not considered to be an eligible form of homeownership under the HOME program. HUD encourages the use of HOME funds to assist low-income households who have entered into a contract for deed to obtain equitable title to the property.

The definition of ''homeownership'' would also be revised to make explicit that mutual or cooperative housing that receives assistance through a Low-Income Housing Tax Credit (LIHTC) program is not considered homeownership housing under the HOME program because a project receiving LIHTC is a rental project.

Housing. HUD proposes to amend the definition of ''housing'' in § 92.2 to exclude all student housing. The current regulations exclude only student dormitories. However, the use of HOME funds for student housing in any configuration, is inconsistent with the statutory purposes of the program. The focus of the HOME program is affordable housing for low-income households, and student housing, regardless of the configuration, does not constitute affordable housing for low-income households as contemplated by the HOME statute. In addition, the proposed rule would amend the definition to clarify that dormitories, including those for farmworkers, do not constitute housing.

With respect to what constitutes housing under the HOME program, HUD has encountered cases where participating jurisdictions have proposed to use HOME funds for buildings considered to be housing by the participating jurisdiction, but that do not constitute housing under the HOME program. Examples of such uses are hospice buildings, nursing homes, foster homes, halfway houses, and residential treatment facilities. HUD emphasizes that the mere fact that a building physically resembles housing or that a person lives in a building for some period of time does not qualify that building as housing for HOME program purposes. The use of HOME funds is statutorily limited to permanent and transitional housing. No HOME funds may be used for any activity that does not qualify as permanent or transitional housing. One indication that the building is a facility, not housing, is the lack of a lease for the residents. All HOME-assisted rental housing units must have leases for the tenants that provide the HOME tenant protections outlined in § 92.253(a).

Low-income families and very low-income families. HUD proposes to revise the definition of ''low-income families'' and ''very low-income families'' in § 92.2 to exclude students from qualifying as a low-income or very low-income family. Specifically, the regulation would be revised to be consistent with recent statutory changes to the Housing Choice Voucher program, which prohibit voucher assistance to individuals who are enrolled in an institution of higher learning from qualifying as a low-income family if the individual is under 24 years of age, is not a military veteran, is unmarried, does not have a dependent child, and is not otherwise individually low-income or does not have parents who are low-income.[1] This statutory change was made to the Housing Choice Voucher program in response to incidents of college students who were obtaining federal housing assistance but did not meet the low-income eligibility requirements, and were therefore depriving eligible families from receiving voucher assistance. Adoption, in the HOME program, of the exclusion of assistance to students would achieve the same goals as those for which the prohibition was put in place in the Housing Choice Voucher program. Accordingly, in the HOME program, students would be prohibited from renting HOME-assisted rental units, receiving HOME tenant-based rental assistance, or otherwise participating in the HOME program independent of their families.

Project completion. HUD proposes to amend the definition of ''project completion'' in § 92.2 to clarify the conditions that must be met for projects to be considered completed. This change is made in response to questions from participating jurisdictions regarding the point at which they can complete a project in the Integrated Disbursement and Information System (IDIS), the HOME data system. For example, the rule will make clear that a rental project may be designated as completed in IDIS once construction or rehabilitation is completed, but before all units are occupied.

Program income. HUD proposes to amend the definition of ''program income'' in § 92.2 to clarify that program income does not include gross income from the use, rental, or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient, or state recipient. The existing regulations provide that program includes ''gross income from the use or rental of real property, owned by the participating jurisdiction, state recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income. However, gross income does not constitute program income in the case of the use, rental, or sale of real property when the gross income is that received by the project owner, developer, or sponsor. Owners, developers, and sponsors of housing are not the participating jurisdiction, a state recipient, or a subrecipient administering all or a portion of the participating jurisdiction's HOME program. Consequently, gross income received by these entities is not program income by the terms of the existing definition.

Reconstruction. The definition of ''reconstruction'' at § 92.2 is proposed to be amended, based on difficulties encountered by participating jurisdictions attempting to rebuild housing after disasters. The current regulations state that housing can be rebuilt under the reconstruction category only if the housing was standing on the site at the time of project commitment. In the case of disasters or fires, the housing may no longer be standing on the site at the time when the opportunity for project commitment arises. Consequently, the current regulations require such reconstructed units to be classified as new construction, resulting in longer periods of affordability for rental projects and the imposition of resale or recapture provisions on displaced owner-occupants.

[1] HUD's Housing Choice Voucher Program regulations were amended by final rule published on December 30, 2005 (70 FR 57743, as subsequently amended on August 21, 2008 at 73 FR 49333), which implemented this prohibition assistance, and which is codified at 24 CFR 5.612.

HUD proposes to provide an exception to the reconstruction requirement that the housing must be standing on a site at the time of project commitment. The exception would permit housing that was destroyed or severely damaged and subsequently demolished to be rebuilt on the same lot under the reconstruction category, if the HOME funds are committed within 12 months of the date of destruction or damage. The one-year period for committing HOME funds to reconstruct a destroyed property by a disaster will provide sufficient flexibility to respond effectively to most natural disasters or fires. This period could be extended by waiver for good cause if the circumstances or scale of a particular disaster make the proposed time frames infeasible.

Single room occupancy. The definition of ''single room occupancy (SRO)'' housing in § 92.2 is proposed to be revised. The HOME regulations provide participating jurisdictions with flexibility with respect to classifying a property as a SRO project or a group home, depending on the physical configuration of the project. Classifying a project as a SRO results in larger potential subsidies and higher gross rent than could be obtained under a group home designation, because the SRO contains more than one unit and a group home is only one unit. However, some participating jurisdictions fail to take their own zoning and building code classifications into account when making this determination for HOME. This rule proposes to require that a project could be designated as an SRO for HOME purposes only if a project having the characteristics of an SRO would be consistent with the participating jurisdiction's applicable building and zoning code classifications.

Subrecipient. HUD proposes to make minor revisions to the definition of ''subrecipient'' in § 92.2. Participating jurisdictions have stated that the roles of subrecipients and developers in the HOME program are not always clearly distinguished. Language is therefore proposed to be added to the definition of ''subrecipient'' that would state that HOME subrecipients receive funds to carry out *programs* (*e.g.,* downpayment assistance programs, owner-occupied rehabilitation programs, etc.), not to undertake specific *projects.*

2. Program Requirements

a. Jointly Funded Projects of Contiguous Jurisdictions (§ 92.201)

Section 218(a) of the NAHA (42 U.S.C. 12748(a)) prohibits a participating jurisdiction from investing HOME funds in projects outside its boundaries, except for projects located in a contiguous jurisdiction that are joint projects that serve the residents of both jurisdictions. HUD has found that participating jurisdictions would be aided by HUD elaborating on what it means to jointly fund a project. HUD therefore proposes to revise § 92.201 to provide that a jointly funded project is one in which both jurisdictions make a financial contribution to the project. A financial contribution would be permitted to take the form of a grant, loan, or relief of a significant tax or fee (such as waiver of impact fees, property taxes, or other taxes or fees customarily imposed on projects within the jurisdiction) and must contribute to the feasibility of the project.

b. Site and Neighborhood Standards (§ 92.202)

This proposed rule includes a conforming change that would update the citation in § 92.202 to the site and neighborhoods regulations, which were moved to 24 CFR 983.57(e)(2) and (3).

c. Income Determinations (§ 92.203)

HUD proposes several changes related to the calculation of the annual income of a family or household for the purpose of determining the family's or household's eligibility for HOME assistance. HUD proposes to revise § 92.203(a)(1)(i) and (a)(2) to require that, when performing income determinations for potential HOME beneficiaries using source documentation, the participating jurisdiction must examine at least 3 months of earning documentation (*e.g.,* wage statements, interest statements, unemployment compensation). This change would codify the existing standard that is already outlined in the *Technical Guide for Determining Income and Allowances for the HOME Program.* This guide allows participating jurisdictions to calculate income eligibility by examining earnings over a 3-month period or 12-month period. While participating jurisdictions would continue to be allowed to select an earnings examination period of more than 3 months, HUD proposes to codify the 3-month standard as the minimum earnings examination period that participating jurisdictions must utilize. A minimum examination period of 3 months should be sufficient to accurately reflect the income eligibility of applicants for HOME units.

HUD proposes to revise § 92.203(b)(2) to eliminate the option currently available to participating jurisdictions to use the definition of ''annual income'' that is based on income reported on the Census long form. (See Form D–61B of the U.S. Census Bureau.) This option was rarely used by participating jurisdictions because the other definitions permitted by the regulations—the 24 CFR part 5 ''annual income'' definition and the Internal Revenue Service (IRS) ''adjusted gross income'' definition- are broadly used in other housing programs. Further, unlike the other definitions of annual income permitted under the HOME regulations, there is not adequate, accessible guidance available from the U.S. Census Bureau regarding how a wide range of situations that arise for HOME-assisted households should be treated. Participating jurisdictions would continue to have the option of using either the income definition in HUD's regulations at 24 CFR part 5 (often referred to as the Section 8 definition) or the definition of adjusted gross income of the IRS.

HUD is also proposing to revise the definition of annual income that is based on the IRS definition of ''adjusted gross income.'' This definition of annual income would be redesignated as § 92.203(b)(2) and revised to require that federal government cost-of-living allowances that are not included in adjusted gross income (*e.g.,* for a federal civilian employee or a federal court employee who is stationed in Alaska, Hawaii, or outside the United States) be added to the adjusted gross income of applicants for HOME assistance for the purpose of determining income eligibility. Currently, these employees receive substantial cost-of-living allowances that may not be subject to federal tax and may not be included in adjusted gross income. The result is that when participating jurisdictions in these areas use the adjusted gross income definition for their HOME programs, individuals who receive these special federal cost of living allowances may earn an actual income in excess of HUD's income limits and still qualify for HOME assistance, while other potential applicants for HOME assistance who have lower actual incomes are not qualified to participate in the program because their incomes exceed the maximum income limits for HOME. This proposed change would ensure that HOME assistance is targeted to households that are actually low-income and eliminate the potential for disparate treatment of federal and nonfederal workers in these areas.

HUD proposes to revise § 92.203(c) to clarify that a participating jurisdiction must designate and implement only one definition of income for each HOME-

assisted program (*e.g.,* downpayment assistance program, rental housing program) that it administers. For example, a participating jurisdiction may designate the IRS-adjusted gross income definition as the definition for its downpayment assistance program. The participating jurisdiction would be required to use that definition to determine the income-eligibility of each applicant for that program, to ensure equitable treatment of all applicants. The designation of the IRS adjusted gross income definition for its downpayment assistance program would not preclude the participating jurisdiction from designating a different income definition for another of its HOME-funded programs (*e.g.,* the participating jurisdiction could designate the Part 5 annual income definition for its rental housing or tenant-based rental assistance program). The revision would help to ensure that all applicants for a local HOME-funded program are treated equally.

HUD proposes to revise § 92.203(d)(1) to clarify the applicability of annual income determination requirements to households that include nonrelated individuals. The existing regulatory provision requires that the determination of annual income include income from ''all family members.'' Participating jurisdictions have asked HUD how to handle the income determinations for households that are composed of nonrelated individuals or related individuals and one or more nonrelated individuals. HUD therefore proposes to update § 92.203(d)(1) to provide that the determination of annual income includes ''all persons in the household.''

d. Eligible Activities: General (§ 92.205)

HUD is proposing to revise several provisions of § 92.205.

The proposed rule would add language to paragraph (a)(1) to clarify that activities and costs are eligible for HOME funding only if the housing meets the property standards in § 92.251 upon project completion.

Paragraph (a)(2) of § 92.205 would be revised to specify that the acquisition of vacant land or demolition with HOME funds may be undertaken only with respect to a particular affordable housing project for which construction can reasonably be expected to start within the time frames established in paragraph (2) of the definition of ''commitment'' in § 92.2. Referring to these time frames for commencement of construction in the paragraph establishing the acquisition of land or demolition of existing structures to facilitate development on land as eligible project costs will improve the clarity of the regulation and emphasize that HOME funds may not be used to acquire property or demolish structures on land for which there is not an immediate planned HOME-eligible use.

HUD is aware of some situations in which a participating jurisdiction determined, after completion of a HOME rental project, that the presence of a live-in manager would improve living conditions in a project or benefit tenants in service-enriched housing. In most rental projects, not all the units in the project are designated as HOME-assisted, so designating a non-HOME unit as a manager's unit is a simple matter. However, the existing HOME regulations do not contemplate a situation in which a participating jurisdiction has designated all the units in a project as HOME-assisted and subsequently determines that there is a need for a live-in manager. To address such situations, HUD proposes to revise paragraph (d) of § 92.205, which addresses cost allocation and the designation of HOME-assisted units in multi-unit projects, to provide that after project completion, the number of HOME-assisted units in a project may be reduced only in accordance with the new regulatory provisions on troubled projects in § 92.210. However, this paragraph, as revised, would permit, in a project consisting of all HOME units, one unit to be converted to an on-site manager's unit if the participating jurisdiction determines the conversion will contribute to the stability of the housing or effectiveness of the housing program and that, notwithstanding the loss of one HOME-assisted unit, the costs charged to the HOME program do not exceed the actual costs of the HOME-assisted units, and the total HOME investment to the project would not exceed the maximum per-unit HOME subsidy limit established in § 92.250(a) for the number of HOME-assisted units.

Costs paid with HOME funds are eligible only if they result in a completed HOME project that meets all applicable HOME requirements (*e.g.,* affordability provisions, income targeting, property standards, etc.). When HOME funds are expended for projects that are not completed, for whatever reason, the project is considered terminated before completion and the participating jurisdiction must repay the HOME funds. HUD proposes to add language to paragraph (e) of § 92.205 regarding terminated projects to better highlight the relationship of the repayment requirements of § 92.503 to terminated projects in § 92.205(e).

In addition, the proposed changes to § 92.205(e) would also provide that projects that are not completed within 4 years from the date of project commitment are deemed terminated and that the participating jurisdiction must repay the funds. When committing HOME funds to a project, the participating jurisdiction must have a reasonable expectation that construction on the project will begin within 12 months. Since large, multi-phase projects are usually funded as several separate projects for HOME purposes, most HOME projects should be completed within 4 years after the date of commitment. HUD's experience is that construction on large multi-unit properties typically is completed within 2 to 3 years, barring unusual circumstances. In the event that a project is not completed within these time frames, the participating jurisdiction may request a 12-month extension of the completion deadline by submitting information about the status of the project, steps being taken to overcome any obstacles to completion, proof of adequate funding to complete the project, and a schedule with milestones for completion of the project for HUD's review and approval.

e. Eligible Project Costs and Eligible Administrative and Planning Costs (§ 92.206)

HUD proposes to revise § 92.206(a) to replace the term ''housing'' with the term ''project'' in several sections of the HOME program regulations. While NAHA uses ''housing'' throughout, HUD, participating jurisdictions, and other HOME program practitioners generally use the term ''project'' or ''HOME-assisted project.''

HUD also proposes to revise § 92.206(b)(1) to emphasize that it is rehabilitation, rather than refinancing, which is the primary activity that makes refinancing an eligible cost under the HOME program. This rule adds language to § 92.206(b)(1) to condition refinancing as an eligible cost to projects in which the cost of the actual rehabilitation is greater than the amount of debt that is refinanced with HOME funds.

HUD proposes to amend § 92.206(b)(2) to allow that the eligibility of costs of refinancing existing debt under paragraph (b)(2), as well as the requirement for participating jurisdictions to adopt accompanying refinancing guidelines, are intended to cover all rental housing—multifamily and single family. The existing language referenced only multifamily housing, necessitating a waiver of the regulation in one instance when a participating

jurisdiction wanted to provide HOME funds to refinance single family rental housing as part of a rehabilitation project.

HUD proposes to revise § 92.206(d)(1) to permit HOME funds to be used to pay for architectural and engineering costs and other related professional services that were incurred within 18 months of the date that HOME funds were committed to the project, provided that the HOME written agreement with the project owner authorizes such use of funds. Participating jurisdictions frequently have requested clarification on the eligibility of soft costs incurred prior to commitment of HOME funds. Permitting predevelopment costs incurred before commitment of HOME funds will provide increased flexibility to participating jurisdictions and affordable housing developers planning a project that is intended to eventually receive HOME financing. The revision would also permit participating jurisdictions to reimburse these costs for projects that are already under construction when it becomes clear that HOME financing is necessary to complete the project. In addition, HUD revises § 92.206(d)(3) to make clear that energy audits are an eligible project-related soft cost. Note that the environmental review requirements must be met before HOME funds are committed to the project. Pursuant to HUD's regulations in 24 CFR 58.22, in instances where a developer applies for HOME funds after construction has begun, construction activities must cease and may not resume until environmental clearance is obtained. The change would not permit HOME funds to reimburse developers for acquisition or construction costs incurred before HOME funds were committed to the project. HUD is proposing that the reimbursement of soft costs be limited to costs incurred during the 18-month period before commitment of HOME funds to a project, to ensure that the costs are associated with HOME funds and not previously planned activities on the site.

HUD proposes to amend § 92.206(d)(3) to provide that eligible costs of a project audit include the cost of certification of costs performed by a certified public accountant.

HUD proposes to amend §§ 92.206(d)(6) and 92.207(b), both of which address staff and overhead costs, to prohibit participating jurisdictions, state recipients, and subrecipients from charging their administrative costs to low-income beneficiaries. HUD has encountered cases in which low-income families are being charged construction management fees, loan processing fees, loan servicing fees, and underwriting fees. For example, participating jurisdictions have been found to be charging construction management fees as high as several thousand dollars per unit to low-income homeowners participating in owner-occupied rehabilitation programs. These fees are sometimes added to amortizing loans, increasing the monthly payment of low-income beneficiaries. Such costs are administrative costs of the participating jurisdiction, state recipient, or subrecipient and can be charged as either program administrative costs or project-related soft costs, without the costs being passed on to low-income beneficiaries. It is inappropriate to pass such program administration costs along to low-income beneficiaries, and this change would prohibit the practice.

Note, however, that participating jurisdictions, state recipients, and subrecipients would not be prohibited from charging reasonable and customary fees commonly charged to a loan applicant in unassisted real estate transactions, such as the cost of credit reports and appraisals fees that are customarily charged by a lender as part of a home purchase and paid to third parties performing services on behalf of the lender. Program participants, including project owners, would still be permitted to charge nominal application fees to applicants for assistance, pursuant to § 92.214(b).

f. Eligible Community Housing Development Organization CHDO Operating Expense and Capacity Building Costs (§ 92.208)

Under § 92.208, as currently codified, a participating jurisdiction may use up to 5 percent of its fiscal year HOME allocation for operating expenses of CHDOs. HUD is proposing to add language to § 92.208 to clarify that CHDO operating funds are separate from and not intended to supplant CHDO set-aside funds provided under § 92.300(a). HUD has found that some participating jurisdictions have awarded operating funds, which the regulation states are to cover general operating costs such as office rents and utilities, staff salaries, and insurance, to CHDOs to pay for project-related soft costs such as architectural or engineering costs or in lieu of developer's fees. Such costs are eligible to be paid with CHDO set-aside funds.

g. Tenant-Based Rental Assistance: Eligible Costs and Requirements (§ 92.209)

HUD proposes several amendments to the tenant-based rental assistance provisions of § 92.209. Language would be added to § 92.209(a) to expressly state that payment of utility deposits is an eligible HOME cost in conjunction with the provision of HOME tenant-based rental assistance or security deposit assistance. HOME funds would not be permitted to be used for programs that provide only utility deposit assistance, since such assistance does not constitute tenant-based rental assistance. This prohibition is consistent with longstanding HUD policy, but the current regulation does not state that utility deposits in connection with rental assistance or security deposit assistance are eligible costs.

HUD proposes to add language to § 92.209(c) to clarify that a participating jurisdiction's tenant selection policies and criteria must be based on local housing needs and priorities consistent with the participating jurisdiction's consolidated plan. This is consistent with the requirement in § 91.325(d)(1) that a participating jurisdiction that plans to use HOME funds for tenant-based rental assistance must certify that the tenant-based rental assistance is an essential part of its consolidated plan.

HUD proposes to revise § 92.209(c)(2) to add provisions on using HOME funds to target tenant-based assistance to special needs populations and to persons with disabilities. The rule would clarify that a participating jurisdiction may establish a preference for individuals with special needs (*e.g.,* homeless persons or elderly persons) or persons with disabilities. In accordance with the existing provision in § 92.209(c)(2)(ii), the participating jurisdiction may provide a preference for a specific category of individuals with disabilities (*e.g.,* persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons. This proposed rule would add a provision at § 92.209(c)(2)(i) to specify that participation may be limited to persons with a specific disability if doing so is necessary to provide housing, aid, benefit, or services that are as effective as those provided to others, in accordance with the provisions in 24 CFR 8.4(b)(1)(iv). A participating jurisdiction may not require participation in medical or disability-related services as a condition of receiving or continuing to receive HOME-funded tenant-based rental assistance.

HUD is also proposing to add new paragraphs (c)(2)(iii) and (iv) to § 92.209

to specifically address the use of HOME tenant-based rental assistance in self-sufficiency and homeownership programs. (Existing paragraph (c)(2)(iii) would be redesignated paragraph (c)(2)(v) and revised as discussed below.) Program policy relating to these types of programs has been part of HUD's administrative guidance on the program for many years, and the proposed provision would not depart from that administrative guidance.

A participating jurisdiction may use HOME tenant-based rental assistance to administer a self-sufficiency program in which the family is required to participate as a condition of selection for tenant-based rental assistance. Participating jurisdictions may not require persons with disabilities to participate in medical or disability-related services as a part of a self-sufficiency program under which HOME funds are provided for tenant-based rental assistance. The family's failure to continue participation in the self-sufficiency program would not be permitted as a basis for terminating the assistance, but renewal of the assistance would be permitted to be conditioned on participation in the program. Most tenant-based rental assistance contracts have a 2-year term. However, shorter terms can be established.

The new paragraphs to be added would provide that the participating jurisdiction may select tenants to participate in a lease-purchase homebuyer program. The HOME tenant-based rental assistance payment would not be permitted to be used to accumulate a downpayment or closing costs for the purchase. The HOME tenant-based rental assistance payment must be used for the monthly rental payment. However, all or a portion of the homebuyer-tenant's own monthly contribution toward rent could be set aside for this purpose.

An additional provision would be added to redesignated § 92.209(c)(2)(v), to specifically prohibit the exclusion of persons who are given preferences for HOME assistance from participating in any other program of the jurisdiction.

Section 92.209(g) would be revised to make explicit that all tenants must have a lease and that the lease must comply with the requirements that are already cross-referenced in the existing provision.

Section § 92.209(h) would be revised to replace the existing description of one alternative for establishing the amount of rent for a unit with a cross-reference to the regulations in 24 CFR part 982, which govern the Section 8 Housing Choice Voucher program.

Finally, a technical change would be made to § 92.209(l) to clarify that the provision applies whenever Section 8 assistance becomes available, rather than just when it becomes available ''to a participating jurisdiction.''

h. Troubled HOME-Assisted Rental Housing Projects (§ 92.210)

HUD proposes to add a new § 92.210 to the HOME regulations to establish provisions that would be applicable to the efforts of participating jurisdictions to preserve HOME-assisted housing projects that have become financially unviable and, as a result, are at risk of failure or foreclosure. HUD has provided expert work-out technical assistance to a number of participating jurisdictions with projects that became troubled due to excessive debt, unsustainably high operating costs, poor physical conditions, or weak market conditions, and that were then able to avert foreclosure and were returned to financial viability. These workouts involved restructuring of private debt, investment of additional owner equity, and altering the terms of existing HOME financing. Some cases also often required HUD to grant waivers to permit the investment of additional HOME funds during the period of affordability or to permit HOME funds to be used to capitalize operating reserves. These changes resulted in the number of HOME-assisted units in a project being preserved. HUD can foresee circumstances where, to preserve financial viability of a project, it may be necessary to reduce the number of HOME-assisted units in projects in which more than the minimum number of units required under § 92.205(d) were designated as HOME-assisted or to reduce a period of affordability that exceeded the minimum period required pursuant to § 92.252(e).

New § 92.210 would provide participating jurisdictions with flexibility to assist in averting foreclosures and would enable HUD to approve these actions without the process required to grant waivers, which can be time-consuming. However, new § 92.210 would limit total investment in the project to the maximum per-unit subsidy in § 92.250(a), and would provide HUD with the option of requiring an extension of the period of affordability as a condition of permitting the investment of additional HOME funds in the project. New § 92.210 would also permit a reduction in the number of HOME-assisted units, but only if the project contains more than the minimum number of units required to be designated as HOME-assisted units under § 92.205(d). HUD does not anticipate that it would delegate authority to enter into the required memoranda of agreement or to grant the required approval outside of HUD Headquarters.

i. HOME Funds and Public Housing (§ 92.213)

HUD is proposing to add a new § 92.213 to the HOME regulations to address the use of HOME funds with public housing funds. The use of HOME funds in public housing projects, and, in particular, the use of HOME funds in HOPE VI projects is an area that would benefit from further regulatory elaboration, given that HOME funds and public housing funds are each governed by separate statutes.

NAHA prohibits the use of HOME funds to provide assistance authorized under section 9 of the United States Housing Act of 1937 (Public Housing Capital and Operating Funds). This prohibition is reflected in paragraph (a) of § 92.213, which prohibits the use of HOME funds for public housing modernization or operating assistance. This provision also prohibits a HOME-assisted unit from receiving Operating Fund or Capital Fund assistance under Section 9 during the period of affordability. With respect to the development of new public housing, paragraph (a) also makes clear that HOME funds cannot be used for public housing units, whether funded under section 9 or another source.

Paragraph (b) of § 92.213 establishes an exception to this prohibition that permits the use of HOME funds to develop a unit that receives funds for development under section 24 (HOPE VI), so long as no Capital Funds are used to develop the unit.[2] In projects receiving HOME, HOPE VI, and Capital funds for development of public housing units, this separation of HOME- and HOPE VI-funded public housing units from units receiving Capital Funds under section 9 must be accomplished through the cost allocation process for multi-unit HOME projects that is established at § 92.205(d). Participating jurisdictions should note that, when HOME funds are used in a public housing unit, the HOME rent requirements of § 92.252(a) and (b) apply. Consequently, the gross rent (tenant contribution and operating subsidy) for any public housing unit

[2] The exception to the prohibition on use of HOME funds to develop a unit that receives funds under section 24 of the U.S. Housing Act of 1937 (the section that authorizes the HOPE VI programs) was addressed in a 2002 legal opinion by HUD's Office of General Counsel and such opinion is part of the docket file for this rulemaking, which can be found at *http://www.regulations.gov.*

that receives HOME funds that is occupied by a household with an income above 50 percent of area median income may not exceed the High HOME rent established under § 92.252(a).

The use of HOME funds in a project triggers the requirements of § 92.353(e) (Residential anti-displacement and relocation assistance plan), particularly the requirement for one-for-one replacement of lower-income dwelling units. These requirements, commonly referred to as 104(d) (section 104(d) of the Housing and Community Development Act), are applicable to HOME-funded projects that involve demolition, but not to HOPE VI projects. Consequently, the use of HOME funds in a HOPE VI project may trigger the 104(d) requirements for an entire phase of the project or for all phases of the project.

Paragraph (c) of § 92.213 makes clear that HOME funds may be used to develop or rehabilitate affordable housing units that are not public housing units in projects that also contain public housing units funded by Section 9, HOPE VI, or other funds. Again, the units must be separated through the cost allocation process required under § 92.205(d). In such projects, the HOME and public housing units would have separate waiting lists and rent structures. Note, however, that the residential anti-displacement and relocation assistance plan requirements of § 92.353(e) are applicable to the entire project.

Under the proposed provision, HOME funds would be permitted to be used in a project that also contains public housing units if the HOME funds are not used in the public housing units.

j. Prohibited Activities and Fees (§ 92.214)

HUD is proposing several revisions to § 92.214(b), including restructuring paragraph (b) into two distinct subparagraphs, in order to strengthen and clarify the prohibition against participating jurisdictions and other program participants from charging fees to cover their administrative costs, especially fees charged directly to low-income program beneficiaries. HUD has found participating jurisdictions, state recipients, and subrecipients charging construction management, homebuyer counseling, origination, and similar fees to low-income families seeking HOME assistance, often amounting to several thousand dollars per family. The proposed rule would clarify at § 92.214(b)(1) that these practices are prohibited and would require participating jurisdictions to extend the prohibition to recipients, subrecipients, and program participants.

HUD also proposes to eliminate the prohibition against participating jurisdictions charging fees to cover the cost of their ongoing monitoring and physical inspection of HOME-projects during their period of affordability. The rule would add a new subparagraph at § 92.214(b)(1)(i), creating an exception to the prohibition on participating jurisdictions charging fees to cover administrative costs to permit participating jurisdictions to charge owners of rental projects a reasonable annual fee for compliance monitoring during the period of affordability. HUD recognizes that the cost of ongoing monitoring of HOME-assisted rental projects is not insignificant and that many participating jurisdictions with substantial portfolios of HOME-assisted rental projects must find other sources of funding to cover some of these administrative costs. HUD is proposing to permit participating jurisdictions to charge annual monitoring fees to owners of rental housing projects to which a commitment of HOME funds is made on or after the effective date of a final rule. Imposition of such monitoring fees is standard industry practice in other programs that require ongoing inspections, including in LIHTC programs. Permitting these fees will create an incentive for participating jurisdictions to impose periods of affordability on HOME-assisted projects that are longer than the minimum period required by § 92.252(e) by eliminating the increased financial burden of fulfilling the required monitoring requirements.

In addition, HUD is proposing to clarify at § 92.214(b)(1)(ii) the existing exception for application fees charged by a participating jurisdiction. HUD is aware of cases in which application fees charged by project owners for HOME-assisted rental units were prohibitive such that they created an obstacle to low-income families accessing benefits intended for them. The provision would clarify that application fees must not create an undue impediment to the participation in the participating jurisdiction's program by a low-income family, a jurisdiction, or entity.

A new provision at § 92.214(b)(2) would prohibit owners of HOME-assisted rental projects from charging fees to tenants that are not reasonable or customary. An example of such a fee is a monthly fee for access to pay laundry facilities. There are several proposed exceptions to this prohibition, including reasonable application fees, parking fees in neighborhoods where such fees are customary, and the cost of nonmandatory services such as meal or bus service.

k. Match Credit (§ 92.221)

HUD proposes to add a new paragraph (d) to § 92.221 that would require that any contributions to HOME-assisted or HOME-eligible homeownership projects must be valued not at face value, but by the amount by which they reduced the sales price to the homebuyer. This would ensure that match credit is not provided for the value of contributions that are included in the homebuyer's mortgage (*e.g.,* donated land or appliances).

l. Match Reduction (§ 92.222)

HUD is proposing to revise § 92.222(b), which addresses a request for a reduction of matching requirements in the event of major disaster. The revision would require HUD to consider the extent of a disaster's fiscal impact on a participating jurisdiction in determining whether to grant the reduction, as well as the amount and duration of any match reduction. HUD anticipates that it would develop and issue administrative guidance for determining the appropriate extent of match reduction.

m. Maximum Per-Unit Subsidy Amount, Underwriting, and Subsidy Layering (§ 92.250)

This proposed rule would revise § 92.250(a) to clarify that the maximum HOME per-unit subsidy may not be increased above 240 percent of the base limits authorized by section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(iii)). This clarification is necessary because section 221 of the General Provisions of Title II, Division K of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved December 26, 2007) increased the maximum exceptions that HUD may grant for the 221(d)(3) mortgage insurance program to up to 315 percent of the base limits. However, section 212(e) of NAHA, which establishes the 221(d)(3) mortgage insurance limits as the per-unit cost limits for HOME-assisted units, was not amended. This section of NAHA permits HUD to adjust the HOME subsidy limit to reflect actual costs up to, but not to exceed, 240 percent of the 221(d)(3) mortgage limit. Consequently, a participating jurisdiction's maximum per-unit subsidy limit for HOME can never exceed 240 percent of the base limits for the 221(d)(3) mortgage insurance program even if the 221(d)(3) mortgage limit approved for the area exceeds that amount.

The current HOME regulations require that participating jurisdictions perform a subsidy layering analysis for any project that receives HOME funding in combination with other public funding sources. HUD proposes to amend § 92.250(b) to require participating jurisdictions to evaluate subsidy layering and conduct or examine the underwriting of all projects. Evaluation of subsidy layering is simply a consideration of whether the combination or total amount of subsidies results in an undue or excessive return to the owners; that is, results in more federal assistance than is needed for a project. However, subsidy evaluation and underwriting of all HOME projects are fundamental to sound program administration and will help ensure cost reasonableness and the long-term viability of HOME-assisted projects. The proposed rule would amend this section by requiring subsidy evaluation and underwriting of all HOME projects, whether or not the project is assisted with other governmental assistance, in order to make a determination regarding the long-term viability of the project, as well as the reasonableness of amount of return to the owner. Participating jurisdictions are expected to incorporate sustainable underwriting practices (*e.g.,* reserves for maintenance and replacement, an analysis of costs and vacancy rates of similar projects in the area, etc.).

HUD also proposes to revise § 92.250(b) to require a participating jurisdiction's underwriting and subsidy layering guidelines to include an assessment of, at minimum, the market conditions of the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm financial commitments for the project. These practices will enable participating jurisdictions to better target HOME funds to neighborhoods in need of additional affordable housing, determine whether homeownership or rental development is more appropriate to specific neighborhoods, and evaluate the amount of subsidy appropriate to all projects seeking HOME funding.

n. Property Standards (§ 92.251)

HUD is proposing several revisions to the property standards applicable to HOME-assisted properties. Given the various building codes and standards that may apply to HOME-assisted projects, HUD has determined that this regulatory section would benefit from further elaboration. HUD is concerned that there is misunderstanding about the applicability of these codes and standards, which has resulted in participating jurisdictions not ensuring an adequate level of improvements to HOME-assisted rental and homebuyer housing, thus threatening the viability of the project. In addition, many of the codes cited in the existing HOME regulations have been superseded and/or updated. HUD also notes that substantial interest has developed in the housing industry in recent years in improving energy and water efficiency to conserve resources and reduce operating costs. Therefore, HUD will propose new standards for energy and water efficiency in a separate proposed rule. The sections that will cover energy standards have been reserved in § 92.251 of this proposed rule.

The proposed changes to § 92.251 would reorganize the section and create separate requirements for projects involving: (1) New construction in § 92.251(a), and (2) rehabilitation in § 92.251(b). The paragraph on new construction, found in § 92.251(a), would be updated to reflect that the three former model code issuing groups (Building Officials and Code Administrators International, Inc., International Conference of Building Officials, and Southern Building Code Congress International, Inc.) created the International Code Council in 1994 to develop a single set of comprehensive and coordinated national model construction codes. The proposed rule would require that, in the absence of an applicable state or local code for new construction, HOME-assisted projects must meet the International Code Council's International Residential Code or International Building Code, whichever is applicable to the type of housing being developed. It would also continue to include requirements for compliance with lead hazard reduction and accessibility requirements. Participating jurisdictions would be required to have written standards for methods and materials to be used, to conduct inspections to ensure that work is performed in compliance with requirements, and to ensure that progress payments are consistent with the amount of work completed.

The property standard requirements for rehabilitation, which would be in § 92.251(b), are also proposed to be substantially revised. HUD has found that many jurisdictions lack specific rehabilitation codes. In jurisdictions that have rehabilitation codes, the codes frequently do not provide a standard for determining what rehabilitation work is needed, but instead set forth the requirements for methods and materials to be used in rehabilitation work being undertaken. Because there is no published rehabilitation standard that fully meets the goals of the HOME program and there is no ''one-size-fits-all'' standard that is appropriate to all participating jurisdictions, the proposed rule would require at § 92.251(b) that each participating jurisdiction must establish and comply with its own rehabilitation standards.

These rehabilitation standards would provide the basis for determining what work is needed and, and along with the participating jurisdiction's construction requirements (materials and methods), provide the basis for inspecting the project. Further, to ensure that the housing is free of all known health and safety defects and in good repair, the proposed rule would require that each participating jurisdiction's rehabilitation standards, at a minimum, ensure that, upon project completion, all units would pass an inspection that addresses all of the inspectable items included in the **Federal Register** notice setting forth the Physical Condition Scoring Process under HUD's Uniform Physical Condition Standards (UPCS) for public housing, which is published pursuant to 24 CFR 5.705. See Appendix 1 and Appendix 2 of the notice published November 26, 2001 (66 FR 59084), which is available on HUD's Web site at *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_26169.pdf.* The Uniform Physical Condition Standards, set forth in 24 CFR part 5, subpart G, which includes the inspection procedures in 24 CFR 5.701, have been in place and utilized in the majority of HUD's housing programs, as provided in 24 CFR 5.701, since 1998. This is a process well-familiar to HUD housing providers participating in these programs.

The participating jurisdictions would also be required to specify a useful life for each major system (structural support, roofing, cladding, and weatherproofing (*e.g.,* windows, doors, siding, gutters), plumbing, electrical and heating, ventilation, air conditioning) of rental housing. The amount of HOME funding for rehabilitation activities that is typically required for replacement of major systems requires a minimum affordability period of 15 years (see § 92.252). Under the rehabilitation standards for rental housing, the proposed rule would require that the remaining useful life of each major system be, at a minimum, 15 years after project completion, or the major system must be rehabilitated or replaced to have a minimum useful life of 15 years. In addition to establishing rehabilitation standards, when awarding funds for the rehabilitation of multifamily projects,

the participating jurisdiction must require a capital needs assessment for all multifamily rental projects of 26 total units or more. A capital needs assessment would determine the long-term physical needs of the project.

For owner-occupied housing undergoing rehabilitation with HOME funds, the participating jurisdiction would be required to ensure that each major system have a required remaining useful life of at least 5 years at the time the project is completed; major systems with a useful life of less than 5 years after project completion must be rehabilitated or replaced as part of the rehabilitation activity to meet this requirement. Although periods of affordability are not imposed on owner-occupied units receiving HOME-funded rehabilitation, this requirement would help to ensure housing stability for the low-income household for a period at least equal to the shortest period of affordability imposed on HOME-assisted rental housing or homebuyer housing. Lead-based paint requirements would continue to apply.

Where applicable, the housing would be required to be improved to mitigate the impact of disasters such as earthquake, hurricane, flooding, and fires. A new paragraph, § 92.251(b)(2)(viii) is proposed to clarify that discretionary housing improvements beyond those required to meet property standards may include modest amenities and aesthetic features that are in keeping with housing of similar type in the community and must avoid luxury improvements, such as air-jet tubs, saunas, outdoor spas, and granite countertops, to name a few.

HUD is also concerned that some participating jurisdictions may not be properly inspecting HOME-assisted projects to ensure that the projects are in compliance with property standards. HUD's compliance monitoring has shown that some participating jurisdictions are not performing required inspections or developing work write-ups in connection with HOME-funded rehabilitation. Therefore, HUD also proposes to add new paragraphs to § 92.251(b)(3) and (4) to provide additional detail on required inspections and work write-ups. Currently, participating jurisdictions are required to have written standards for rehabilitation work that prescribe the materials and methods to be used. The new regulatory language would make clear that a participating jurisdiction must inspect the property and prepare a work write-up for the project that describes the work needed to bring the project up to the participating jurisdiction's rehabilitation standards. The participating jurisdiction must have written construction progress inspection procedures (including a description of how and by whom the inspections will be carried out) and detailed inspection checklists reflecting all aspects of the property standards.

HUD has become aware of many rental projects acquired with HOME assistance that were not in good repair at the time of their acquisition and subsequently became physically or financially troubled during the period of affordability required by § 92.252(e). When HOME funds are used to purchase existing rental housing, such housing must be in good condition; otherwise, it must be rehabilitated with HOME funds at the time the project is acquired with HOME funds. In accordance with § 92.214(a)(6), during the period of affordability established in § 92.252(e), additional HOME funds may be expended on a HOME-assisted project only during the first year after project completion. Consequently, it is imperative that HOME-assisted affordable housing be in standard condition at the time of project completion so that its financial viability is not jeopardized.

Section 92.251(c) of the proposed rule would set forth property standards for existing housing in standard condition that is acquired using HOME funds. If the housing was newly constructed or rehabilitated less than one year before HOME funds are used to acquire the housing as rental housing, the housing would be required to meet the property standards in § 92.251(a). Builder warranties typically cover deficiencies during the first 12 months of completion in new construction or rehabilitation projects, and should reasonably be expected to meet the established property standards. The participating jurisdiction would be required to document this compliance based upon a review of approved building plans and Certificates of Occupancy, and a current inspection that is conducted no earlier than 30 days before the commitment of HOME assistance. It is a typical and prudent business practice when acquiring any property, be it market-rate or assisted, to obtain a physical inspection.

Other existing housing that is acquired with HOME funds would be required to meet the requirements of § 92.251(b). The participating jurisdiction would be required to document this compliance based upon a current inspection conducted no earlier than 30 days before the date of commitment of HOME assistance, in accordance with the inspection procedures that the participating jurisdiction established pursuant to this section. Existing housing that does not meet these standards would be required to be rehabilitated.

o. Qualification as Affordable Housing: Rental Housing (§ 92.252)

HUD proposes to revise § 92.252 to require that HOME-assisted rental units be occupied by an initial tenant within a specified period from the date of project completion. If units have not been leased to an eligible tenant within that time, HUD will require the participating jurisdiction to provide information about current marketing efforts and, if appropriate, a plan for marketing the unit so that it is leased as quickly as possible. If there is adequate market demand for the unit as indicated by the market assessment proposed to be required pursuant to § 92.250(b) and adequate marketing to the eligible population is undertaken, then a unit should be occupied within a specified period of time from the date of project completion. The proposed rule currently includes a placeholder of what this specified time will be. It will be a period that is no less than 90 days but no more than 6 months. As provided below, HUD is specifically seeking comment on what is an appropriate time period within this range set by HUD. HUD seeks to impose a defined period and not a range as the proposed regulatory text now provides. Whatever the time period established for initial occupancy, if efforts to market the unit are unsuccessful and a unit is not occupied by an initial tenant after 18 months, HUD would require repayment of HOME funds invested in the units.

Specific solicitation of comment. HUD specifically seeks comment on the time frames to be established in its proposal that participating jurisdictions be required to ensure that initial occupancy of a HOME-assisted rental unit occurs following project completion and that they repay HOME funds invested in rental units that have not been initially occupied within 18 months.

HUD proposes several other revisions to § 92.252. A sentence would be added to the introductory paragraph to make explicit that leases are required for all HOME-assisted rental units, consistent with the clarification in § 92.209(g) discussed above. The proposed rule would also incorporate the ''High HOME rent'' (*i.e.,* ''maximum HOME rent'') and ''Low HOME rent'' (*i.e.,* ''additional requirements'') terminology, which is commonly used by HUD, participating jurisdictions, and other HOME program participants including owners, developers, and property

managers, into paragraphs (a) and (b) for clarity.

Paragraph (a) would be revised to specifically state that HOME rent limits include both rent and utilities or utility allowance.

HUD proposes to add language to paragraph (b)(2) to make clear that participating jurisdictions may designate more than the minimum 20 percent of units in a project as Low HOME rent units. HUD has received many questions from participating jurisdictions and potential owners or developers regarding this issue. This is a common practice in HOME projects, particularly in projects that also receive project-based rental assistance, because it permits the owner to charge project-based assistance rents, which typically exceed both the HOME high and low HOME rents, and makes serving extremely low-income households with HOME funds more economically feasible. In such projects, such as Section 202 projects for the elderly or permanent supportive housing for the homeless, the participating jurisdiction may want to designate all HOME-assisted units as low HOME units to take advantage of project-based rental subsidy to serve an extremely low-income population.

The substance of existing paragraph (c), which addresses initial rent schedules and utility allowances, would be moved to paragraph (d), and redesignated paragraph (d) would be revised to outline the applicable rent limits for Single Room Occupancy (SRO) units assisted with HOME. Recognizing that a zero-bedroom rent was not appropriate for all SROs depending on the amenities located within the unit, HUD established these rent limitations in administrative guidance in 1994.

The High HOME rent for a SRO unit with no sanitary or food preparation facilities or only one of the two is based on 75 percent of a zero-bedroom fair market rent (FMR). Because this rent is already very low, HUD did not apply the Low HOME rent provisions to these units, although the income targeting (20 percent of units occupied by persons with incomes at or below 50 percent of area median income, as determined by HUD) does apply to SRO projects with five or more HOME-assisted units. The High HOME rent for a SRO unit that has both sanitary and food preparation facilities is the zero-bedroom FMR for the area. The Low HOME rent provisions of paragraph (b) apply to these units. HUD proposes to codify this longstanding policy, without change, in the HOME regulations.

Redesignated paragraph (d) would also be revised to specifically reference the HUD Utility Schedule Model. This model was developed by HUD and enables the user to calculate utility schedules by housing type after inputting utility rate information. The IRS uses this model to determine utilities for its LIHTC program. The model can be found at: *http://huduser.org/portal/resources/utilmodel.html.* The provisions on nondiscrimination against rental assistance subsidy holders in existing § 92.252(d) would be moved to § 92.253(d)(4).

HUD is proposing to add a sentence to § 92.252(e) specifically stating that the termination of affordability restrictions under paragraph (e) does not relieve a participating jurisdiction of its repayment obligation for housing that did not remain affordable for the required period under § 92.503(b). To increase local administrative flexibility, this paragraph would also be amended to specifically authorize use agreements to impose affordability restrictions, in addition to those currently included in the regulations (*i.e.,* deed restrictions and covenants running with the land). HUD also proposes to add language clarifying that affordability restrictions must be recorded in accordance with state recordation laws.

HUD is proposing to add a sentence to § 92.252(f)(2) to require that a participating jurisdiction must review and approve the rents for its HOME-assisted rental projects each year to ensure that they comply with the HOME limits and do not result in undue increases from the previous year. Participating jurisdictions are currently required to provide the published maximum HOME rents to project owners and then to examine reports submitted by owners outlining for each HOME unit the rent being charged and the income of the tenant. The additional step codifies existing practice of most participating jurisdictions, which do not permit HOME project owners to raise rents without approval or to charge the maximum permissible HOME rent.

HUD is proposing to add language to § 92.252(j) to specify that the written agreement between the participating jurisdiction and a project owner must state whether HOME rental units will be fixed or floating during the period of affordability. The existing regulations state that the designation of whether units will be fixed or floating must be made at the time of commitment (*i.e.,* the point at which the written agreement is signed). However, HUD has found that participating jurisdictions are not always documenting the determination or including the specific designation in its written agreement, sometimes resulting in uncertainty among owners.

HUD is proposing to add two new paragraphs to § 92.252 to make the regulations more user-friendly for persons attempting to locate requirements related to rental housing. First, a new § 92.252(k) that cross-references the tenant selection requirements located in § 92.253(d) would be added. Second, a new paragraph (l) would be added to § 92.252 that cross-references participating jurisdictions' ongoing responsibilities for on-site inspections, and financial oversight located in § 92.504(d) would also be added.

p. Tenant Protections and Selection (§ 92.253)

The HOME statute provides for mandatory tenant protections for families occupying HOME-assisted rental housing or receiving HOME-funded tenant-based rental assistance and establishes a minimum lease period. These provisions are promulgated at § 92.253(a) of the existing HOME regulations and are required to be integrated into leases used for HOME-assisted unit or leases executed by recipients of HOME-funded tenant-based rental assistance. Similar to other regulatory changes already discussed in the preamble that emphasize the importance of documenting compliance with HOME program requirements, HUD proposes to revise § 92.253(a) to clarify that there must be a written lease for all HOME-assisted rental units and units rented by HOME tenant-based rental assistance recipients.

HUD proposes a new paragraph § 92.253(b)(9) that would clarify that supportive services related to a disability cannot be mandatory for tenants of HOME-assisted units by adding this prohibition to the list of prohibited lease terms for HOME units. This clarification is consistent with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of disability in federally funded programs and activities and HUD's implementing regulations at 24 CFR part 8. In adding this provision, HUD is better integrating the part 8 requirements into the HOME regulations.

Section 92.253(c) would be revised to provide that a tenant's failure to follow a transitional housing services plan is a permissible basis for terminating a tenancy or refusing to renew a lease. The provision is needed in order to ensure that transitional housing can be

made available to individuals who use the transitional housing for its intended purpose. Section 92.253(c) would be revised to make explicit that increase in a tenant's income does not constitute good cause for termination or refusal to renew. This revision will minimize the possibility that a misunderstanding of the HOME regulations will create disincentives for tenants of HOME-assisted units to increase their incomes for fear of losing their housing.

HUD is proposing to revise § 92.253(d) to address the use of HOME funds for special needs populations, including persons with disabilities. One change would provide that the owner's tenant selection policies must comply with requirements governing how and when HOME funds may be used for special needs populations, and that such policies must limit the housing to low- and very low-income families. The new regulatory provisions would also provide that the owner of HOME-assisted rental housing may limit eligibility or give a preference to a particular segment of the population only if permitted in its written agreement with the participating jurisdiction.

Section 92.253(d)(3)(i) would provide that any limitation or preference must not violate nondiscrimination requirements listed in § 92.350, and would clarify that a limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a federal program that limits eligibility to a particular segment of the population. Examples of such programs include the Housing Opportunity for Persons with AIDS program, HUD's homeless programs, HUD's Section 202 supportive housing for the elderly, and HUD's Section 811 housing for persons with disabilities. Section 92.253(d)(3)(ii) would provide that preferences may be given to disabled families who need services offered at a project, if certain conditions are met. In particular, the preference must be limited to the population of families (including individuals) with disabilities that interfere with their ability to obtain and maintain housing; such families will not be able to obtain and maintain themselves in housing without appropriate supportive services; and such services are provided in a nonsegregated setting.

Generally, separate or different housing or services for individuals with disabilities are not permitted. However, 24 CFR 8.4 permits different or separate housing, aid benefits, or services to individuals with disabilities or to any class of individuals with disabilities from that provided to others in extremely limited circumstances: That is, when necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others. Even when separate housing or services are permitted, individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different.

q. Qualification as Affordable Housing: Homeownership (§ 92.254)

As discussed earlier in this preamble, section 215(b) of NAHA requires that the initial purchase price of homeownership units assisted with HOME funds not exceed 95 percent of the area median purchase price for single family housing, as determined by HUD. The existing regulation at § 92.254(a)(2)(iii) permits participating jurisdictions to use the FHA Single Family Mortgage Limits under section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) as the 95 percent of median purchase price or after-rehabilitation value limit for HOME-assisted homeownership housing. The regulation also permits a participating jurisdiction to determine its own 95 percent of area median value limit using a prescribed methodology.

Historically, HUD has based the annual FHA Single Family Mortgage Limits on 95 percent of area median purchase prices, except that there are national floor and ceiling loan amounts for low- and high-cost areas, which are percentages of conforming loan limits. Over time, statutory changes have increased the FHA section 203(b) floor, rendering the section 203(b) limits a less reliable surrogate for participating jurisdictions' 95 percent of area median purchase prices. As a consequence of these changes, HUD issued an interim policy in March 2008, permitting participating jurisdictions to use the Single Family Mortgage Limits issued in February 2008, before the passage of the Economic Stimulus Act, as the 95 percent of area median purchase price limit for HOME-assisted homeownership units until HUD could promulgate regulatory changes. (See *http://www.hud.gov/offices/cpd/affordablehousing/library/homefires/volumes/vol9no3.cfm*.) At the same time, HUD posted the actual 95 percent of median purchase price for each Metropolitan Statistical Area (MSA) and county in the country so that participating jurisdictions could become familiar with the true 95 percent figure for their housing market.

HUD is proposing to revise § 92.254(a)(2)(iii) so that participating jurisdictions would no longer be permitted to use the FHA Single Family Mortgage Limit as a surrogate for 95 percent of area median purchase price. Once the proposed regulatory change is effective, HUD will calculate 95 percent of median purchase price for the area and provide the limits to participating jurisdictions annually. A participating jurisdiction would continue to have the option to determine its own 95 percent of area median value limit using the methodology in the regulation, which remains unchanged.

HUD proposes to make an exception to this limitation for new construction homeownership units, in response to concerns expressed by State participating jurisdictions and nonmetropolitan or rural communities. These communities point out that 95 percent of area median purchase price figures in their communities are extremely low, due to the age, size, and poor condition of their housing stock; the relatively small number of sales of existing housing that take place; and the small number of new housing units that are produced and sold annually.

HUD recognizes that the 95 percent of area median purchase price limits in these areas are so low that imposing them would make construction of new, standard single family units economically infeasible with HOME funds. However, HUD's data also show that the actual 95 percent of area median purchase price in many MSAs, primarily in the Midwest and South, while higher than those in many nonmetropolitan areas, are also too low to make the use of HOME funds for new construction of homeownership units economic. For instance, HUD's 2011, 95 percent of median purchase price figures for Omaha, Nebraska-Council Bluffs, Iowa MSA, Saginaw, Michigan MSA, and Kansas City, Kansas-Kansas City, Missouri MSA, are $60,653, $71,250, and $87,673, respectively. Nationally, there are hundreds of communities in which the use of HOME funds for new construction of homeownership units could be accomplished only through the write-off of large HOME development subsidies by participating jurisdictions. Further, imposition of an artificially low purchase price limit in these areas would result in homebuyers realizing large amounts of unrestricted equity attributable to HOME funds, due to the difference between the actual value of the housing and the purchase price cap.

Section 215(b)(1) of NAHA permits HUD to make adjustments to the 95 percent of the area median purchase price, including ''for new and old housing'' as the Secretary determines to

be appropriate. Consequently, HUD is proposing to amend § 92.254(a)(2)(iii) to provide an exception to the new HUD-issued 95 percent of median purchase price limits to permit participating jurisdictions to use the greater of the HUD-issued 95 percent of area median purchase price limit or the Bureau of the Census's median sales price for single family houses sold outside of MSA. The Census Bureau produces this figure annually. The 2010 figure, which would apply to the HOME program for 2011 if this proposed provision were in effect, is $179,900.

Specific solicitation of comment. HUD specifically requests comment regarding the use of this figure as the sales price limitation for newly constructed HOME units. Additional information regarding how this figure is derived is available at: *http://www.census.gov/const/www/characteristicsdoc.html#source.* The HUD-issued actual 95 percent of median purchase price limits for all MSAs and counties can be found in column L of the spreadsheet posted at: *http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/maxprice.cfm.*)

HUD is proposing to revise § 92.254(a)(3) to specify that the participating jurisdiction must include the income of all persons residing in the housing when determining the income eligibility of the family. The same change would be made in paragraph (b)(2) of this section for purposes of rehabilitation not involving acquisition. The change would also require the housing to be rented to an eligible tenant in accordance with § 92.252 if the housing were not acquired by an eligible homeowner within 6 months of the date of project completion.

In response to the national foreclosure crisis, HUD is proposing to add several new requirements with respect to HOME-assisted homebuyer programs. These changes are intended to ensure that homebuyers are well-prepared for the responsibilities of homeownership and receive financing that optimizes the sustainability of their homeownership, and to prevent them from becoming targets of predatory lenders as part of the initial purchase or a later refinancing of the housing. Specifically, HUD proposes to revise § 92.254(a)(3) to require that all homebuyers receiving HOME assistance or purchasing units developed with HOME funds receive housing counseling.

A 2008 national study of outcomes for HOME-assisted homebuyers found that 83 percent of participating jurisdictions that provide HOME-funded homeownership assistance also provide homebuyer counseling (see *http://www.huduser.org/portal/publications/hsgfin/addi.html.*) This change would ensure that all HOME-assisted homebuyers receive some counseling before purchasing a home. The counseling could be provided by the participating jurisdiction, an organization under contract to participating jurisdiction, or a qualified third party independent of the participating jurisdiction (*e.g.,* a HUD-approved housing counseling agency). The regulation would not specify the extent of the required counseling, but the counseling should be comprehensive by including post-purchase counseling, if feasible. The Dodd-Frank Wall-Street Reform and Consumer Protection Act (Pub. L. 111–203, approved July 21, 2010) in section 1442 requires HUD to ensure that homeownership counseling provided through any HUD-funded program cover specific topics related to the selection, financing, ownership, and resale of a home. HUD will conduct separate rulemaking to establish the minimum requirements for homebuyer counseling provided in connection with HUD-administered or -funded programs.

A new paragraph (f) would be added to this section requiring participating jurisdictions that use HOME funds for homebuyer assistance to develop and follow written policies for: (1) Underwriting standards for homeownership assistance that take into account housing debt, overall household debt, the appropriateness of the amount of assistance, recurring household expenses, assets available to acquire the housing, and financial resources to sustain homeownership; (2) anti-predatory lending measures; and (3) measures that ensure that the terms of any loans that refinance debt to which HOME loans are subordinated are reasonable.

Section 92.254(a)(5) would be revised to require the participating jurisdiction to obtain HUD's specific approval of its resale and recapture requirements. Section 215(b)(3) of NAHA requires HUD to determine that a participating jurisdiction's resale or recapture provisions are ''appropriate'' or consistent with HOME statute and regulations. These provisions are currently required to be submitted as part of the participating jurisdiction's annual action plan. HUD has found that participating jurisdictions frequently provide insufficient detail about the proposed resale or recapture provisions to permit HUD to make the required determination or to enable interested citizens to obtain a full understanding of the affordability restrictions to be imposed on the homebuyer program. Requiring that HUD issue specific, written approval of resale or recapture provisions, as opposed to an implicit approval as part of the consolidated plan or annual action plan approval, will emphasize that the participating jurisdiction is submitting the provisions for HUD's approval and must provide sufficient detail to enable HUD to assess their appropriateness.

The proposed rule would also amend § 92.254(a)(5)(i) to require the participating jurisdiction's resale requirements to specifically define ''fair return on investment'' and ''affordability to a reasonable range of low-income buyers,'' and to address how it will make the housing affordable if the resale price that is needed for a fair return on investment is too high to be within the affordable range. Section 215(b)(3)(A) of NAHA specifically requires resale provisions to provide a fair return and remain affordable for a reasonable range of low-income buyers. Requiring participating jurisdictions to develop specific standards for these requirements will improve their ability to design resale requirements that meet statutory and regulatory requirements.

HUD proposes to amend § 92.254(a)(5)(ii) to permit a subsequent low-income purchaser of a HOME-assisted homeownership unit to assume the HOME loan and recapture obligation entered into by the original buyer. The current regulations governing recapture provisions permit the HOME-assisted homebuyer to sell his or her unit during the period of affordability to any willing buyer at the prevailing market price. When a HOME-assisted unit is sold during the period of affordability, the participating jurisdiction exercises its recapture provisions and collects all or a portion of the original HOME subsidy regardless. Sometimes, a subsequent buyer who is low-income may require downpayment or other acquisition assistance to purchase the HOME assisted unit and the participating jurisdiction provides HOME assistance to the subsequent homebuyers and imposes new recapture provisions. To enhance administrative simplicity and encourage the efficient use of funds, some participating jurisdictions have expressed a desire to permit subsequent low-income purchasers of a HOME-assisted homebuyer unit under a recapture agreement to assume the remaining HOME loan and period of affordability. This proposed rule change would establish this as an option when the subsequent homebuyer qualifies as low-income, but would not eliminate the initial homebuyer's right to sell to a willing buyer at any income level.

HUD proposes to amend the HOME regulation at § 92.254(c) to permit rehabilitation assistance to be provided in three different situations to persons whose interest in the housing they occupy does not meet the requirements of ''homeownership'' as defined in § 92.2. In each case, there have been many instances in which an otherwise eligible low-income household was denied HOME funds for rehabilitation.

The proposed changes are intended to remove regulatory impediments to participation in the HOME program. For each situation, the participating jurisdiction would have the right to establish the terms of assistance. The first of these exceptions is inherited property with multiple owners (often referred to as *heir property*)—housing for which title has been passed to several—heirs by inheritance, but in which not all heirs. (The occupant of the housing has a divided ownership interest.) This most often occurs when siblings inherit a family home that is occupied by one sibling. Rather than sell the home and split the proceeds, the siblings continue to hold the property in divided ownership, but permit a low-income sibling to occupy the property. The regulation would be amended to permit participating jurisdictions to provide rehabilitation assistance to the owner-occupant, if the occupant meets the following conditions: the occupant is low-income, occupies the housing as his or her principal residence, and pays all the costs associated with ownership and maintenance of the housing (*e.g.,* mortgage, taxes, insurance, utilities).

The second exception would address cases involving a *life estate.* Under a life estate, the occupant of the property has the right to live in the housing for the remainder of his or her life and does not pay rent. HUD has encountered situations in which a disabled adult occupies a dwelling owned by another family member under a life estate, or in which a deceased spouse leaves a property to the children of a previous marriage but permits the other spouse to occupy the property for the remainder of his or her life. In the latter situation, the life estate holder is responsible for expenses related to the dwelling (*e.g.,* property taxes, insurance) and for maintenance and upkeep of the property. The regulation would be revised to permit participating jurisdictions to provide rehabilitation assistance to the person holding the life estate, if the person is low-income and occupies the housing as his or her principal residence.

The third exception would address cases involving an *inter vivos trust,* also known as a *living trust.* A living trust is created when the owner of property conveys his or her property to a trust for his or her own benefit or for that of a third party (the beneficiaries). The trust holds legal title and the beneficiary holds equitable title. The person may name himself or herself as the beneficiary. The trustee is under a fiduciary responsibility to hold and manage the trust assets for the beneficiary. HUD has found that this is a very common estate-planning tool, even among the low-income elderly who wish their heirs to avoid probate. Currently, HUD must grant a waiver of the provision that an individual hold title to the property to permit these individuals to receive rehabilitation assistance. The regulation would be revised to permit participating jurisdictions to provide rehabilitation assistance to a property if all beneficiaries of the trust qualify as a low-income family and occupy the property as their principal residence (except that contingent beneficiaries, who receive no benefit from the trust nor have any control over the trust assets until the beneficiary is deceased, need not be low-income). The trust would be required to be valid and enforceable and to ensure that each beneficiary has the legal right to occupy the property for the remainder of his or her life.

HUD recognizes that many participating jurisdictions provide HOME funds to for-profit and nonprofit organizations as a contractor or subrecipient respectively, so that those organizations may provide the homeownership assistance (*e.g.,* downpayment assistance) to eligible families in conjunction with first mortgage financing funded by the same entity. However, HUD is concerned that these organizations may have a financial incentive to provide the first mortgage and, as a result, such organizations could provide HOME assistance to families that are not low-income families or for units that do not meet minimum standards.

In order to put safeguards in place to prevent potential abuses, and to counter the built-in incentives for the lender to provide HOME assistance in such cases, a § 92.254(e) would be added to require the participating jurisdiction to verify that the family is low-income and to inspect the housing for compliance with the property standards in § 92.251. The for-profit or nonprofit organization would not be permitted to charge fees (*e.g.,* origination fees or points) to the family for the HOME homeownership assistance the organization provides, although reasonable administrative costs could be charged to the HOME program as a project cost. In addition, the participating jurisdiction would be required to determine that the fees and other amounts charged to the family by the lender for the first mortgage financing are reasonable, based upon industry practice in the area, in order to ensure that the organization is not effectively charging fees for HOME funds disguised as mortgage-related fees. If a participating jurisdiction requires lenders to pay a fee to participate in the HOME program, the amount would be program income to the HOME program.

r. Converting Rental Units to Homeownership Units for Existing Tenants (§ 92.255)

Section 92.55 permits rental units to be converted to homeownership units for existing tenants. This provision was added to the HOME regulations to facilitate efforts of in-place tenants to purchase the rental unit in which they reside. However, some HOME program participants have interpreted this section to permit conversion of an entire HOME-assisted multifamily rental project to condominium ownership during the period of affordability. HUD has encountered situations in which program participants have attempted to convert existing HOME rental housing into homeownership and sought to evict tenants who were unable or unwilling to buy the units they occupied. HUD proposes to revise this paragraph to provide that tenants' refusal to purchase their rental housing unit does not constitute grounds for eviction or for failure to renew the lease, in order to ensure that the rights of HOME tenants are clearly understood.

s. Set-Aside for CHDOs (§ 92.300)

In this section, HUD proposes changes to redefine ''reservation of funds'' and to more thoroughly address the standards which a project must meet to qualify for CHDO set-aside funds. In § 92.300(a)(1), HUD would redefine reservation of funds to a CHDO as occurring when a participating jurisdiction enters into a written agreement with the CHDO committing the funds to a specific project to be owned, developed, or sponsored by the CHDO. This change would make participating jurisdictions more accountable for ensuring that CHDOs perform in accordance with the HOME program requirements.

With respect to the CHDO set-aside, NAHA requires participating jurisdictions to provide a minimum of 15 percent of their HOME allocations for housing that is owned, developed, or sponsored by community housing development organizations. In 1994,

HUD first provided guidance for what is considered housing owned, developed, or sponsored by CHDOs. HUD continues to receive questions about whether specific projects may be funded with the CHDO set-aside funds or must be funded with other HOME dollars. Frequently, the proposed projects do not meet standards in established in HUD's administrative guidance for housing that is owned, developed, or sponsored by a CHDO. Generally, such projects did not meet the standards because the role of the CHDO in the development process was too limited or the organization did not meet the definition of a CHDO at § 92.2.

HUD is proposing two changes to the regulations to address these situations. To ensure that participating jurisdictions provide CHDO set-aside funds only to organizations that qualify as CHDOs, HUD is proposing to revise § 92.300 to require participating jurisdictions to certify that the organization meets the definition of ''community housing development organization.'' A participating jurisdiction would also be required to document that the organization has the capacity to own, develop, or sponsor housing, as required by the revised definition of CHDO in § 92.2, each time it commits CHDO funds to an organization. The certification and documentation requirement would apply to commitments of funds to any CHDO after the effective date of the final rule.

As discussed later in this preamble, the proposed rule would also alter minimum requirements for reserving funds to a CHDO. The concept of reservation of CHDO funds would change from being a general agreement to provide funds for a project to be identified at a future time to the execution of a written agreement between the participating jurisdiction and the CHDO committing the funds to a specific local project in accordance with paragraph (2) of the definition of ''commitment'' in § 92.2.

HUD is proposing to codify definitions of housing that is owned, developed, or sponsored by a CHDO currently established in HUD's administrative guidance into the regulation in § 92.300(a)(2) through (a)(6), with only minimal revisions.

Paragraph (a)(2) of § 92.300 would provide the minimum standard for a project to be considered to be ''owned'' by the CHDO. Housing meets the ''owned'' standard if the CHDO is the owner (in fee simple absolute) of multifamily or single housing that will be rented to low-income families in accordance with § 92.252.

Paragraph (a)(3) would provide the minimum standards for a project to be considered to be ''developed'' by the CHDO. Housing would meet the ''developed'' standard, if the CHDO is the owner (in fee simple absolute) and developer of: (1) New single family housing that is or will be constructed or (2) existing single family substandard housing that is or will be acquired and rehabilitated for sale to low-income families in accordance with § 92.254.

To be the developer, the CHDO would be required to arrange financing of the project and be in sole charge of construction. The CHDO would be permitted to provide direct homeownership assistance (*e.g.,* downpayment assistance) when the CHDO sells this housing to low-income families without being considered a subrecipient of HOME funds, subject to the condition that the HOME funding for downpayment assistance is not greater than 10 percent of the amount of HOME funds for development of the housing.

The participating jurisdiction would be required to determine and set forth in its written agreement with the CHDO either the actual sales prices or the method by which the sales prices for the housing will be established and whether the proceeds from the sale of the housing must be returned to the participating jurisdiction or may be retained by the CHDO. While the proceeds the participating jurisdiction permits the CHDO to retain would not be subject to the requirements of 24 CFR part 92, the participating jurisdiction would be required to specify in the written agreement with the CHDO whether the proceeds are to be used for HOME-eligible or other housing activities to benefit low-income families. However, funds recaptured because the housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) would then be subject to the requirements of this part in accordance with § 92.503.

Paragraph (a)(4) would provide the minimum standards for a rental project to be considered ''sponsored'' by the CHDO. Rental housing would meet the ''sponsored'' standard if it is rental housing that is owned (in fee simple absolute) by a subsidiary of a CHDO, a limited partnership of which the CHDO or its subsidiary is the sole general partner, or a limited liability company of which the CHDO or its subsidiary is the sole managing member. The subsidiary of the CHDO would be permitted to be for-profit or nonprofit organization and would be required to be wholly owned by the CHDO. Paragraph (a)(4) would provide that, if the limited partnership or limited liability company agreement permits the CHDO to be removed as general partner or sole managing member, the agreement would have to require that the removal be ''for cause'' and that the CHDO must be replaced with another CHDO. In addition, the HOME funds would be required to be provided to the CHDO, its subsidiary, the limited partnership, or the limited liability company.

Paragraph (a)(5) would clarify that HUD also recognizes as ''sponsorship'' of HOME-assisted rental housing, situations in which the CHDO owns and develops the housing and agrees to convey the housing to a private nonprofit organization (that is not created by a governmental entity) at a predetermined time after completion of the development of the project. Such arrangements typically occur when the CHDO has the development expertise and the nonprofit organization has the capacity to own and operate the housing. Because the CHDO is the owner and developer, the CHDO would be required to own the property before the development phase of the project. The CHDO sponsor would be required to select the nonprofit organization before the CHDO enters into the agreement with the participating jurisdiction that commits HOME funds to the CHDO project. The nonprofit organization would assume the CHDO's HOME obligation (including any repayment of loans) for the project at a specified time after completion of development. If the property is not transferred to the nonprofit organization, the CHDO sponsor would remain liable for the HOME assistance and the HOME project.

Paragraph (a)(6) would be revised to provide that it is the participating jurisdiction that determines the form of assistance (*e.g.,* a grant or loan) to the CHDO.

Finally, minor conforming changes would be made to paragraph (e), in accordance with the proposed requirement for a written agreement between the participating jurisdiction and the CHDO, and paragraph (f) would be revised to clarify that the participating jurisdiction is responsible for ensuring that CHDOs do not receive more than the permitted amount in operating funds.

t. Other Federal Requirements

1. Affirmative Marketing; Minority Outreach Program (§ 92.351)

HUD is proposing to revise § 92.351 by removing the provision that affirmative marketing requirements do

not apply to tenants with tenant-based rental assistance. In all cases, HOME-assisted rental housing must be affirmatively marketed without regard to whether the potential tenant has rental assistance. Accordingly, HUD proposes to eliminate this exception to affirmative marketing. In addition, HUD is proposing to expand the applicability to affirmative marketing requirements and procedures to include HOME-funded programs, such as tenant-based rental assistance and down-payment assistance programs.

Corresponding changes would also be made to the provisions on written agreements (§ 92.504) and applicability of affirmative marketing requirements (§ 92.614) for funds remaining under the American Dream Downpayment Initiative.

Finally, § 92.351 would be revised to clarify that participating jurisdictions must not only adopt, but also follow their affirmative marketing procedures, and that the requirements apply to subrecipients as well as owners.

2. Environmental Review (§ 92.352)

HUD proposes to revise § 92.352 to address the applicability of the environmental review regulations in 24 CFR parts 50 and 58. This change would clarify that the applicability of environmental review regulations is based on the type of HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance), not the particular cost paid with HOME funds. For example, if the project is a new construction project, but the HOME funds will be used for acquisition of vacant land for the project, the environmental review is based on new construction of housing, as well as the acquisition of the land.

3. Labor (§ 92.352)

Section 92.354(a)(3) would be revised to remove reference to HUD Handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs. The monitoring and oversight responsibilities of participating jurisdictions, which were addressed in the handbook, have been incorporated in the regulations to ensure that it is clear that participating jurisdictions retain these responsibilities. While the procedures and processing provisions of the handbook remain applicable to participating jurisdictions, the regulation's reference to the handbook is not needed.

4. Conflict of Interest (§ 92.356)

While not required by statute, for many years HUD has, by regulation, prohibited conflicts of interest in the use of HOME funds. HUD proposes to revise the conflict of interest provisions of § 92.356(b) by clarifying that the covered conflict involves a financial benefit or interest and that covered familial relationships are limited to immediate family members. Because the existing language of this paragraph differs somewhat from the corresponding regulation for the CDBG program, some program participants have been reading the HOME regulation more broadly than intended.

The HOME regulation currently defines prohibited conflicts to include situations where a covered person may obtain ''a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect to a HOME-assisted activity.'' The regulation provides no further definition of what type of ''benefit'' or ''interest in any contract, subcontract or agreement'' is prohibited. This lack of detail led to many questions and ambiguity as to the circumstances that would constitute a prohibited conflict.

One problematic area has been with respect to public officials participating in the affairs of local nonprofit organizations. It is common for state and local governments to designate elected or appointed officials to serve on the boards of nonprofit organizations that may provide affordable housing within their communities. In such situations, the question arises whether the provision of HOME funds to a nonprofit organization constitutes a conflict when a public official serves on the nonprofit group's board. If the public official is not receiving a salary or any other compensation for serving on the board, the official's interest would only be a personal one. However, HUD has found that this kind of public participation often is beneficial and should not be discouraged.

Currently, under the CDBG conflict-of-interest regulations, interests or benefits of a personal nature do not create prohibited conflicts of interest. HUD believes that the HOME conflict rules should also be expressly limited to the prohibition of situations that provide a financial interest or benefit. Accordingly, this rule proposes to add ''financial'' to qualify the terms ''benefit'' and ''interest.'' Similar questions have surfaced with respect to the phrase ''family or business ties.'' For some communities with histories of extended family relationships, it could be difficult to avoid a conflict. The proposed rule adds the word ''immediate'' to be consistent with the phrase ''immediate family,'' as used in the CDBG conflict regulation and the procurement conflict provisions in 24 CFR 85.36.

In addition, HUD proposes to revise § 92.356(f)(1) by prohibiting an immediate family members of an officer, employee, agent, elected or appointed official or consultant of an owner, developer, or sponsor from occupying a HOME-assisted affordable housing unit in a project. A developer or owner (including their employees, agents, consultants, and officers) will generally have a financial interest or benefit from a HOME-assisted activity; for example, developer's fees. To address this situation, the HOME rule established specific conflict provisions in paragraph (f) to guard against owners and developers receiving an unfair advantage in the occupancy of HOME-assisted affordable housing. The range of situations in which a conflict may arise under paragraph (f) includes, for example, a nonprofit group receives HOME funds to construct rental housing as an owner, and then the executive director gives its employees first choice to occupy a rental unit.

While the current regulations prohibit officers or employees of the owner or developer of HOME-assisted housing to reside in or purchase HOME units unless the participating jurisdiction provides a written exception based upon specified regulatory criteria, this prohibition does not extend to their immediate family members. In other words, the executive director of the nonprofit owner in the above example rents the first unit to his child, sibling, or parent. Similar to the employment context, in HUD's view, this situation also conveys an unfair advantage for occupying HOME-assisted affordable housing. While there may be some instances where it is not inappropriate for immediate family members of the owners or developer of HOME-assisted housing to purchase or occupy a HOME unit, to ensure complete transparency these instances should be subject to the same exception process used for employees or officers of the owners or developers themselves.

u. Program Administration

1. The HOME Investment Trust Fund (§ 92.500)

HUD proposes to amend § 92.500(c) to require that participating jurisdictions' local HOME accounts be interest-bearing. NAHA states that participating jurisdictions must expend HOME funds for an eligible project cost within 15 days of the date of drawing HOME funds from the Federal HOME Investment Trust Fund and depositing

them in its local HOME Investment Trust Fund account. Requiring that this local account be interest-bearing will ensure that participating jurisdictions maximize these funds, as well as the accumulation of HOME program income, since, by virtue of being deposited in the local HOME Investment Trust Fund account by ensuring some level of return on the funds in the account.

NAHA requires each participating jurisdiction to reserve 15 percent of their HOME allocations to CHDOs. However, some participating jurisdictions encounter challenges in finding CHDOs with the adequate capacity to plan, undertake, and complete development of affordable housing, or to improve the capacity of existing CHDOs. To avoid losing CHDO set-aside funds to deobligation at the end of 24 months, many participating jurisdictions reserve funds to CHDOs. In some cases, these reservations never result in project commitments, expenditures, or completed projects. The reserved funds remain reserved to nonperforming organizations—in many cases for years—but the low-income communities the CHDOs are intended to serve never realize any benefit in the form of standard, affordable housing units. As long as the participating jurisdiction's rate of expenditure for other HOME funds is adequate, the unspent CHDO funds are not subject to deobligation until they expire at the end of 8 years under the provisions of the National Defense Authorization Act.

To provide an incentive for participating jurisdictions to proactively manage CHDO set-aside funds by moving them from nonperforming CHDOs to performing CHDOs before they expire, this proposed rule would add a new paragraph at § 92.502(d)(1)(C) that establishes a separate 5-year expenditure deadline for community housing development organization set-aside funds. The 5-year deadline for expending CHDO set-aside funds parallels the existing regulatory 5-year deadline for expenditure of other HOME funds.

2. Program Disbursement and Information System (§ 92.502)

HUD proposes to add a provision to § 92.502(a) that would clarify that participating jurisdictions are required to report all program income earned on HOME funds in the Integrated Disbursement and Information System (IDIS). HUD has found that some participating jurisdictions are not consistently reporting program income they earn in IDIS and are not always expending program income before drawing down additional HOME funds from their HOME Treasury Accounts.

Additionally, § 92.502(e) would clarify that even though other participants may be permitted to access HUD's disbursement and information system, only participating jurisdictions and State recipients (if permitted by the State) may request disbursement. This change would codify HUD's longstanding IDIS administrative guidance.

3. Repayments (§ 92.503)

Section 92.503 would be revised to provide that when repayment of HOME funds is required, HUD will instruct a participating jurisdiction whether to repay funds to the HOME Investment Trust Fund Treasury account or the local account.

4. Participating Jurisdiction Responsibilities; Written Agreements; On-Site Inspection (§ 92.504)

HUD is proposing several revisions to § 92.504 to reflect programmatic changes proposed by this rule to strengthen the performance of participating jurisdictions, and help ensure that participating jurisdictions are able to require other HOME program participants to comply with applicable requirements.

Specifically, § 92.504(a) would be revised to require participating jurisdictions to develop and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities, to ensure that the requirements of this part are met. While the existence of such written policies and procedures does not guarantee that a participating jurisdiction's program will be compliant and efficient, HUD's monitoring has shown that the absence of or failure to follow systemic program procedures for assessing risk and monitoring participating entities is strongly correlated with poor performance and noncompliance with HOME regulations.

The proposed rule would also make explicit that State recipients are included in the entities that must be evaluated annually, and it would clarify that the evaluation must include a review of each entity's compliance with HOME program requirements.

Many participating jurisdictions have requested HUD's assistance in improving the written agreements that they use when awarding HOME funds to program participants, so that the agreements are comprehensive with respect to compliance with all aspects of HOME regulations and effective management and enforcement tools. HUD shares this interest in making HOME written agreements better compliance, management, and enforcement tools for participating jurisdictions.

The proposed rule would make several revisions to § 92.504(c), which sets forth the provisions that are required to be contained in participating jurisdictions' written agreements with participants in their HOME programs, including state recipients, subrecipients, owners, developers, sponsors, contractors, and CHDOs. The proposed changes would require the inclusion of provisions in order to ensure that participating jurisdictions are able to meet their obligations to ensure participants' compliance with existing requirements, as well as requirements that would be added under this proposed rule.

Under § 92.504(c)(1), agreements between state participating jurisdictions and state recipients would include a provision to carry out the existing requirement in § 92.201(b)(3)(i). Under the existing requirement, states must require the state recipient to comply with either requirements established by the State or, alternatively, may require the state recipient to establish and comply with its own requirements to comply with part 92. The proposed revision would specify that under either alternative, the requirements must include provisions for income determinations, underwriting and subsidy layering review, rehabilitation standards, refinancing standards, homebuyer program policies, and affordability.

Section 92.504(c)(1)(i) would be revised to require agreements with state recipients to include greater detail about the state recipients' use of HOME funds, including amounts and uses for specific programs and activities, the number of housing projects to be funded, and any requirements for matching contributions. Under § 92.504(c)(1), the agreement would be required to specify whether repaid and recaptured HOME funds must be returned to the state or retained by the state recipient and expended on eligible activities.

Section 92.504(c)(1)(xi) would be revised to clarify that the written agreement required under that paragraph as a condition of providing HOME funds to other entities and persons must be in place before the HOME funds are provided, and new § 92.504(c)(1)(xiii) would require inclusion of a provision to implement the prohibition on charging fees in § 92.214(b), as proposed to be revised under this rule.

Section 92.504(c)(2) would be revised to include requirements in agreements with subrecipients reflecting those that this rule would require in agreements with state recipients, as described above. In addition, agreements with subrecipients would be required to provide requirements that they must follow to enable participating jurisdictions to carry out their environmental review responsibilities before HOME funds are committed to a project.

HUD further proposes to revise § 92.504(c)(3), which enumerates the requirements for written agreements between participating jurisdictions and project owners, developers, and sponsors, clarifying that the preliminary award of HOME funds (*i.e.,* early awards of HOME funds before other necessary sources of financing have been secured) does not constitute a ''commitment'' pursuant to the definition at § 92.2 and may not be entered into IDIS until a legally binding written agreement containing all required provisions is executed.

Section 92.504(c)(3)(i) would specify that the agreements must also include the address of the project and other information specific to the project that is the subject of the agreement.

Section 92.504(c)(3)(ii) would be revised to specify that affordability requirements must be imposed by legal restrictions and mechanisms under which the participating jurisdiction may require and seek specific performance under state law. For homeownership projects, agreements would have to specify sales prices and the required disposition of sales proceeds.

Agreements would also be required to specify the number and size of HOME assistance units, to provide whether the units are to be fixed or ''floating,'' and to require provision of the address of each unit to the participating jurisdiction by the time of project completion. Such agreements would be required under revised § 92.504(c)(3)(v) to specify that owners of rental housing must report annually information on rents, occupancy, the status of floating units, and the financial condition of the rental project.

Revised § 92.504(c)(3)(xi) would require inclusion of a provision to implement the prohibition on charging fees in § 92.214(b), as proposed to be revised under this rule. If a nonprofit owner is a CHDO, the agreement would also have to require compliance with § 92.303, which governs tenant grievances and tenant participation in management decisions.

A new paragraph (c)(6) would be added to § 92.504 that would enumerate the required provisions for written agreements providing operating expense funds to CHDOs, pursuant to § 92.208. The new paragraph would require the agreement to describe the uses of operating funds and, if the CHDO is not also receiving HOME funds for a project that it is to own, develop, or sponsor, also to state the expectation that such funds will be provided to the CHDO within 24 months, as also required in § 92.300(e).

HUD is proposing to revise § 92.504(d) to make clear that the participating jurisdiction must inspect each HOME project at the time of completion and during the period of affordability to determine compliance with the property standards applicable under § 92.251. Several participating jurisdictions have told HUD that they can effectively monitor their HOME rental projects through risk-based on-site monitoring plans that they use for rental housing developed through other funding sources. HUD is proposing changes to the inspection schedule and sample of inspected HOME-assisted units that will provide flexibility to participating jurisdictions with respect to the frequency of inspections.

Specific solicitation of comment. HUD specifically requests public comment from states and other affected members of the public about the criteria used in and characteristics of an effective risk-based system for on-site monitoring by states.

HUD is also proposing to add a new paragraph at § 92.504(d)(2) to require participating jurisdictions to examine, at least annually during the HOME period of affordability, the financial condition of rental projects with at least 10 HOME-assisted units. These provisions would be added to increase the likelihood that participating jurisdictions become aware to financial problems early enough to attempt to successfully correct problems or conduct a financial workout to sustain the viability of the project. HUD proposes to require this review to projects with 10 or more HOME-assisted units, so as to reduce the financial and administrative burden of these reviews on participating jurisdictions and to focus attention on projects which have large HOME investments. HUD recommends that participating jurisdictions perform such reviews periodically on smaller projects.

Specific solicitation of comment. HUD specifically seeks comment on its proposal that participating jurisdictions perform such reviews regularly. HUD is particularly interested in input regarding the unit-threshold for triggering annual reviews and whether it would be appropriate to establish a regulatory requirement for less frequent financial reviews of smaller projects.

HUD's proposed addition of a new section on troubled projects at § 92.210 is a companion to this new requirement and is intended to facilitate participating jurisdictions' efforts to return financially troubled projects to viability.

5. Applicability of Uniform Administrative Requirements (§ 92.505)

Section 92.505(a) and (b) would be revised to add a reference to the regulations implementing OMB Circular No. A–87 (2 CFR part 225) and OMB Circular No. A–122 (2 CFR part 230). Circular A–87 is entitled ''Cost Principles for States, Local, and Indian Tribal Governments.'' Circular A–122 is entitled ''Cost Principles for Non-Profit Organizations.'' The provisions of these cost principle circulates are codified in the governmentwide regulations found at 2 CFR part 225 and 2 CFR part 230, respectively. The circulars can also be found on OMB's Web site at *http://www.whitehouse.gov/omb/circulars/index.html.*

6. Recordkeeping (§ 92.508)

HUD is proposing to make revisions throughout § 92.508 to require participating jurisdictions to maintain records pertaining to new requirements that would be established in this rule.

7. Corrective and Remedial Actions (§ 92.551)

Section 92.551(c) would be amended by revising and adding to the remedial actions available for imposition on a participating jurisdiction. The current provision for requiring matching contributions would be expanded to include establishment of a remedial plan to make up a matching contributions deficit.

Two new remedial actions, which—are establishing procedures to ensure compliance with HOME requirements, and forming a consortium with the urban county—would also be added. The existing provision under which HUD may change the method of payment from advance to reimbursement would be expanded to require submission of supporting documentation before payment is made. Finally, the proposed change would provide that HUD may determine the participating jurisdiction to be high risk and impose special conditions or restrictions in accordance with 24 CFR 85.12.

8. Hearing Proceedings (§ 92.552)

Section 92.552(b) would be revised to remove the reference that it is specifically subpart B of 24 CFR part 26 that governs hearing proceedings.

9. Other Federal Requirements (§ 92.614)

HUD makes a minor technical change to § 92.614. HUD moves the reference to the affirmative marketing requirements in § 92.351(a) from § 92.614(b) to § 92.614(b).

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. This rule was determined to be a ''significant regulatory action'', as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
§ 91.320 (Action Plan)	645	1	1	1	645
§ 92.205(e) (Terminated Projects)	180	1	1	5	900
§ 92.252 (Qualification as affordable housing: Rental Housing)	50	1	1	5	250
§ 92.254(f) (Homeownership)	600	1	1	5	3,000
§ 92.351 (Affirmative Marketing)	1,290	1	1	5	6,450
§ 92.504 (Participating Jurisdiction Inspection)	645	1	1	1	645
§ 92.508 (Recordkeeping—Subsidy Layering and Underwriting—§ 92.250)	13,032	1	1	4	52,128
Total	16,442	1	1	26	64, 018

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting the electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR–5563) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395–6947,

and

Reports Liaison Officer, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7233, Washington, DC 20410.

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the allocation and use of formula grant funds by state and local jurisdictions (participating jurisdictions) under the HOME program. As discussed in the preamble, this proposed rule updates the regulations governing the HOME program, which have not been updated in 15 years. The proposed rule does not alter the allocation of funds under the HOME program, but is directed to revising the HOME program regulations to reflect changes in the housing market that have occurred over the last 15 years, to clarify and enhance the roles and responsibilities and accountability of participating jurisdictions, and strengthen HUD's own oversight of the program. The

program is a voluntary grant program and the regulations are designed to ensure the use of HOME program grant funds by participating jurisdictions and their subrecipients in a manner consistent with statutory requirement and objectives, and with HUD's mission. Accordingly, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This proposed rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, and Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 91and 92 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for part 30 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. In § 91.220, revise paragraphs (l)(2)(i) and (ii), redesignate existing paragraph (l)(2)(iv) as paragraph (l)(2)(vii), and add new paragraphs (l)(2)(iv), (v), and (vi), to read as follows:

§ 91.220 Action plan.

* * * * *

(l) * * *

(2) *HOME.* (i) For HOME funds, a participating jurisdiction shall describe other forms of investment that are not described in § 92.205(b). HUD's specific written approval to the jurisdiction is required for other forms of investment, as provided in § 92.205(b). Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action plan does not satisfy the requirement for specific HUD approval for other forms of investment.

(ii) If the participating jurisdiction intends to use HOME funds for homebuyers, it must set forth the guidelines for resale or recapture, and obtain HUD's specific, written approval, as required in § 92.254. Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action does not satisfy the requirement for specific HUD approval for other forms of investment.

* * * * *

(iv) If the participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single family housing and does not use the Single Family 95 percent Median Area Purchase Price Limit for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with § 92.254(a)(2)(iii).

(v) The jurisdiction must describe eligible applicants and describe its process for soliciting and funding applications or proposals.

(vi) The participating jurisdiction may limit the beneficiaries or give preferences to a particular segment of the low-income population only if described in the action plan.

(A) Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 92.350, and the participating jurisdiction must not limit or give preferences to students.

(B) A limitation or preference may include, in addition to targeting tenant-based rental assistance to persons with special needs, as provided in 24 CFR 92.209(c)(2), limiting beneficiaries or giving preferences to such professions as police officers, teachers, or artists.

(C) The participating jurisdiction must not limit beneficiaries or give a preference to all employees of the jurisdiction.

(D) The participating jurisdiction may permit rental housing owners to limit tenants or give a preference in accordance with 24 CFR 92.253(d) only if such limitation or preference is described in the action plan.

* * * * *

3. In § 91.320, revise paragraphs (k)(2)(i) and (ii), redesignate existing paragraph (k)(2)(iv) as paragraph (k)(2)(vii), and add new paragraphs (k)(2)(iv), (v), and (vi) to read as follows:

§ 91.320 Action plan.

* * * * *

(k) * * *

(2) *HOME.* (i) The State shall describe other forms of investment that are not described in 24 CFR 92.205(b). HUD's specific written approval is required for other forms of investment, as provided in § 92.205(b). Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action plan does not satisfy the requirement for specific HUD approval for other forms of investment.

(ii) If the State intends to use HOME funds for homebuyers, it must set forth the guidelines for resale or recapture, and obtain HUD's specific, written approval, as required in 24 CFR 92.254. Approval of the consolidated plan or action plan under § 91.500 or the failure to disapprove the consolidated plan or action does not satisfy the requirement for specific HUD approval for other forms of investment.

* * * * *

(iv) If the participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single family housing and does not use the Single Family Median Area Purchase Price Limit for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with § 92.254(a)(2)(iii).

(v) The State must describe eligible applicants and describe its process for soliciting and funding applications or proposals.

(vi) The participating jurisdiction may limit the beneficiaries or give preferences to a particular segment of the low-income population only if described in the action plan.

(A) Any limitation or preference must not violate nondiscrimination requirements in § 92.350 of this chapter, and the participating jurisdiction must not limit or give preferences to students.

(B) A limitation or preference may include, in addition to targeting tenant-based rental assistance to persons with special needs as provided in 24 CFR 92.209(c)(2), limiting beneficiaries or giving preferences to persons in certain occupations, such as police officers, firefighters, or teachers.

(C) The participating jurisdiction must not limit beneficiaries or give a preference to all employees of the jurisdiction.

(D) The participating jurisdiction may permit rental housing owners to limit tenants or give a preference in accordance with 24 CFR 92.253(d) only if such limitation or preference is described in the action plan.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

4. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

5. In § 92.2:

a. Revise the introductory text;

b. Add, in alphabetical order, the definition of *CDBG program;*

c. Revise paragraph (1) of the definition of *Commitment;*

d. Revise paragraphs (3)(ii) and (iii); add paragraph (3)(iv); and revise paragraphs (4), (5), and (9) of the definition of *Community housing development organization;*

e. Add, in alphabetical order, the definition of *Consolidated plan;*

f. Revise the definitions of *Homeownership, Housing,* and *Low-income families;*

g. Add a definition of *Observed deficiency (OD);*

h. Revise paragraph (2) of the definition of *Program income;* and

i. Revise the definitions of *Project completion, Reconstruction, Single room occupancy (SRO) housing,* and *Subrecipient*

j. Add a definition of *Uniform Physical Condition Standards (UPCS);* and

k. Revise the definition of *Very low-income families.*

The revisions and additions read as follows:

§ 92.2 Definitions.

The terms ''1937 Act'', ''ALJ'', ''Fair Housing Act'', ''HUD'', ''Indian Housing Authority (IHA)'', ''Public housing'', ''Public Housing Agency (PHA)'', and ''Secretary'' are defined in 24 CFR 5.100.

* * * * *

CDBG program means the Community Development Block Grant program under 24 CFR part 570.

* * * * *

Commitment * * *

(1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) with a State recipient, a subrecipient, or a contractor to use a specific amount of HOME funds to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance; or has met the requirements to commit to a specific local project, as defined in paragraph (2) of this definition. (See § 92.504(c) for minimum requirements for a written agreement.) An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (*e.g.,* an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment.

* * * * *

Community housing development organization * * *

(3) * * *

(ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members;

(iii) The community housing development organization must be free to contract for goods and services from vendors of its own choosing; and

(iv) The officers and employees of the for-profit entity may not be officers or employees of the community housing development organization, and the community housing development organization may not use office space of the for-profit entity.

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)–1 or 1.501(c)(4)–1));

(5) Is not a governmental entity (including the participating jurisdiction, other jurisdiction, Indian tribe, public housing authority, Indian housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a community housing development organization; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of recipient governmental entity. Board members appointed by a governmental entity may not appoint the remaining two-thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a community housing development organization, and the community housing development organization may not use office space of a governmental entity;

* * * * *

(9) Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. An organization satisfies this requirement by having paid employees with housing development experience. A nonprofit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization; and

* * * * *

Consolidated plan means the plan submitted and approved in accordance with 24 CFR part 91.

* * * * *

Homeownership means ownership in fee simple title in a 1- to 4-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD.

(1) The land may be owned in fee simple or the homeowner may have a 99- year ground lease.

(i) For housing located in the insular areas, the ground lease must be 40 years or more.

(ii) For housing located on trust or restricted Indian lands, the ground lease must be 50 years or more.

(2) Right to possession under a contract for deed, installment contract, or land contract (pursuant to which the deed is not given until the final payment is made) is not an equivalent form of ownership.

(3) The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

(4) The participating jurisdiction must determine whether or not ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law; however, if the cooperative or mutual housing project receives Low Income Housing Tax Credits, the ownership or membership does not constitute homeownership.

* * * * *

Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway houses, housing for students, or dormitories (including farmworker dormitories).

* * * * *

Low-income families means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a low-income family if the individual is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002); is under 24 years of age; is not a veteran of the United States military; is unmarried; does not have a dependent child; and is not otherwise individually low-income or does not have parents who qualify as low-income.

* * * * *

Observed deficiency (OD) means any deficiency identified during an on-site inspection of each inspectable item for each inspected area. The participating jurisdiction may establish its own standards for an observed deficiency for each inspectable item, except that at a minimum, the participating jurisdiction's standards must identify each deficiency (regardless of the level of severity) for each inspectable item and inspected area included in the most recent Uniform Physical Condition Standards (UPCS) Dictionary of Definitions established by HUD pursuant to 24 CFR 5.703 and 5.705, or such other requirements that HUD may establish.

* * * * *

Program income * * *

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income (Program income does not include gross income from the use, rental or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient or State recipient);

* * * * *

Project completion means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under § 92.251); the final drawdown has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD, except that with respect to rental housing project completion, for the purposes of § 92.502(d) of this part, project completion occurs upon completion of construction and prior to occupancy. For tenant-based rental assistance, project completion means the final drawdown has been disbursed for the project.

Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment, except that housing that was destroyed may be rebuilt on the same lot if HOME funds are committed within 6 months of the date of destruction. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part.

* * * * *

Single room occupancy (SRO) housing means housing (consisting of single-room dwelling units) that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of nonresidential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants. A project's designation as an SRO must be consistent with the building's zoning and building code classification.

* * * * *

Subrecipient means a public agency or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME programs to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of a housing project is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

* * * * *

Uniform Physical Condition Standards (UPCS) means uniform

national standards established by HUD pursuant to § 5.703 of this title for housing that is decent, safe, sanitary, and in good repair. Standards are established for inspectable items for each of the following areas: site, building exterior, building systems, dwelling units, and common areas.

* * * * *

Very low-income families means low-income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a very low-income family if the individual is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002); is under 24 years of age; is not a veteran of the United States military; is unmarried; does not have a dependent child; and is not otherwise individually very low-income or does not have parents who qualify as very low-income.

6. In § 92.201, revise paragraph (a)(2) to read as follows:

§ 92.201 Distribution of assistance.

(a) * * *

(2) The participating jurisdiction may only invest its HOME funds in eligible projects within its boundaries, or in jointly funded projects within the boundaries of contiguous local jurisdictions which serve residents from both jurisdictions. For a project to be jointly funded, both jurisdictions must make a financial contribution to the project. A jurisdiction's financial contribution may take the form of a grant or loan (including a loan of funds that comes from other federal sources and that are in the jurisdiction's control, such as CDBG program funds) or relief of a significant tax or fee (such as waiver of impact fees, property taxes, or other taxes or fees customarily imposed on projects within the jurisdiction).

* * * * *

7. In § 92.202, revise paragraph (b) to read as follows:

§ 92.202 Site and neighborhood standards.

* * * * *

(b) *New rental housing.* In carrying out the site and neighborhood requirements with respect to new construction of rental housing, a participating jurisdiction is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR 983.57(e)(2) and (3).

8. In § 92.203, revise paragraphs (a)(1)(i), (a)(2), (b), (c), and (d)(1) to read as follows:

§ 92.203 Income determinations.

(a) * * *

(1) * * *

(i) Examine at least 3 months of source documents evidencing annual income (*e.g.,* wage statement, interest statement, unemployment compensation statement) for the family.

* * * * *

(2) For all other families (*i.e.,* homeowners receiving rehabilitation assistance, homebuyers, and recipients of HOME tenant-based rental assistance), the participating jurisdiction must determine annual income by examining at least 3 months of source documents evidencing annual income (*e.g.,* wage statement, interest statement, unemployment compensation statement) for the family.

(b) When determining whether a family is income eligible, the participating jurisdiction must use one of the following two definitions of ''annual income'':

(1) *Annual income* as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR 5.603); or

(2) *Adjusted gross income* as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual Federal annual income tax purposes, except that government cost-of-living allowances that not are included in income (*e.g.,* for a Federal civilian employee or a federal court employee who is stationed in Alaska, Hawaii, or outside the United States) must be added to adjusted gross income.

(c) Although the participating jurisdiction may use either of the definitions of ''annual income'' permitted in paragraph (b) of this section to calculate adjusted income, it must apply exclusions from income established at 24 CFR 5.611. The HOME rents for very low-income families established under § 92.252(b)(2) are based on adjusted income. In addition, the participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family. The participating jurisdiction may use only one definition for each HOME-assisted program (*e.g.,* downpayment assistance program, rental housing program) that it administers.

(d)(1) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income shall include income from all persons in the household. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

* * * * *

9. In § 92.205, revise paragraphs (a)(1), (a)(2), (b)(1), (d), and (e) to read as follows:

§ 92.205 Eligible activities: General.

(a) * * *

(1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing. The specific eligible costs for these activities are set forth in §§ 92.206 through 92.209. The activities and costs are eligible only if the housing meets the property standards in § 92.251 upon project completion.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing within the time frames established in paragraph (2) of the definition of ''commitment'' in § 92.2.

* * * * *

(b) * * *

(1) A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be

consistent with the purposes of this part and specifically approves in writing. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

* * * * *

(d) *Multi-unit projects.* HOME funds may be used to assist one or more housing units in a multi-unit project.

(1) Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program. If the assisted and nonassisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non-assisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the HOME-assisted units can be determined by prorating the total HOME eligible development costs of the project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME-assisted units in the project.

(2) After project completion, the number of units designated as HOME-assisted may be reduced only in accordance with § 92.210, except that in a project consisting of all HOME-assisted units, one unit may be subsequently converted to an on-site manager's unit if the participating jurisdiction determines that the conversion will contribute to the stability or effectiveness of the housing and that, notwithstanding the loss of one HOME-assisted unit, the costs charged to the HOME program do not exceed the actual costs of the HOME-assisted units and do not exceed the subsidy limit in § 92.250(b).

(e) *Terminated projects.* A HOME assisted project that is terminated before completion, either voluntarily or involuntary, constitutes an ineligible activity, and any HOME funds invested in the project must be repaid to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b) (except for project-specific assistance to community housing development organizations as provided in § 92.301(a)(3) and (b)(3)).

(1) A project that does not meet the requirements for affordable housing must be terminated and must repay all HOME funds invested in the project to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b).

(2) If a participating jurisdiction does not complete a project within 4 years of the date of commitment of funds, the project is considered to be terminated and the participating jurisdiction must repay all funds invested in the project to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b). The participating jurisdiction may request a one-year extension of this deadline in writing, by submitting information about the status of the project, steps being taken to overcome any obstacles to completion, proof of adequate funding to complete the project, and a schedule with milestones for completion of the project for HUD's review and approval.

10. In § 92.206, revise paragraphs (a)(1), (a)(2), (a)(3) introductory text, (a)(4), (b) introductory text, (b)(1), (b)(2) introductory text, (b)(2)(vi), (d)(1), (d)(3), and (d)(6) to read as follows:

§ 92.206 Eligible project costs.

* * * * *

(a) * * *

(1) For new construction projects, costs to meet the new construction standards in § 92.251;

(2) For rehabilitation, costs to meet the property standards for rehabilitation projects in § 92.251;

(3) For both new construction and rehabilitation projects, costs:

* * * * *

(4) For both new construction and rehabilitation of multifamily rental housing projects, costs to construct or rehabilitate laundry and community facilities that are located within the same building as the housing and which are for the use of the project residents and their guests.

* * * * *

(b) *Refinancing costs.* The cost to refinance existing debt secured by a housing project that is being rehabilitated with HOME funds. These costs include the following:

(1) For single-family (one- to four-family) owner-occupied housing, when loaning HOME funds to rehabilitate the housing, if the refinancing is necessary to reduce the overall housing costs to the borrower and make the housing more affordable and if the rehabilitation cost is greater than the amount of debt that is refinanced.

(2) For single family or multifamily projects, when loaning HOME funds to rehabilitate the units if refinancing is necessary to permit or continue affordability under § 92.252. The participating jurisdiction must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. Regardless of the amount of HOME funds invested, the minimum affordability period shall be 15 years. The guidelines shall describe the conditions under which the participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

* * * * *

(vi) State that HOME funds cannot be used to refinance single family or multifamily housing loans made or insured by any Federal program, including CDBG.

* * * * *

(d) * * *

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups. The costs may be paid if they were incurred not more than 18 months before the date that HOME funds are committed to the project and the participating jurisdiction expressly permits HOME funds to be used to pay the costs in the written agreement committing the funds.

* * * * *

(3) Costs of a project audit, including certification of costs performed by a certified public accountant, that the participating jurisdiction may require with respect to the development of the project.

* * * * *

(6) Staff and overhead costs of the participating jurisdiction directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers, *e.g.,* housing counseling, may be charged to project costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project. For multi-unit projects, such costs must be allocated among HOME-assisted units in a reasonable manner and documented. Although these costs may be charged as project costs, they must not be charged to or paid by low-income families.

* * * * *

11. In § 92.207, revise paragraph (b) to read as follows:

§ 92.207 Eligible administrative and planning costs.

* * * * *

(b) *Staff and overhead.* Staff and overhead costs of the participating jurisdiction directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, lead-based paint inspections (visual assessments, inspections, and risk assessments) and other services related to assisting potential owners, tenants, and homebuyers (*e.g.,* housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced

by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 92.206(d)(6) and (f)(2), at the discretion of the participating jurisdiction; however, these costs cannot be charged to or paid by the low-income families.

* * * * *

12. In § 92.208, revise paragraph (a) to read as follows:

§ 92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.

(a) Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). This amount is in addition to amounts set aside for housing projects that are owned, developed, or sponsored by CHDOs as described in § 92.300(a). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials; and supplies. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.300(e) and (f).

* * * * *

13. In § 92.209, revise paragraphs (a), (c) introductory text, (c)(2), (g), (h)(3)(ii), and (l) to read as follows:

§ 92.209 Tenant-based rental assistance: Eligible costs and requirements.

(a) *Eligible costs.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family pursuant to this section. Eligible costs also include utility deposit assistance, but only if this assistance is provided with tenant-based rental assistance or security deposit payment. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at § 92.207(a).

* * * * *

(c) *Tenant selection.* The participating jurisdiction must select low-income families in accordance with written tenant selection policies and criteria that are based on local housing needs and priorities established in the participating jurisdiction's consolidated plan.

* * * * *

(2) *Targeted assistance.* (i) The participating jurisdiction may establish a preference for individuals with special needs (*e.g.,* homeless persons or elderly persons) or persons with disabilities. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of nonmandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services. Participation may be limited to persons with a specific disability if necessary to provide as effective housing, aid, benefit, or services as those provided to others in accordance with 24 CFR 8.4(b)(1)(iv).

(ii) The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (*e.g.,* persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

(iii) *Self-sufficiency program.* The participating jurisdiction may require the family to participate in a self-sufficiency program as a condition of selection for assistance. The family's failure to continue participation in the self-sufficiency program is not a basis for terminating the assistance; however, renewal of the assistance may be conditioned on participation in the program. Tenants living in a HOME-assisted rental project who receive tenant-based rental assistance as relocation assistance must not be required to participate in a self-sufficiency program as a condition of receiving assistance.

(iv) *Homebuyer program.* HOME tenant-based rental assistance may assist a tenant who has been identified as a potential low-income homebuyer through a lease-purchase agreement, with monthly rental payments for a period up to 36 months (*i.e.,* 24 months, with a 12-month renewal in accordance with paragraph (e) of this section). The HOME tenant-based rental assistance payment may not be used to accumulate a downpayment or closing costs for the purchase; however, all or a portion of the homebuyer-tenant's monthly contribution toward rent may be set aside for this purpose. If a participating jurisdiction determines that the tenant has met the lease-purchase criteria and is ready to assume ownership, HOME funds may be provided for downpayment assistance in accordance with the requirements of this part.

(v) Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a). For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance. Persons who are eligible for a preference must have the opportunity to participate in all programs of the participating jurisdiction, including programs that are not separate or different.

* * * * *

(g) *Tenant protections.* The tenant must have a lease that complies with the requirements in § 92.253 (a) and (b).

(h) * * *

(3) * * *

(ii) The Section 8 Housing Choice Voucher Program (24 CFR part 982).

* * * * *

(l) *Use of Section 8 assistance.* In any case where assistance under section 8 of the 1937 Act becomes available, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

14. Add § 92.210 to read as follows:

§ 92.210 Troubled HOME-assisted rental housing projects.

(a) The provisions of this section apply only to an existing HOME-assisted rental project that, within the HOME period of affordability, is no longer financially viable. For purposes of this section, a HOME assisted rental project is no longer financially viable if its operating costs significantly exceed its operating revenue. HUD may approve one or both of the actions described in paragraphs (b) and (c) of this section to strategically preserve a rental project after consideration of market needs, available resources, and the likelihood of long-term viability of the project.

(b) Notwithstanding § 92.214, HUD may permit, pursuant to a written memorandum of agreement, a

participating jurisdiction to invest additional HOME funds in the existing HOME-assisted rental project. The total HOME funding for the project (original investment plus additional investment) must not exceed the per-unit subsidy limit in § 92.250(a). The use of HOME funds may include, but is not limited to, rehabilitation of the HOME units and recapitalization of project reserves for the HOME units (to fund capital costs). If additional HOME funds are invested, HUD may require the period of affordability to be extended, based on such considerations as the amount of additional HOME funds or additional units.

(c) HUD may, through written approval, permit the participating jurisdiction to reduce the number of HOME-assisted units, if the project contains more than the minimum number of units required to be designated as HOME-assisted under § 92.205(d). In determining whether to permit a reduction in the number of HOME-assisted units, HUD will take into account the required period of affordability and the amount of HOME assistance provided to the project.

15. Add § 92.213 to read as follows:

§ 92.213 HOME Funds and Public Housing.

(a) *General Rule.* HOME funds may not be used for public housing units. HOME-assisted housing units may not receive Operating Fund or Capital Fund assistance under section 9 of the 1937 Act during the HOME period of affordability.

(b) *Exception.* HOME funds may be used for the development of public housing units, if the units are developed under section 24 of the 1937 Act (HOPE VI) and no Capital Fund assistance under section 9(d) of the Act is used for the development of the unit. Units developed with both HOME and HOPE VI may receive operating assistance under section 9 of the 1937 Act. Units developed with HOME and HOPE VI funds under this paragraph may subsequently receive Capital Funds for rehabilitation or modernization.

(c) *Using HOME Funds in Public Housing Projects.* Consistent with § 92.205(d), HOME funds may be used for affordable housing units in a project that also contains public housing units, provided that the HOME funds are not used for the public housing units (except as provided in paragraph (b) of this section) and HOME funds are used only for eligible costs in accordance with this part.

16. In § 92.214, revise the section heading and paragraphs (a)(4) and (b) to read as follows:

§ 92.214 Prohibited activities and fees.

(a) * * *

(4) Provide assistance for uses authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);

* * * * *

(b)(1) Participating jurisdictions may not charge (and must prohibit State recipients, subrecipients, and other program participants from charging) servicing, origination, or other fees for the purpose of covering costs of administering the HOME program (*e.g.,* fees on low-income families for construction management or for inspections for compliance with property standards) (see § 92.206(d)(6) and § 92.207), except that participating jurisdictions:

(i) May charge owners of rental projects reasonable annual fees for compliance monitoring during the period of affordability; and

(ii) May charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. The amount of application fees must be appropriate to the type of application and may not create an undue impediment to a low-income family's, subrecipient's, State recipient's, or other entity's participation in the participating jurisdiction's program. All such fees are applicable credits under 2 CFR 225 (OMB Circular A–87, entitled ''Cost Principles for State, Local, and Indian Tribal Governments'').

(2) The participating jurisdiction must prohibit project owners from charging fees that are not customarily charged in rental housing (*e.g.,* laundry room access fees), except that rental project owners may:

(i) Charge reasonable application fees to prospective tenants;

(ii) May charge parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and

(iii) May charge fees for services such as bus transportation or meals, as long as such services are voluntary.

17. In § 92.221, add paragraph (d) to read as follows:

§ 92.221 Match credit.

* * * * *

(d) *Match credit for affordable homeownership housing.* Contributions to homeownership housing may be credited as a match only to the extent that the sales price of the housing is reduced by the amount of the contribution.

18. In § 92.222, revise paragraph (b) to read as follows:

§ 92.222 Reduction of matching contribution requirement.

* * * * *

(b) *Reduction of match for participating jurisdictions in disaster areas.* If a participating jurisdiction is located in an area in which a declaration of major disaster is made pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206), the participating jurisdiction may request a reduction of its matching requirement.

(1) In determining whether to grant the request and the amount and duration of the reduction, if any, HUD must consider the fiscal impact of the disaster on the participating jurisdiction.

(i) For a local participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218 by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year.

(ii) For a State participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218, by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expended in an area to which the declaration of a major disaster applies.

(2) At its discretion and upon request of the participating jurisdiction, the HUD Field Office may extend the reduction for an additional year.

19. Revise § 92.250 to read as follows:

§ 92.250 Maximum per-unit subsidy amount, underwriting, and subsidy layering.

(a) *Maximum per-unit subsidy amount.* The total amount of HOME funds and ADDI funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limitations established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C.17151(d)(3)(ii)) for elevator-type projects that apply to the area in which the housing is located. HUD will allow the per-unit subsidy amount to be increased on a programwide basis to an amount, up to 240 percent of the original per unit limits, to the extent that the costs of multifamily housing construction exceed the section 221(d)(3)(ii) limit.

(b) *Underwriting and subsidy layering.* Before committing funds to a project, the participating jurisdiction must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit

or return on owner's or developer's investment in a project and must not invest any more HOME funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at minimum, the period of affordability in § 92.252 or § 92.254) and that will not provide a profit or return on the owner's or developer's investment that exceeds the participating jurisdiction's established standards for the size, type, and complexity of the project. The participating jurisdiction's guidelines must require the participating jurisdiction to undertake:

(1) An examination of the sources and uses of funds for the project and a determination that the costs are reasonable; and

(2) An assessment, at minimum, of the market conditions of the neighborhood in which the project will be located, the experience of the developer, the financial capacity of the developer, and firm financial commitments for the project.

20. Revise § 92.251 to read as follows:

§ 92.251 Property standards.

(a) *New construction projects.* (1) *State and local codes, ordinances, and zoning requirements.* Housing that is newly constructed with HOME funds must meet all applicable State and local codes, ordinances, and zoning requirements. HOME-assisted new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon project completion.

(2) *HUD requirements.* All new construction projects must also meet the requirements described in paragraphs (a)(2)(i) through (vii) of this section:

(i) *Lead-based paint.* The housing must meet the lead-based paint requirements at 24 CFR part 35.

(ii) *Accessibility.* The housing must meet the accessibility requirements of part 8 of this title, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619).

(iii) [Reserved.]

(iv) *Disaster mitigation.* Where relevant, the housing must be constructed to mitigate the impact of potential disasters (*e.g.,* earthquakes, hurricanes, flooding, and wildfires), in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

(v) *Written standards for methods and materials, plans, specifications, work write-ups, and cost estimates.* The participating jurisdiction must establish written standards for methods and materials to be used for new construction. The participating jurisdiction must ensure that plans and specifications for new construction that describe the work to be undertaken are in compliance with State and local codes, ordinances, requirements, and the participating jurisdiction's standards for methods and materials. The participating jurisdiction must review and approve a written cost estimate for construction after a determination that costs are reasonable.

(vi) *Construction progress inspections.* The participating jurisdiction must conduct progress and final inspections of construction to ensure that work is done in accordance with approved standards for methods and materials, plans, specifications, and work write-ups. The participating jurisdiction must establish written procedures for initial, progress, and final inspections of construction, including the following: Detailed inspection checklists, description of how and by whom inspections will be carried out, procedures for training and certifying qualified inspectors, and frequency of inspections.

(vii) *Payment schedule.* The participating jurisdiction must have procedures to ensure that progress payments are consistent with the amount of work performed and that final payment does not occur until project completion.

(b) *Rehabilitation projects.* All rehabilitation that is performed using HOME funds must meet the requirements of this paragraph (b).

(1) *State and local codes, ordinances, and zoning requirements.* Housing that is rehabilitated with HOME funds must meet all applicable State and local codes, ordinances, and requirements. The housing must meet the applicable requirements upon project completion.

(2) *Rehabilitation standards.* The participating jurisdiction must establish rehabilitation standards for all HOME-assisted housing rehabilitation activities. The housing must meet the participating jurisdiction's rehabilitation standards upon project completion. The participating jurisdiction's description of its standards must be in sufficient detail to establish the basis for a uniform inspection of the property. At a minimum, the standards of the participating jurisdictions must be such that, upon completion, the HUD-assisted project and units will have no observed deficiencies, using the most recent physical inspection procedures prescribed by HUD pursuant to 24 CFR 5.705 for public housing under the Uniform Physical Condition Standards. For multifamily housing projects of 26 or more total units, the participating jurisdiction must determine all work that will be performed in the rehabilitation of the housing and the long-term physical needs of the project through a capital needs assessment of the project. The rehabilitation standards must address each of the following:

(i) *Written standards for methods and materials.* The participating jurisdiction must establish written standards for methods and materials to be used for rehabilitation work, whether or not there are applicable State or local rehabilitation codes.

(ii) *Health and safety.* The housing must be free of all health and safety defects. The participating jurisdiction's standards must identify life-threatening deficiencies that must be addressed immediately.

(iii) *Major systems.* For rental housing, upon project completion, each of the following major systems must have a remaining useful life for a minimum of 15 years or for such longer period specified by the participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work: structural support; roofing; cladding and weatherproofing (*e.g.,* windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For multifamily housing projects of 26 units or more, the participating jurisdiction must determine the useful life of major systems through a capital needs assessment of the project. For owner-occupied housing, upon project completion, each of the following major systems must have a remaining useful life for a minimum of 5 years or for such longer period specified by the participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work: Structural support; roofing; cladding and weatherproofing (*e.g.,* windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.

(iv) *Lead-based paint.* The housing must meet the lead-based paint requirements at 24 CFR part 35.

(v) *Accessibility.* The housing must meet the accessibility requirements in 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601–3619). Rehabilitation may include improvements that are not required by regulation or statute that permit use by a person with disabilities.

(vi) [Reserved]

(vii) *Disaster mitigation.* Where relevant, the housing must be improved to mitigate the impact of potential disasters (*e.g.,* earthquake, hurricanes, flooding, wildfires) in accordance with State and local codes, ordinances, and requirements.

(viii) *Other improvements.* Discretionary housing improvements beyond those described in paragraphs (b)(2)(i) through (vii) of this section may include modest amenities and aesthetic features that are in keeping with housing of similar type in the community and must avoid luxury improvements, as defined by the participating jurisdiction.

(3) *Work write-ups and cost estimates.* The participating jurisdiction must ensure that a work write-up that describes the work to be undertaken is in compliance with State and local codes, ordinances, requirements, and the participating jurisdiction's standards for methods and materials. The participating jurisdiction must review and approve a written cost estimate for construction after a determination that costs are reasonable.

(4) *Construction progress inspections.* The participating jurisdiction must establish written inspection procedures for initial, progress, and final inspections during construction (see § 92.504(d) for the participating jurisdiction's ongoing responsibilities for on-site inspections during the affordability period), including detailed inspection checklists, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors.

(5) *Frequency of inspections.* The participating jurisdiction must conduct an initial property inspection to identify the deficiencies that must be addressed. The participating jurisdiction must conduct progress and final inspections to ensure that work is done in accordance with approved standards for methods and materials, and with work write-ups. In accordance with § 92.504(d), the participating jurisdiction must comply with ongoing responsibilities for on-site inspections during the affordability period.

(6) *Payment schedule.* The participating jurisdiction must have procedures to ensure that progress payments are consistent with the amount of work performed and that final payment does not occur until all of the required work is completed.

(c) *Acquisition of standard housing.* (1) Existing housing that is acquired with HOME assistance for rental housing, and that was newly constructed or rehabilitated less than 12 months before the date of commitment of HOME funds, must meet the property standards of paragraph (a) or paragraph (b) of this section, as applicable, of this section for new construction and rehabilitation projects. The participating jurisdiction must document this compliance based upon a review of approved building plans and Certificates of Occupancy, and an inspection that is conducted no earlier than 30 days before the commitment of HOME assistance.

(2) All other existing housing that is acquired with HOME assistance for rental housing must meet the rehabilitation property standards requirements of paragraph (b) of this section. The participating jurisdiction must document this compliance based upon an inspection that is conducted no earlier than 30 days before the commitment of HOME assistance, in accordance with the inspection procedures that the participating jurisdiction established pursuant to this section. If the property does not meet these standards, the property must be rehabilitated to meet the standards of paragraph (b) of this section.

(3) For acquisition projects that are homebuyer projects, before the transfer of the housing to the homebuyer, the participating jurisdiction must inspect the housing and notify the prospective homebuyer of the work needed to cure any defects, and the time by which defects must be cured and applicable property standards met. The housing must be free from all health and safety defects before occupancy and must meet the property standards of this section not later than 6 months after the date of transfer of ownership. The participating jurisdiction must inspect the housing to verify that the defects were corrected and the standards are met.

(d) All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in 24 CFR 982.401, or the successor requirements as established by HUD.

(e) *Manufactured housing.* Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards codified at 24 CFR part 3280. These standards preempt State and local codes covering the same aspects of performance for such housing. Participating jurisdictions providing HOME assistance to install manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing must be on a permanent foundation. Manufactured housing that is rehabilitated using HOME funds must meet the property standards requirements in paragraph (b) of this section, as applicable. The participating jurisdiction must document this compliance in accordance with the inspection procedures that the participating jurisdiction has established pursuant to § 92.251, as applicable.

(f) *Ongoing property condition standards: Rental housing.* (1) *Ongoing property standards.* The participating jurisdiction must establish property standards for rental housing (including manufactured housing) that apply throughout the affordability period. The standards must ensure that owners maintain the housing as decent, safe, and sanitary housing in good repair. The participating jurisdiction's description of its property standards must be in sufficient detail to establish the basis for a uniform inspection of HOME rental projects. The participating jurisdiction's ongoing property standards must address each of the following:

(i) *Compliance with State and local codes, ordinances, and requirements.* The housing must meet all applicable State and local code requirements and ordinances. At a minimum, the participating jurisdiction's ongoing property standards must include all inspectable items in the most recent notice setting forth the physical inspection procedures prescribed by HUD pursuant to 24 CFR 5.705 for public housing under the Uniform Physical Condition Standards. The participating jurisdiction's property standards are not required to use any scoring, item weight, or level of criticality in the notice.

(ii) *Health and safety.* The housing must be free of all health and safety defects. The standards must identify life-threatening deficiencies that the owner must immediately correct and the time frames for addressing these deficiencies.

(iii) *Lead-based paint.* The housing must meet the lead-based paint requirements in 24 CFR part 35.

(2) *Inspection procedures.* The participating jurisdiction must have written inspection procedures for ongoing property inspections, in accordance with § 92.504(d). These procedures must include: Detailed inspection checklists, description of how frequently the property inspections will be undertaken, description of how and by whom inspections will be carried out, and procedures for training and certifying qualified inspectors.

(3) *Corrective and remedial actions.* The participating jurisdiction must have procedures for ensuring that timely corrective and remedial actions are taken by the project owner to address identified deficiencies.

21. In § 92.252:

a. Revise the introductory text, paragraph (a) introductory text, paragraph (b) introductory text, paragraphs (c), (d), (e), (f)(2), paragraph (g) heading, and paragraph (j); and

b. Add paragraphs (k) and (l).

The revisions and additions read as follows:

§ 92.252 Qualification as affordable housing: Rental housing.

The HOME-assisted units in a rental housing project must be occupied only by households that are eligible as low-income families and must meet the requirements of this section to qualify as affordable housing. If multifamily housing is not occupied by eligible tenants within the time period to be specified by HUD following the date of project completion, HUD will require the participating jurisdiction to submit marketing information and, if appropriate, submit a marketing plan. HUD will require repayment of HOME funds invested in any housing unit that has not been rented to eligible tenants 18 months after the date of project completion. The affordability requirements also apply to the HOME-assisted nonowner-occupied units in single-family housing purchased with HOME funds in accordance with § 92.254. The tenant must have a written lease that complies with § 92.253.

(a) *Rent limitation.* HUD provides the following maximum HOME rent limits. The rent limits apply to the rent plus the utilities or the utility allowance. The maximum HOME rents (High HOME Rents) are the lesser of:

* * * * *

(b) *Additional rent limitations (Low HOME Rents).* The participating jurisdiction may designate (in its written agreement with the project owner) more than the minimum HOME units in a rental housing project, regardless of project size, to have Low HOME Rents that meet the requirements of this paragraph (b). In rental projects with five or more HOME-assisted rental units, at least 20 percent of the HOME-assisted units must be occupied by very low-income families and meet one of the following rent requirements:

* * * * *

(c) *Additional rent limitations for SRO projects.* (1) For SRO units that have both sanitary and food preparation facilities, the fair market rent is based on the zero-bedroom fair market rent. The project must meet the requirements of paragraphs (a) and (b) of this section.

(2) For SRO units that have no sanitary or food preparation facilities or only one of the two, the fair market rent is based on 75 percent of the zero-bedroom fair market rent. The project is not required to have low HOME rents in accordance with paragraph (b)(1) or (2) of this section, but must meet the occupancy requirements of paragraph (b) of this section.

(d) *Initial rent schedule and utility allowances.* (1) The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. The participating jurisdiction must use the HUD Utility Schedule Model or otherwise determine the utility allowance for the project based on the type of utilities used at the project.

(2) The participating jurisdiction must review and approve rents proposed by the owner for units, subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.

(e) *Periods of affordability.* The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion.

(1) The affordability requirements:

(i) Apply without regard to the term of any loan or mortgage, repayment of the HOME investment, or the transfer of ownership;

(ii) Must be imposed by deed restrictions, use restrictions, covenants running with the land, or other mechanisms approved by HUD and under which the participating jurisdiction may require specific performance, except that the participating jurisdiction may provide that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure; and

(iii) Must be recorded in accordance with State recordation laws.

(2) The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure in order to preserve affordability.

(3) The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

(4) The termination of the restrictions on the project does not terminate the participating jurisdiction's repayment obligation under § 92.503(b).

Rental housing activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds:	
Under $15,000	5
$15,000 to $40,000	10
Over $40,000 or rehabilitation involving refinancing	15
New construction or acquisition of newly constructed housing	20

(f) * * *

(2) The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section. The participating jurisdiction must review rents for compliance and approve or disapprove them every year.

* * * * *

(g) *Adjustment of HOME rent limits for an existing project.*

* * * * *

(j) *Fixed and floating HOME units.* In a project containing HOME-assisted and other units, the participating jurisdiction may designate fixed or floating HOME units. This designation

must be made at the time of project commitment in the written agreement between the participating jurisdiction and the owner, and the HOME units must be identified not later than the time of project completion. Fixed units remain the same throughout the period of affordability. Floating units are changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

(k) *Tenant selection.* The tenants must be selected in accordance with § 92.253(d).

(l) *Ongoing responsibilities.* The participating jurisdiction's responsibilities for on-site inspections and financial oversight of rental projects are set forth in § 92.504(d).

22. In § 92.253, revise the section heading and paragraphs (a), (c), and (d), and add paragraph (b)(9), to read as follows:

§ 92.253 Tenant protections and selection.

(a) *Lease.* There must be a written lease between the tenant and the owner of rental housing assisted with HOME funds that is for a period of not less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified.

(b) * * *

(9) *Mandatory supportive services.* Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow a transitional housing services plan; or for other good cause. Good cause does not include an increase in the tenant's income. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(d) *Tenant selection.* An owner of rental housing assisted with HOME funds must comply with the affirmative marketing requirements established by the participating jurisdiction pursuant to § 92.351(a). The owner must adopt and follow written tenant selection policies and criteria that:

(1) Limit the housing to very low-income and low-income families;

(2) Are reasonably related to the applicants' ability to perform the obligations of the lease (*i.e.,* to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants);

(3) Limit eligibility or give a preference to a particular segment of the population if permitted in its written agreement with the participating jurisdiction (and only if the limitation or preference is described in the participating jurisdiction's consolidated plan).

(i) Any limitation or preference must not violate nondiscrimination requirements in § 92.350 of this part. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (*e.g.,* the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, supportive housing for the elderly or persons with disabilities under 24 CFR part 891), and the limit or preference is tailored to serve that segment of the population.

(ii) A project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

(A) The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;

(B) Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and

(C) Such services cannot be provided in a nonsegregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

(4) Do not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance: Housing Choice Voucher Program (24 CFR part 982) or an applicant participating in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(5) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(6) Give prompt written notification to any rejected applicant of the grounds for any rejection.

23. In § 92.254, revise paragraph (a)(2)(iii), (a)(3), (a)(5) introductory text, (a)(5)(i) introductory text, (a)(5)(ii) introductory text, (b)(2), and (c), and add paragraphs (e) and (f) to read as follows:

§ 92.254 Qualification as affordable housing: Homeownership.

(a) * * *

(2) * * *

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for the rehabilitation of owner-occupied single-family properties, the participating jurisdiction must use the HOME affordable homeownership limits provided by HUD ((*i.e.,* 95 percent of the median purchase price for the area, except that the affordable homeownership limit for newly constructed HOME-assisted housing need not be lower than the 95th percentile of the U.S. median purchase price for new construction for nonmetropolitan areas, as provided by HUD) or it may determine 95 percent of the median area purchase price for single family housing in the jurisdiction annually, as follows. The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. The participating jurisdiction may determine separate limits for existing housing and newly constructed housing. For housing located outside of metropolitan areas, a State may aggregate sales data from more than one county, if the counties are contiguous and similarly situated. The following information must be included in the annual action plan of the Consolidated Plan submitted to HUD for review and updated in each action plan.

(A) The 95 percent of median area purchase price must be established in accordance with a market analysis that ensured that a sufficient number of recent housing sales are included in the survey.

(B) Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a 2-month reporting period; for less than 250 sales per month, at least a 3-month reporting

period. The data must be listed in ascending order of sales price.

(C) The address of the listed properties must include the location within the participating jurisdiction. Lot, square, and subdivision data may be substituted for the street address.

(D) The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction.

(E) To determine the median, take the middle sale on the list if an odd number of sales, and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by 0.95 to determine the 95 percent of the median area purchase price.

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family, and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section. If the housing is not acquired by an eligible homebuyer within 6 months of the date of project completion, the housing must be rented to an eligible tenant in accordance with § 92.252. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing. The homebuyer must receive housing counseling.

* * * * *

(5) *Resale and recapture.* To ensure affordability, the participating jurisdiction must impose either resale or recapture requirements, at its option. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate and must specifically approve them in writing.

(i) *Resale.* Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as the family's principal residence. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The participating jurisdiction must specifically define ''fair return on investment'' and ''affordability to a reasonable range of low-income homebuyers,'' and specifically address how it will make the housing affordable to a low-income homebuyer in the event that the resale price necessary to provide fair return is not affordable to the subsequent buyer. The period of affordability is based on the total amount of HOME funds invested in the housing.

* * * * *

(ii) *Recapture.* Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(5) of this section. Recapture provisions may permit the subsequent homebuyer to assume the HOME assistance (subject to the HOME requirements for the remainder of the period of affordability) if the subsequent homebuyer is low-income.

* * * * *

(b) * * *

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing. In determining the income eligibility of the family, the participating jurisdiction must include the income of all persons living in the housing.

(c) *Ownership interest.* The ownership in the housing assisted under this section must meet the definition of ''homeownership'' in § 92.2, except that housing that is rehabilitated pursuant to paragraph (b) of this section may also include inherited property with multiple owners, life estates, and living trusts under the following conditions. The participating jurisdiction has the right to establish the terms of assistance.

(1) *Inherited property.* Inherited property with multiple owners: Housing for which title has been passed to several individuals by inheritance, but not all heirs reside in the housing, sharing ownership with other nonresident heirs. (The occupant of the housing has a divided ownership interest.) The participating jurisdiction may assist the owner-occupant if the occupant is low-income, occupies the housing as his or her principal residence, and pays all the costs associated with ownership and maintenance of the housing (*e.g.,* mortgage, taxes, insurance, utilities).

(2) *Life estate.* The person who has the life estate has the right to live in the housing for the remainder of his or her life and does not pay rent. The participating jurisdiction may assist the person holding the life estate if the person is low-income and occupies the housing as his or her principal residence.

(3) *Inter vivos trust, also known as a living trust.* A living trust is created when the owner of property conveys his or her property to a trust for his or her own benefit or for that of a third party (the beneficiaries). The trust holds legal title and the beneficiary holds equitable title. The person may name him or herself as the beneficiary. The trustee is under a fiduciary responsibility to hold and manage the trust assets for the beneficiary. The participating jurisdiction may assist if all beneficiaries of the trust qualify as a low-income family and occupy the property as their principal residence (except that contingent beneficiaries, who receive no benefit from the trust nor have any control over the trust assets until the beneficiary is deceased, need not be low-income). The trust must be valid and enforceable and ensure that each beneficiary has the legal right to occupy the property for the remainder of his or her life.

* * * * *

(e) *Providing homeownership assistance through lenders.* Subject to the requirements of this paragraph (e), the participating jurisdiction may provide homeownership assistance through for-profit or nonprofit lending institutions that provide the first mortgage loan to a low-income family.

(1) The homeownership assistance may be provided only as specified in a written agreement between the participating jurisdiction and the lender. The written agreement must specify the forms and amounts of homeownership assistance that the participating jurisdiction authorizes the lender to provide to families and any conditions that apply to the provision of such homeownership assistance.

(2) Prior to the lender providing any homeownership assistance to a family, the participating jurisdiction must verify that the family is low-income and must inspect the housing for compliance with the property standards in § 92.251.

(3) No fees (*e.g.,* origination fees or points) may be charged to a family for the HOME homeownership assistance provided pursuant to this paragraph (e),

and the participating jurisdiction must determine that the fees and other amounts charged to the family by the lender for the first mortgage financing are reasonable. Reasonable administrative costs may be charged to the HOME program as a project cost. If the participating jurisdiction requires lenders to pay a fee to participate in the HOME program, the fee is program income to the HOME program.

(f) *Homebuyer program policies.* The participating jurisdiction must have and follow written policies for:

(1) Underwriting standards for homeownership assistance that evaluate housing debt and overall debt of the family, the appropriateness of the amount of assistance, monthly expenses of the family, assets available to acquire the housing, and financial resources to sustain homeownership;

(2) Anti-predatory lending, and

(3) Refinancing loans to which HOME loans are subordinated to ensure that the terms of the new loan are reasonable.

24. Revise § 92.255 to read as follows:

§ 92.255 Converting rental units to homeownership units for existing tenants.

(a) The participating jurisdiction may permit the owner of HOME-assisted rental units to convert the rental units to homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of § 92.254. However, refusal by the tenant to purchase the housing does not constitute grounds for eviction or for failure to renew the lease.

(b) If no additional HOME funds are used to enable the tenants to become homeowners, the homeownership units are subject to a minimum period of affordability equal to the remaining affordable period if the units continued as rental units. If additional HOME funds are used to directly assist the tenants to become homeowners, the minimum period of affordability is the affordability period under § 92.254(a)(4), based on the amount of direct homeownership assistance provided.

25. In § 92.300, revise paragraphs (a), (e), and (f) to read as follows:

§ 92.300 Set-aside for community housing development organizations (CHDOs).

(a) Within 24 months after the date that HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organizations. For a State, the HOME allocation includes funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, includes funds transferred from a State under § 92.102(b). The participating jurisdiction must certify the organization as meeting the definition of ''community housing development organization'' and must document that the organization has capacity to own, develop, or sponsor housing each time it commits funds to the organization. For purposes of this paragraph:

(1) Funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization (or project owner as described in paragraph (a)(4) of this section) committing the funds to a specific local project in accordance with paragraph (2) of the definition of ''commitment'' in § 92.2.

(2) Housing is ''owned'' by the community housing development organization if the community housing development organization is the owner in fee simple absolute of multifamily or single family housing that is or will be rented to low-income families in accordance with § 92.252.

(3) Housing is ''developed'' by the community development housing organization if the community housing development organization is the owner (in fee simple absolute) and developer of new housing that is or will be constructed or existing substandard housing that is or will be acquired and rehabilitated for sale to low-income families in accordance with § 92.254.

(i) To be the ''developer,'' the community development housing organization must arrange financing of the project and be in sole charge of construction. The community housing development organization may provide direct homeownership assistance (*e.g.,* downpayment assistance) when it sells the housing to low-income families and the community housing development organization will not be considered a subrecipient, provided that the HOME funds for downpayment assistance are not greater than 10 percent of the amount of HOME funds for development of the housing.

(ii) The participating jurisdiction must determine and set forth in its written agreement with the community housing development organization the actual sales prices of the housing or the method by which the sales prices for the housing will be established and whether the proceeds must be returned to the participating jurisdiction or may be retained by the community housing development organization.

(A) While proceeds that the participating jurisdiction permits the community housing development organization to retain are not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the community housing development organization whether the proceeds are to be used for HOME-eligible activities or other housing activities to benefit low-income families.

(B) Funds that are recaptured because the housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) are subject to the requirements of this part in accordance with § 92.503.

(4) Housing is ''sponsored'' by the community development housing organization if it is rental housing owned (in fee simple absolute) by a subsidiary of a community housing development organization, a limited partnership of which the community housing development organization or its subsidiary is the sole general partner, or a limited liability company of which the community housing development organization or its subsidiary is the sole managing member.

(i) The subsidiary of the community housing development organization may be a for-profit or nonprofit organization and must be wholly owned by the community housing development organization. If the limited partnership or limited liability company agreement permits the community housing development organization to be removed as general partner or sole managing member, the applicable agreement must provide that the removal must be for cause and that the community housing development organization must be replaced with another community housing development organization.

(ii) The HOME funds must be provided to the entity that owns the project.

(5) HOME-assisted rental housing is also ''sponsored'' by a community housing development organization if the community housing development organization owns and develops the rental housing project that it agrees to convey to a private nonprofit organization at a predetermined time after completion of the development of the project. Sponsored rental housing, as provided in this paragraph (a)(5), is subject to the following requirements:

(i) The private nonprofit organization may not be created by a governmental entity.

(ii) The HOME funds must be invested in the project that is owned by the community housing development organization.

(iii) Because the community housing development organization owns and develops the housing, the community housing development organization must own the property before the development phase of the project.

(iv) Before commitment of HOME funds, the community housing development organization sponsor must select the nonprofit organization that will obtain ownership of the property.

(A) The nonprofit organization assumes the community housing development organization's HOME obligations (including any repayment of loans) for the project at a specified time after completion of development.

(B) If the housing is not transferred to the nonprofit organization, the community housing development organization sponsor remains liable for the HOME assistance and the HOME project.

(6) The participating jurisdiction determines the form of assistance (*e.g.,* grant or loan) that the community housing development organization receives.

* * * * *

(e) If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored, or owned by the community housing development organization, the participating jurisdiction's written agreement with the community housing development organization must provide that the community housing development organization is expected to receive funds under paragraph (a) of this section for a project within 24 months of the date of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) The participating jurisdiction must ensure that a community housing development organization does not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or $50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

26. In § 92.351, revise paragraphs (a)(1) and (a)(2)(ii) through (iv) to read as follows:

§ 92.351 Affirmative marketing; minority outreach program.

(a) *Affirmative marketing.* (1) Each participating jurisdiction must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME-funded programs, including, but not limited to, tenant-based rental assistance and downpayment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability

(2) * * *

(ii) Requirements and practices each subrecipient and owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (*e.g.,* use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (*e.g.,* through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and

* * * * *

27. In § 92.352, revise paragraph (a) to read as follows:

§ 92.352 Environmental review.

(a) *General.* The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. The applicability of the provisions of 24 CFR part 50 or part 58 is based on the HOME project (new construction, rehabilitation, acquisition) or activity (tenant-based rental assistance) as a whole, not on the type of the cost paid with HOME funds.

* * * * *

28. In § 92.354, paragraphs (a)(1) and (3) are revised to read as follows:

§ 92.354 Labor.

(a) * * *

(1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

* * * * *

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards, as applicable. Participating jurisdictions shall be responsible for ensuring compliance by contractors and subcontractors with labor standards described in this section. In accordance with procedures specified by HUD, participating jurisdictions shall:

(i) Ensure that bid and contract documents contain required labor standards provisions and the appropriate Department of Labor wage determinations;

(ii) Conduct on-site inspections and employee interviews;

(iii) Collect and review certified weekly payroll reports;

(iv) Correct all labor standards violations promptly;

(v) Maintain documentation of administrative and enforcement activities; and

(vi) Require certification as to compliance with the provisions of this section before making any payment under such contracts.

* * * * *

29. In § 92.356, paragraphs (b) and (f)(1) are revised to read as follows:

§ 92.356 Conflict of interest.

* * * * *

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process

or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

* * * * *

(f) * * *

(1) No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

* * * * *

30. In § 92.500, paragraphs (c)(1) and (d)(1)(A) and (C) are revised to read as follows:

§ 92.500 The HOME Investment Trust Fund.

* * * * *

(c) * * *

(1) The local account of the HOME Investment Trust Fund includes deposits of HOME funds disbursed from the Treasury account; the deposit of any State funds (other than HOME funds transferred pursuant to § 92.102(b)(2)) or local funds that enable the jurisdiction to meet the participating threshold amount in § 92.102, any program income (from both the allocated funds and matching contributions in accordance with the definition of program income), and any repayments or recaptured funds as required by § 92.503. The local account must be interest-bearing.

* * * * *

(d)(1) * * *

(A) Any funds in the United States Treasury account that are required to be reserved (*i.e.,* 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not committed to a community housing development organization project within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;

* * * * *

(C) Any funds in the United States Treasury account that are not expended within 5 years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement and any funds in the United States Treasury account that were committed to community housing development organization projects that are not expended within 5 years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement; and

* * * * *

31. In § 92.502, paragraphs (a), (b)(2), and (e) are revised to read as follows:

§ 92.502 Program disbursement and information system.

(a) *General.* The HOME Investment Trust Fund account established in the United States Treasury is managed through a computerized disbursement and information system established by HUD. The system disburses HOME funds that are allocated or reallocated, and collects and reports information on the use of HOME funds in the United States Treasury account. (For purposes of reporting in the Integrated Disbursement and Information System, a HOME project is an activity.) The participating jurisdiction must report all program income in HUD's computerized disbursement and information system.

(b) * * *

(2) If the project set-up information is not completed within 20 days of the project set-up, the project may be cancelled by the system. In addition, a project that has been committed in the system for 12 months without an initial disbursement of funds may be cancelled by the system.

* * * * *

(e) *Access by other participants.* Access to the disbursement and information system by other entities participating in the HOME program (*e.g.,* State recipients) will be governed by procedures established by HUD. Only participating jurisdictions and State recipients (if permitted by the State) may request disbursement.

32. In § 92.503, paragraph (b)(3) is revised to read as follows:

§ 92.503 Program income, repayments, and recaptured funds.

* * * * *

(b) * * *

(3) HUD will instruct the participating jurisdiction to either repay the funds to the HOME Investment Trust Fund Treasury account or the local account. Generally, if the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund Treasury account, they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account, they must be repaid to the local account. If the jurisdiction is not a participating jurisdiction at the time the repayment is made, the funds must be remitted to HUD, and reallocated in accordance with § 92.454.

* * * * *

33. In § 92.504:

a. Paragraph (a) is revised;

b. Paragraphs (c)(1) introductory text, (c)(1)(i), (ii), (vii), and (xi) are revised;

c. Paragraph (c)(1)(xiii) is added;

d. Paragraphs (c)(2) introductory text, (c)(2)(i), (iv), (v), and (x) are revised;

e. Paragraph (c)(2)(xi) is added;

f. Paragraphs (c)(3) introductory text, (c)(3)(i) through (iv), (c)(3)(v)(A), (vi), (vii), and (x) are revised;

g. Paragraph (c)(3)(xi) is added;

h. Paragraph (c)(4) introductory text is revised;

i. Paragraph (c)(6) is added and

j. Paragraph (d) is revised.

The revisions and additions read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

(a) *Responsibilities.* The participating jurisdiction is responsible for managing the day-to-day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance and compliance of each contractor, State recipient, and subrecipient must be reviewed at least annually. The participating jurisdiction must have and follow written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

* * * * *

(c) * * *

(1) *State recipient.* The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State recipient will carry out in accordance with § 92.201(b). In accordance with § 92.201, the written agreement must either require the State recipient to comply with the requirements established by the State or require the State recipient to establish its own requirements to comply with this part, including requirements for income determinations and underwriting subsidy layering guidelines, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability.

(i) *Use of the HOME funds.* The agreement must describe the amount and use of the HOME funds to administer one or more programs to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance, including the type and number of housing projects to be funded (*e.g.* the number of single-family homeowner loans to be made or number of homebuyers to receive downpayment assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects), a budget for each program, and any requirement for matching contributions. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. The agreement must state if repayment of HOME funds or recaptured HOME funds must be remitted to the State or retained by the State recipient for additional eligible activities.

* * * * *

(vii) *Affirmative marketing.* The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with § 92.351.

* * * * *

(xi) *Written agreement.* Before the State recipient provides funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants (or landlords) receiving tenant-based rental assistance, or contractors who are providing services to the State recipient, the State recipient must have a written agreement with such entities that meets the requirements of this section.

* * * * *

(xiii) *Fees.* The agreement must prohibit the State recipient and subrecipients from charging servicing, origination, processing, inspection, or other fees for the costs of administering a HOME program.

(2) *Subrecipient.* A subrecipient is a public agency or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME programs to produce affordable housing, provide downpayment assistance, or provide tenant-based rental assistance. The agreement must set forth and require the subrecipient to follow the participating jurisdiction's requirements, including requirements for income determinations, underwriting and subsidy layering guidelines, rehabilitation standards, refinancing guidelines, homebuyer program policies, and affordability requirements. The agreement between the participating jurisdiction and the subrecipient must include:

(i) *Use of the HOME funds.* The agreement must describe the amount and use of the HOME funds for one or more programs, including the type and number of housing projects to be funded (*e.g.,* the number of single-family homeowners loans to be made or the number of homebuyers to receive downpayment assistance), tasks to be performed, a schedule for completing the tasks (including a schedule for committing funds to projects), a budget, any requirement for matching contributions and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement.

* * * * *

(iv) *Other program requirements.* The agreement must require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under § 92.352 and the intergovernmental review process in § 92.357 does not apply. The agreement must set forth the requirements the subrecipient must follow to enable the participating jurisdiction to carry environmental review responsibilities before HOME funds are committed to a project.

(v) *Affirmative marketing.* The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with § 92.351.

* * * * *

(x) *Written agreement.* Before the subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers or sponsors, subrecipients, homeowners, homebuyers, tenants (or landlords) receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement that meets the requirements of this section. The agreement must state if repayment of HOME funds or recaptured HOME funds must be remitted to the participating jurisdiction or retained by the subrecipient for additional eligible activities.

(xi) *Fees.* The agreement must prohibit the subrecipient from charging servicing, origination, or other fees for the costs of administering the HOME program.

(3) *For-profit or nonprofit housing owner, sponsor, or developer (other than single-family owner-occupant).* The participating jurisdiction may preliminarily award HOME funds for a proposed project, contingent on conditions such as obtaining other financing for the project. This preliminary award is not a commitment to a project. The written agreement committing the HOME funds to the project must meet the requirements of ''commit to a specific local project'' in the definition of ''commitment'' in § 92.2 and contain the following:

(i) *Use of the HOME funds.* The agreement between the participating jurisdiction and a for-profit or nonprofit housing owner, sponsor, or developer must describe the address of the project, the use of the HOME funds and other funds for the project, including the tasks to be performed for the project, a schedule for completing the tasks and the project, and a complete budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement to achieve project completion and compliance with the HOME requirements.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. The affordability requirements in § 92.252

must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction may require specific performance.

(A) If the owner or developer is undertaking rental projects, the agreement must establish the initial rents and the procedures for rent increases the number of HOME units, the size of the HOME units, and the designation of the HOME units as fixed or floating, and the requirement to provide the address (*e.g.,* street address and apartment number) of each HOME unit no later than the time of project completion.

(B) If the owner or developer is undertaking a homeownership project for sale to homebuyers in accordance with § 92.254(a), the agreement must set forth the resale or recapture requirements that must be imposed on the housing, the sales price or the basis upon which the sales price will be determined, and the disposition of the sales proceeds. Recaptured funds must be returned to the participating jurisdiction.

(iii) *Project requirements.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted. The agreement may permit the owner to limit eligibility or give a preference to a particular segment of the population in accordance with § 92.253(d).

(iv) *Property standards.* The agreement must require the housing to meet the property standards in § 92.251, upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing compliance with § 92.251 for the duration of the affordability period.

(v) * * *

(A) The agreement must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

* * * * *

(vi) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements. The owner of rental housing must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with § 92.252. If the rental housing project has floating HOME units, the owner must provide the participating jurisdiction with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements. The agreement must specify the reporting requirements (including copies of financial statements) to enable the participating jurisdiction to determine the financial condition (and continued financial viability) of the rental project.

(vii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the participating jurisdiction and the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The affordability requirements in § 92.252 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction may require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

* * * * *

(x) *Community housing development organization provisions.* If the nonprofit owner or developer is a community housing development organization and is using set-aside funds under § 92.300, the agreement must include the appropriate provisions under §§ 92.300, 92.301, and 92.303. If the community development organization is receiving HOME funds as a developer of homeownership housing, the agreement must specify if the organization may retain proceeds from the sale of the housing and whether the proceeds are to be used for HOME-eligible or other housing activities to benefit low-income families. Recaptured funds are subject to the requirements of § 92.503. If the community housing development organization is receiving assistance for operating expenses, see paragraph (c)(6) of this section.

(xi) *Fees.* The agreement must prohibit project owners from charging origination fees, parking fees, laundry room access fees, and other fees; however, rental project owners may charge reasonable application fees to prospective tenants.

(4) *Contractor.* The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or services in accordance with a written agreement (the contract). For contractors who are administering all or some of the participating jurisdiction's HOME programs or specific services for one or more programs, the contract must include at a minimum the following provisions:

* * * * *

(6) *Community housing development organization receiving assistance for operating expenses.* The agreement must describe the use of HOME funds for operating expenses; *e.g.,* salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; and materials and supplies. If the community housing development organization is not also receiving funds for a housing project to be developed, sponsored, or owned by the community housing development organization, the agreement must provide that the community housing development organization is expected to receive funds for a project within 24 months of the date of receiving the funds for operating expenses, and must specify the terms and conditions upon which this expectation is based and the consequences of failure to receive funding for a project.

(d) *On-site inspections and financial oversight.* (1) *Inspections.* The participating jurisdiction must inspect each project at project completion and during the period of affordability to determine that the project meets the property standards of § 92.251.

(i) *Completion inspections.* At completion of the project, the participating jurisdiction must perform an on-site inspection of HOME-assisted housing to determine that all contracted work has been completed and that the project complies with the property standards of § 92.251.

(ii) *Ongoing periodic inspections of HOME-assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards of § 92.251 and to verify the information submitted by the owners in accordance with the requirements of § 92.252. The inspections must be in accordance with the inspection procedures that the participating jurisdiction establishes to meet the inspection requirements of § 92.251.

(A) The on-site inspections must occur 12 months after project completion and at least once every 3 years thereafter during the period of affordability.

(B) If there are observed deficiencies for any of the inspectable items in the

property standards established by the participating jurisdiction, in accordance with the inspection requirements of § 92.251, a follow-up on-site inspection to verify that deficiencies are corrected must occur within 12 months, or within a reasonable time frames established by the participating jurisdiction depending on the severity of the deficiency. Health and safety deficiencies must be corrected immediately, in accordance with § 92.251. The participating jurisdiction must adopt a more frequent inspection schedule for properties that have been found to have health and safety deficiencies.

(C) The property owner must annually certify to the participating jurisdiction that each building and all HOME-assisted units in the project is suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by the participating jurisdiction to meet the requirements of § 92.251.

(D) Inspections must be based on a statistically valid sample of units. The participating jurisdiction must select the sample. For projects with one to four HOME-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HOME-assisted units and 100 percent of the HOME-assisted units must be inspected. For projects with more than four HOME-assisted units, the inspectable items (site, building exterior, building systems, and common areas) for each building with HOME-assisted units and at least 20 percent of the HOME-assisted units in each building, but not less than four HOME-assisted units in each project and one HOME-assisted unit in each building, must be inspected.

(iii) *Annual inspections: Tenant-based rental assistance (TBRA).* All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the standards in § 982.401 of this title. The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with these standards.

(2) *Financial oversight.* During the period of affordability, the participating jurisdiction must examine regularly (at least annually) the financial condition of HOME-assisted rental housing to determine the continued financial viability of the housing and must take actions to correct problems, to the extent feasible.

34. Revise § 92.505 to read as follows:

§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of 2 CFR part 225 (OMB Circular No. A–87) and the following requirements of 24 CFR part 85 apply to the participating jurisdictions, State recipients, and governmental subrecipients receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32 through 85.34, 85.36, 85.44, 85.51, and 85.52.

(b) *Nonprofit organizations.* The requirements of 2 CFR part 230 (OMB Circular No. A–122) and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are nonprofit organizations that are not governmental subrecipients: §§ 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.

34. In § 92.508:

a. Paragraphs (a)(2)(ii), (iii), and (viii) are revised;

b. Paragraphs (a)(3)(i), (ii), (iii), (iv), (vi), and (xiii) are revised;

c. Paragraph (a)(3)(xiv) is added; and

d. Paragraphs (a)(4)(i) and (iii) and (a)(6)(i) are revised.

The revisions and addition read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(2) * * *

(ii) The forms of HOME assistance used in the program, including any forms of investment described in the Consolidated Plan under 24 CFR part 91 that are not identified in § 92.205(b), and which are specifically approved by HUD.

(iii) The underwriting and subsidy layering guidelines adopted in accordance with § 92.250 that support the participating jurisdiction's Consolidated Plan certification.

* * * * *

(viii) If HOME funds are used for acquisition of housing for homeownership, the resale or recapture guidelines established in accordance with § 92.254(a)(5), as set forth in the Consolidated Plan.

* * * * *

(3) * * *

(i) A full description of each project assisted with HOME funds, including the location (address of each unit), form of HOME assistance, and the units or tenants assisted with HOME funds.

(ii) The source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20; and records to document the eligibility and permissibility of the project costs, including the documentation of the actual HOME-eligible development costs of each HOME-assisted unit (through allocation of costs, if permissible under § 92.205(d)) where HOME funds are used to assist less than all of the units in a multi-unit project.

(iii) Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy amount of § 92.205(c), the maximum per-unit subsidy amount of § 92.250(a), and the subsidy layering and underwriting evaluation adopted in accordance with § 92.250(b).

(iv) Records (*e.g.,* inspection reports) demonstrating that each project meets the property standards of § 92.251 at project completion. In addition, during the period of affordability, records for rental projects demonstrating compliance with the property standards and financial reviews and actions pursuant to § 92.504(d).

* * * * *

(vi) Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of § 92.209(c), including any targeting requirements, the rent reasonableness requirements of § 92.209(f), the maximum subsidy provisions of § 92.209(h), HQS inspection reports, and calculation of the HOME subsidy.

* * * * *

(xiii) Records demonstrating that a site and neighborhood standards review was conducted for each project which includes new construction of rental housing assisted under this part to determine that the site meets the requirements of 24 CFR 983.57(e)(2) and (e)(3), in accordance with § 92.202.

(xiv) Records (written agreements) demonstrating compliance with the written agreements requirements in § 92.504.

(4) * * *

(i) Written agreements committing HOME funds to CHDO projects in accordance with § 92.300(a).

* * * * *

(iii) The name and qualifications of each CHDO and amount of HOME CHDO set-aside funds committed.

* * * * *

(6) *Program administration records.* (i) Written policies, procedures, and systems, including a system for assessing risk of activities and projects and a system for monitoring entities consistent with this section, to ensure that the requirements of this part are met.

* * * * *

36. In § 92.551, paragraph (c)(1)(vii) is redesignated paragraph (c)(1)(viii) and revised, new paragraphs (c)(1)(vii) and (c)(1)(ix) are added, and paragraph (c)(2) is revised to read as follows:

§ 92.551 Corrective and remedial actions.

* * * * *

(c) * * *

(1) * * *

(vii) Establishing procedures to ensure compliance with HOME requirements;

(viii) Making matching contributions as draws are made from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account and establishing a remedial plan to make up the matching contributions deficit; and

(ix) If the participating jurisdiction is a metropolitan city, forming a consortium with the urban county if the urban county is willing to carry out the HOME program in the metropolitan city.

(2) HUD may also change the method of payment from an advance to reimbursement basis and may require supporting documentation to be submitted for HUD review for each payment request before payment is made; determine the participating jurisdiction to be high risk and impose special conditions or restrictions on the next year's allocation in accordance with 24 CFR 85.12; and take other remedies that may be legally available.

37. In § 92.552, paragraph (b) is revised to read as follows:

§ 92.552 Notice and opportunity for hearing; sanctions.

* * * * *

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction or, at HUD's option, the State recipient. Proceedings will be conducted in accordance with 24 CFR part 26.

38. 38. In § 92.614:

a. Paragraphs (a)(3) through (6) are redesignated as paragraphs (a)(5) through (7), respectively;

b. New paragraph (a)(3) is added;

c. Paragraph (b)(1) is removed; and

d. Paragraphs (b)(2) and (3) are redesignated paragraphs (b)(1) and (2), respectively.

The addition reads as follows:

§ 92.614 Other Federal requirements.

(a) * * *

(3) *Affirmative marketing.* The affirmative marketing requirements contained in § 92.351(a).

* * * * *

Dated: November 30, 2011.

Shaun Donovan,

Secretary.

[FR Doc. 2011–31778 Filed 12–15–11; 8:45 am]

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Part III

Federal Communications Commission

47 CFR Part 54

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[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; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on several issues related to Eligible Telecommunications Carriers obligations, the funding mechanisms for rate-of-return, price cap and mobile carriers, and a Remote Areas Fund. The Commission also seeks comment on several issues related to bill-and-keep, end user charges, IP-to-IP interconnection, and call signaling rules. This is information will help the Commission to comprehensively reform and modernize the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation.

DATES: Comments on the matters synopsized in paragraphs 1–303 of the **SUPPLEMENTARY INFORMATION** and proposed 47 CFR part 54, subparts L, M, and N are due on or before January 18, 2012 and reply comments on the matters synopsized in paragraphs 1–303 of the **SUPPLEMENTARY INFORMATION** and proposed 47 CFR part 54, subparts L, M, and N are due on or before February 17, 2012. Comments on the matters synopsized in paragraphs 304–406 of the **SUPPLEMENTARY INFORMATION** are due on or before February 24, 2012 and reply comments on the matters synopsized in paragraphs 304–406 of the **SUPPLEMENTARY INFORMATION** are due on or before March 30, 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 FNPRM, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, by any of the following methods:

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

• *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

• *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *email: FCC504@fcc.gov* or *phone:* (202) 418–0530 or *TTY:* (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Amy Bender, Wireline Competition Bureau, (202) 418–1469, Victoria Goldberg, Wireline Competition Bureau, (202) 418–7353, and Margaret Wiener, Wireless Telecommunications Bureau, (202) 418–2176 or *TTY:* (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 10–90, GN Docket No. 09–51, WC Docket No. 07–135, WC Docket No. 05–337, CC Docket No. 01–92, CC Docket No. 96–45, WC Docket No. 03–109, and WT Docket No. 10–208; FCC 11–161, released November 18, 2011. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf.*

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, May 1, 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.

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).

I. Further Notice of Proposed Rulemaking

A. Broadband Public Interest Obligations

i. Measuring Broadband Service

1. In the *USF/ICC Transformation Order,* adopted concurrently with the FNPRM, the Commission adopts a rule requiring that actual speed and latency be measured on the access network of each eligible telecommunications carriers (ETC) from the end-user interface to the nearest Internet access point, and requires that ETCs certify to and report the results to the Universal Service Administrative Company

(USAC) on an annual basis. The Commission seeks comment on whether it should adopt a specific measurement methodology beyond what is described in the *USF/ICC Transformation Order* and the format in which ETCs should report their results.

2. The *Measuring Broadband America Report* concludes that a standardized set of broadband measurements can be implemented across a range of ISPs and scaled to support detailed regional assessments of broadband deployment and performance. The Commission notes that commercial hardware and software as well as some free, non-commercial options are available. Should the Commission adopt a uniform methodology for measuring broadband performance? If so, should it be uniform across different technologies? The Commission notes that it has requested more information on measurement approaches for mobile broadband in *Comment Sought on Measurement of Mobile Broadband Network Performance and Coverage,* 75 FR 33303, June 11, 2010, and seeks to incorporate that proceeding's record. How should wireless providers measure speed? Should the Commission require fixed funding recipients to install SamKnows-type white boxes at consumer locations to monitor actual performance in a standardized way?

3. Should the Commission specify a uniform reporting format? Should test results be recorded in a format that can be produced to USAC and auditable such that USAC or the state commissions may confirm that a provider is, in fact, providing broadband at the required minimum speeds?

4. Should providers be required to provide the underlying raw measurement data to USAC? Are there legitimate concerns with confidentiality if such data are made public? Is it sufficient to have a provider certify to USAC that its network is satisfying the minimum broadband metrics and retain the results of its own performance measurement to be produced on request in the course of possible future audits?

5. Should the Commission consider easing the performance measuring obligations on smaller broadband providers? If so, what would be the appropriate threshold for size of provider before granting relief for measuring broadband? If so, how can it ensure that their customers are receiving reasonably comparable service?

ii. Reasonably Comparable Voice and Broadband Services

6. In the *USF/ICC Transformation Order,* the Commission directs the Wireline Competition Bureau (WCB) and Wireless Telecommunications Bureau (WTB) (together, the Bureaus) to develop and conduct a survey of voice and broadband rates to compare urban and rural voice and broadband rates. The Commission seeks comment on the components of the survey.

7. With respect to determining reasonable comparability of voice service rates for universal service purposes, should the Commission separately collect data on fixed and mobile voice telephony rates? Should fixed and mobile voice services have different benchmarks for purposes of reasonable comparability?

8. In the landline context, the Commission has previously surveyed the basic R–1 voice rate. What would the equivalent basic offering be in the mobile context? How should the Commission take into account packages that offer varying numbers of minutes of usage and/or additional features such as texting?

9. With respect to determining reasonable comparability of broadband services, should the Commission separately collect data on fixed and mobile broadband pricing and capacity requirements (if any)? For purposes of that analysis, how should the Commission consider, if at all, data cards provided by mobile providers?

10. For fixed broadband offerings subject to the Commission's initial Connect America Fund (CAF) requirements of 4 Mbps downstream/1 Mbps upstream, should the Commission survey advertised rates for such service, or the closest available offering in urban areas? How should the Commission take into account promotional pricing that may require a specific contractual commitment for a period of time?

11. Should fixed and mobile broadband services have different or the same benchmarks for purposes of reasonable comparability?

12. The Commission also seeks comment on how to compare mobile broadband to fixed broadband as product offerings evolve over time.

13. In the *USF/ICC Transformation Order,* the Commission also determines that rural rates for broadband service would be reasonably comparable to urban rates under 47 U.S.C. 254(b)(3) if rural rates fall within a reasonable range of the national average urban rate for broadband service. The Commission seeks comment on how specifically to define that reasonable range for broadband.

14. The Commission notes that in the voice context, today it requires states to certify that basic R–1 voice rates for non-rural carriers are no more than two standard deviations above the national average R–1 rate. Would using two standard deviations be the appropriate measure for reasonable comparability in the broadband context, or should the Commission adopt a different methodology for establishing such a reasonable range? Do unregulated broadband prices show relatively small variations, making another methodology more appropriate? For example, would prices normalized to disposable income be appropriate?

15. Should the Commission adopt a presumption that if a given provider is offering the same rates, terms and conditions (including capacity limits, in any) to both urban and rural customers, that is sufficient to meet the statutory requirement that services be reasonably comparable?

iii. Additional Requirements

16. Some commenters propose to require CAF recipients to comply with certain interconnection requirements. The Commission seeks comment on whether the Commission should require CAF recipients to offer IP-to-IP interconnection for voice service, beyond whatever framework it adopts more broadly. If so, what would the scope and nature of any such requirement be? Should any obligations be based on the requirements of 47 CFR 251(a)(1), since, as ETCs, the providers subject to these requirements will be telecommunications carriers? How would any such obligations be enforced?

17. The Commission also seeks additional comment on the proposal of Public Knowledge and the Benton Foundation that CAF recipients be required to make interconnection points and backhaul capacity available so that unserved high-cost communities could deploy their own broadband networks. How would such a requirement operate? Is it sufficient to require CAF recipients to negotiate in good faith with community broadband networks to determine a point of interconnection? If there are disputes, who should resolve them? Should there be reporting requirements associated with such an obligation (*i.e.,* should CAF recipients be required to report annually on unfulfilled requests for interconnection from community broadband networks)? What benefits might such a requirement bring that the Commission's other universal service policies are not meeting? What would the costs of such a requirement be, on funding recipients and on administration of the requirement?

18. The Commission also seeks comment on the proposal of Public Knowledge and the Benton Foundation

that the Commission should create a fund for a Technology Opportunities Program to assist communities with deploying their own broadband networks. How much money should the Commission set aside for such a program? Are there any legal impediments to the Commission running such a pilot program out of the universal service fund? The Commission acknowledges the important role that WISPs, non-profits, and other small and non-traditional communications providers play in extending broadband in rural America, including in areas where traditional commercial providers have not deployed. Are there other things the Commission should be doing to enable such entities to further extend broadband coverage, particularly in currently unserved areas?

B. Connect America Fund for Rate-of-Return Carriers

19. In response to the *USF/ICC Transformation NPRM,* 75 FR 26906, May 13, 2010, the Rural Associations (NECA, NTCA, OPASTCO, ERTA, and WTA) proposed the creation of a new broadband-focused CAF mechanism that ultimately would entirely replace existing support mechanisms for rate-of-return carriers. Subsequently, the Rural Associations provided draft rules that provide additional context regarding the operation of their proposed CAF. The Commission now seeks focused comment on this proposal and asks whether and how it could be modified consistent with the framework adopted in the *USF/ICC Transformation Order* to provide a path forward for rate-of-return or carriers to invest in extending broadband to unserved areas. The Commission sets forth in Appendix G of the *USF/ICC Transformation Order* the draft rules, modified to take into account the rule changes adopted in the *USF/ICC Transformation Order,* and seeks comment on those draft rules. These rules, as modified, are not reproduced here, but are available in their entirety at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1122/FCC-11-161A1.pdf.*

20. Under the Rural Association Plan, loop costs would be allocated to the interstate jurisdiction based on the current 25 percent allocator or the individual carrier's broadband adoption rate, whichever is greater. This would have the practical effect of reducing over time the size of legacy support mechanisms, like HCLS, that offset some intrastate costs. The new interstate revenue requirement would also include certain key broadband-related costs (*i.e.,* middle mile facilities and Internet backbone access). In conjunction with this proposal, the Rural Associations also propose that their authorized rate-of-return be reduced from 11.25 percent to 10 percent. CAF support would be provided under this new mechanism for any provider's broadband costs that exceeded a specified benchmark representing wholesale broadband costs in urban areas. In particular, under this proposal, CAF funding would be computed by subtracting the product of an urban broadband transmission cost benchmark times the number of broadband lines in service, from the actual company broadband network costs (which would be the sum of last mile, second mile, middle mile, and Internet connection costs). The broadband transmission benchmark would have a fixed component that would increase from $19.25 in the first year to $24.75 in the eighth year, and a variable component that is tied to an individual company's broadband take rate. In addition, there would be certain provisions to mitigate the impact on companies that would receive reduced support under the modified mechanism. The purpose of the transitional stability mechanism would be to ensure that no study area would experience a reduction in total support of more than five percent, on an annual basis, which would be funded by carriers that receive a net increase in support.

21. The Rural Associations explain that their plan is calibrated to aim for a budget target of $2.05 billion in combined funding for USF and their suggested access restructure mechanism in the first year of implementation, and may grow to $2.3 billion by the sixth year. In the *USF/ICC Transformation Order,* the Commission adopts an overall budget target for rate-of-return companies of $2 billion over the next six years. Given that, how could the Commission best accommodate the Rural Association Plan within the Commission's budgetary framework? If savings are realized in other components of the CAF—for example, if competitive bidding leads to less support being disbursed through the CAF for price cap areas than has been budgeted for—should those savings be used to increase funding for rate-of-return carriers under the Rural Association Plan? Could the Commission more quickly transition existing support mechanisms to the framework proposed by the Rural Associations to stay within the overall budget? The Commission seeks year-by-year financial projections of any new mechanisms and the related impact on legacy support mechanisms, as well as the associated data and assumptions supporting those projections.

22. With respect to plan specifics, the Commission seeks comment on the benefits and the costs of providing support for middle mile facilities and access to the Internet backbone under the Rural Associations' proposal. On average for smaller carriers, approximately what proportion of the costs to deploy broadband networks and provide broadband services are attributable to middle mile and Internet backbone costs today? Commenters are encouraged to provide factual information to support any projections they submit into the record. Consistent with the overall framework adopted in the *USF/ICC Transformation Order* to impose reasonable limits on recovery of loop expenses, how could the Commission impose a constraint on the recovery of middle mile costs under this proposal?

23. The Rural Associations propose that costs be shifted to the interstate jurisdiction based on an individual carrier's Broadband Take Rate, which equals its total broadband lines divided by its total working access lines. Should this calculation be limited to residential lines? The Rural Associations define Broadband Line to include any line that supports voice and broadband, or only broadband, at a minimum speed of 256 Kbps downstream. The Commission seeks comment on that proposal, and asks whether broadband lines should be defined consistent with the broadband characteristics required in its public interest obligations. What would be the impact of a more stringent definition of a broadband line in this context? If the Commission were to adopt this proposal but shift costs to the interstate jurisdiction only for loops that provide speeds of at least 4 Mbps downstream and 1 Mbps upstream, how would that affect the financial projections regarding this proposal? Are there any legal, policy or practical implications to providing CAF support for lines where the end user customer does not subscribe to voice service from the ETC? The Rural Associations' Plan contemplates that rate-of-return carriers may offer standalone broadband; to the extent they do so, absent any other rule changes, what would be the impact on USF support for rate-of-return carriers? What rule changes would help provide appropriate incentives for investment in broadband-capable networks, while limiting unrestrained growth in support provided to rate-of-return companies?

24. How does the Rural Associations' proposal to alter the current 25 percent allocation of loop costs fit within, or inform, the Federal-State Joint Board on

Jurisdictional Separations' ongoing work to reform the separations process? Are there components of the Rural Association plan that should be referred to the Separations Joint Board and examined directly in that ongoing process?

25. In the *USF/ICC Transformation Order,* the Commission adopts a requirement that rate-of-return carriers offer speeds of 4 Mbps downstream and 1 Mbps upstream upon reasonable request. Should the Commission adopt a rule that rate-of-return carriers are not required to serve any location within their study area that is served by an unsubsidized competitor and will not receive support for those lines to the extent they choose to extend service to areas of competitive overlap? How would the Commission implement the Rural Associations' proposal in conjunction with such a rule? In particular, what would be the methodology for removing the broadband costs associated with areas of competitive overlap from the calculation of the proposed CAF support?

26. Is a broadband urban wholesale benchmark the right approach to determine support under a new rate-of-return mechanism, or would another approach be more in keeping with the statute and prior precedent? How does comparing wholesale urban costs relate to the Commission's obligation to ensure that rural retail rates are reasonable? Should such a benchmark be based on the wholesale cost of providing broadband, or another metric? Can wholesale broadband costs be calculated reliably, particularly where wholesale broadband services are not typically offered in urban areas? As an alternative, should the relevant benchmark be set based on the price of comparable retail services in a sample of urban areas?

27. The Rural Associations' benchmark proposal contemplates a fixed and variable component of the rural benchmark. How should the Commission establish the levels for those components, and should there be a company-specific component of the benchmark? If the benchmark is tied in any manner to the National Exchange Carrier Association (NECA) tariff rates or another industry metric, does that proposal bear any risks of gamesmanship by carriers to raise or lower individual rates to maximize universal service receipts?

28. What information would the Commission need to require from carriers to evaluate and implement that Rural Association proposal? Prior to implementation, should the Commission, for instance, require carriers to submit analyses showing their broadband adoption trends for service at varying speeds for the last five years for us to develop reasonable projections regarding broadband penetration in the future? What information should the Commission obtain regarding their middle mile costs to better understand the implications of the proposal to include middle mile costs in support calculations?

29. How would the proposed transitional stability plan mechanism operate? What would be the distributional impact of this proposal in terms of the number of companies that would see increases in support, compared to the number of companies that would see decreases in support?

30. The Rural Associations propose that incremental broadband build-out commitments would be tied to an individual company's ability to receive incremental CAF support for new investment, subject to prospective capital investment constraints and the budget target adopted by the Commission. If the Commission were to adopt such an approach, what specific metrics or build-out milestones should be established, and what reporting and certifications should be imposed to improve the Commission's ability to enforce such commitments? How should CAF associated with intercarrier compensation reform be incorporated into any rate-of-return CAF mechanism? Would the public interest obligations for CAF associated with intercarrier compensation reform be updated to reflect any new obligations? The Commission seeks comment more broadly on how its universal service policies can best accelerate broadband deployment to consumers served by rate-of-return carriers, many of whom reside in rural America. In the long term, should universal service support for rate-of-return carriers be distributed through separate mechanisms from the mechanisms used to distribute support for other types of carriers, or is a uniform national approach preferable to achieve its universal service objectives? The Commission seeks comment on any other proposals to transition areas served by rate-of-return carriers to CAF, or any other analysis or recommendations that could facilitate this process.

C. Interstate Rate of Return Represcription

31. As explained in the Order, rate-of-return carriers will continue to receive for some time a modified version of their legacy universal service support. The level of support they receive depends, in part, on the interstate rate of return allowed for plant in service. As a result, the Commission concluded it was necessary to evaluate the authorized interstate rate of return for rate-of-return carriers, which has not been updated in over 20 years. Three major associations representing rate-of-return carriers, as well as the State Members of the Federal-State Joint Board on Universal Service, have proposed a reduction in the current rate of return, which is currently set at 11.25 percent, in the context of overall reform. The Commission agrees that it is appropriate at this time to reexamine the rate of return as part of comprehensive reform of the universal service fund. The Commission seeks comment more generally on how this prescription fits within the broader reform framework for rate-of-return carriers, and specifically in what manner this prescription process should be linked to other proposals in this FNPRM, including the separate CAF support mechanism for rate-of-return carriers.

32. With respect to the prescription process itself, the Commission's statutory authority under 47 U.S.C. 205 provides the power to determine and prescribe those elements that make up the charge, including the interstate rate of return. The rate of return must be high enough to provide confidence in the financial integrity of the carrier, so that it can maintain its credit and attract capital. The return should also be commensurate with returns on investments in other enterprises having corresponding risks. On the other hand, the return should not be higher than necessary for this purpose.

33. The Commission last prescribed the authorized interstate rate of return in 1990, reducing it from 12 percent to 11.25 percent. The Commission believes fundamental changes in the cost of debt and equity since 1990 no longer allow it to conclude that a rate of return of 11.25 percent is necessarily just and reasonable as required by 47 U.S.C. 201(b). The rate-of-return carrier associations proposed a reduction in the interstate rate of return from the current 11.25 percent to 10 percent. The State Members of the Federal-State Joint Board proposed that the rate be reduced further to 8.5 percent. The State Members highlight that the interest rate on a three month Treasury Bill has fallen from 7.83 percent in 1990 to 0.15 percent in January 2011. Further, the Commission observes that the average 10-year treasury constant maturity rate has declined from approximately 8.1 percent in January 1991 to

approximately 2 percent in September 2011.

34. The Commission finds compelling evidence that its presently applied interstate rate-of-return, 11.25 percent, is no longer reflective of the cost of capital. The Commission believes updating the rate of return is necessary for rate-of-return carriers to both attract capital on reasonable terms in today's markets and encourage economically sound network investments. The Commission welcomes input from state regulators that may have insights from conducting intrastate rate of return represcriptions in recent years. The Commission also invites comment on how the Commission can ensure that the rate of return over time remains consistent with changes in the financial markets and cost of capital. The Commission seeks comment on means by which the rate of return can be adjusted automatically based on some set of financial triggers, and how any such triggers would operate.

35. When it last initiated an interstate rate of return prescription proceeding in 1998, the Commission sought comment on the methods by which it could calculate incumbent LECs' costs of capital. The Commission seeks comment on the issues raised in the *1998 Prescription Notice* generally and asks parties to provide the data responsive to the previous requests. In particular, the Commission seeks comment on the following:

36. *WACC.* Weighted average cost of capital (WACC) identifies the rate of return required to maintain the current value of a firm; alternatively, it is the minimum rate of return the firm needs to offer to investors to maintain access to its current supply of capital. WACC is the key component for prescribing the rate of return. The Commission seeks comment on how to calculate the WACC for the relevant companies. The Commission asks whether the formula to determine the WACC in 47 CFR 65.301–305 is the proper framework for this represcription, and whether any modification or update to the formula or inputs is warranted or necessary. Specifically, the Commission's rules provide that WACC is the sum of the cost of debt, the cost of preferred stock, and the cost of equity, each weighted by its proportion in the capital structure. Does this remain the correct approach? Should the Commission augment, or replace, its WACC calculation with any other analysis or approaches? Looking to the WACC calculated for an entire company, rather than for a specific line of business, is appropriate, for example, when thinking about setting an allowed rate-of-return for an entire company. In contrast, this overall WACC would not in general inform a business as to whether to undertake a specific project. Typically, specific projects that have greater risk and therefore a greater cost of capital than the entire company are only undertaken when much higher rates of return are expected. Given that many rate-of-return companies have diversified beyond regulated voice services, for example to offer broadband, video, or wireless services, should the WACC be computed for only the regulated portion of the company's business, or at the level of the entire company? The Commission seeks comment on this analysis, and how, if at all, it should impact its rate-of-return calculation, and use of WACC for these purposes.

37. *Data.* The Commission seeks comment on the appropriate data and methodologies the Commission should use to calculate the WACC. The Commission notes that some of the formulas in the rules rely on ARMIS data, which are no longer collected. In the absence of ARMIS data, what additional data should the Commission require and rely upon, and who should be required to file the data? Are there other publicly available data that could provide the necessary information? Does the absence of any particular data necessitate a different approach to any of the necessary calculations?

38. *Capital Structure.* Under the Commission's WACC calculation, the estimated cost of debt, preferred stock, and equity of a company are all weighted relative to their proportion in the firm's capital structure. A firm's capital structure can be measured on a book basis or market basis. The Commission seeks comment on whether the formula in 47 CFR 65.304 based on book values remains the correct approach, and whether any modification to the formula or inputs is warranted or necessary. Are there other components of the cost of capital that should be included in the capital structure, and should any of the elements listed in the rules be excluded?

39. *Surrogates.* Because the vast majority of rate-of-return carriers are not publicly traded, the Commission must select an appropriate set of surrogate firms, for which financial data is available publicly, to use as a basis for the cost of capital analysis. To do so, the Commission must select a group of companies for which there is available financial data and that face similar risks to rate-of-return carriers. The Commission's rules provide that the proper group of surrogates is all local exchange carriers with annual revenues equal to or above the indexed revenue threshold, which is $146 million this year. In the *1998 Prescription Notice* the Commission sought comment on what group of companies should be selected as surrogates and tentatively concluded at that time that the Regional Bell Operating Companies' (RBOCs) risk most closely resembled the risk encountered by the rate-of-return carriers. The Commission seeks comment on whether that group should be used as surrogates here, or whether another group of providers, for example smaller publicly traded carriers, not including the RBOCs, would better serve this purpose. Should the surrogate group include publicly traded rate-of-return companies only, or a mixture of publicly traded rate-of-return companies and smaller price-cap companies? Commenters proposing a particular surrogate group should clearly define that group, identify the publicly available financial data for that group, and explain how that group best reflects the business risks and cost of capital of rate-of-return carriers.

40. *Cost of Debt.* A firm's cost of debt can be estimated by dividing its total annual interest expense by its average outstanding debt measured on a historic book basis, or alternatively, on a market basis using the current yield to maturity. The Commission seeks comment on the cost of debt formula in 47 CFR 65.302 of the Commission's rules based on book values. The Commission had previously noted that the book basis is more objectively ascertainable, but may not fully reflect current investor expectations. The Commission seeks comment on that assessment, and the relative weight either the book or market approach should be given in its calculations. The Commission's rules provide that this measurement should occur for the most recent two years. Is this the correct time period, or is a longer or shorter period warranted?

41. *Cost of Preferred Stock.* A firm's cost of preferred stock can be calculated by dividing the total annual preferred dividends by the total proceeds from the issuance of preferred stock. The Commission asks whether the formula in 47 CFR 65.303 remains the correct one, and whether any modification to the formula or inputs is warranted or necessary. The Commission's rules provide that this measurement should occur for the most recent two years. Is this the correct time period, or is a longer or shorter period warranted? Can the WACC calculation be simplified by ignoring the cost of preferred stock (and the amount of preferred stock in the capital structure) without significantly affecting the accuracy of the WACC?

42. *Cost of Equity.* A firm's cost of equity can be estimated using a number of different approaches. The Commission's rules do not provide a specific formula for determining the cost of equity. In 1990, the Commission relied heavily on the discounted cash flow (DCF) methodology, which assesses a firm's stock price and dividend rate and forecasted growth rates to determine the cost of equity. There are a number of different variations of DCF, including historic and classic calculations. Alternatively, a firm's cost of equity can be calculated using the capital asset pricing model (CAPM). To use the CAPM, estimates of the risk free rate, the market risk premium, and the correlation of surrogate companies' common stock returns with the returns of the entire market of securities (or betas) must be made. The Commission seeks comment on these approaches, and asks whether any other methodologies should be incorporated into its analysis. For instance, should the Commission rely upon any cost of equity calculations made in state proceedings addressing intrastate rate of return, or other benchmarks based on the stock market as a whole, or a subset of companies or industries? Proponents of any particular methodology should detail their preferred approach and the relevant data required to perform the necessary calculations. Commenters should also justify the relative weight any particular methodology or comparison should have in the Commission's ultimate calculation. The Commission also seeks comment on the need, if any, to make adjustments with respect to flotation costs (*i.e.,* costs of selling new securities in the market) or dividends.

43. *Zone of Reasonableness.* The cost of equity, based on different methodologies and sets of reasonable assumptions and input values, as well as the WACC calculation can be used to develop a range from which the Commission can prescribe the new authorized interstate rate of return. This zone of reasonableness allows the Commission to take into account additional policy considerations before finalizing the new rate of return. The Commission seeks comment on the factors the Commission should consider in determining the rate of return from within that zone of reasonableness. The Commission asks how infrastructure deployment, particularly broadband deployment, and today's reforms should be accounted for in its analysis. Is the deployment of broadband significantly more risky than the voice telephony business, and does it have a significantly greater cost of capital? The Commission notes, for instance, that voice telephony has nearly universal penetration, while broadband adoption is more than 65 percent nationally. If some or all of the surrogates on which the WACC estimates are based are large companies such as Verizon and AT&T, should unique competitive and market conditions for rate-of-return carriers be reflected, and should any differences in diversification in rate-of-return carrier offerings compared to large carrier offerings, which now may include voice, video, wireless, and data services, be reflected, if at all? Should any allowances made in 1990, or proposed in 1998, apply here? The Commission also seeks comment on the need to make any adjustments to capture changes in the telecommunications market generally, and ask commenters proposing any such adjustments to explain why they are necessary to prescribe the allowable rate of return for multi-use plant that can provide voice, data, video and other services, in particular, and how any such adjustments should be structured. Lastly, the Commission asks whether any of these policy considerations should also be reflected in any other components of the WACC calculation, and, if so, in what manner.

44. *Preliminary Analysis.* The Commission estimate, using recent public data, the WACC for AT&T and Verizon and find it in the range of 6 to 8 percent. This range is consistent with other analysts' estimates. The Commission finds a similar range when considering other mid-size and competitive carriers. Even if the interest rate were to increase by 1.5 percent, which seems unlikely in today's economy, the WACC would remain in the range of approximately 7 to 8 percent. This preliminary analysis would conservatively suggest that the authorized interstate rate of return should be no more than 9 percent. The Commission seeks comment on this analysis and note that this preliminary analysis does not prejudge the Commission's ability to select a higher or lower rate of return in this proceeding.

45. *Impact on Universal Service Funding.* The Commission proposes that any reduction in the rate of return be reflected in its universal service rules by reducing the HCLS cap by a corresponding amount, and repurposing that funding amount consistent with the CAF framework and budget. The Commission also proposes that ICLS support be reduced by a corresponding amount as well. The Commission seeks comment on these proposals and how to calculate any such reductions. The Commission seeks comment on whether any savings realized from reducing the rate of return should be used to establish a new CAF mechanism for rate of return companies that would support new broadband investment. How would a change in the rate of return impact the Rural Association's CAF proposal discussed in this FNPRM, and does this prescription process impact the timing or operation of that proposal or any other transition of rate-of-return carriers to CAF-based support? In the alternative, the Commission seeks comment on the potential benefits of retaining the HCLS cap at the same amount even if the rate of return is reduced, which would have the effect of allowing funding to be redistributed to lower cost rate-of-return carriers that are ineligible for HCLS support today. Are there any other changes to other universal service distribution mechanisms that should be made to reflect a change to the rate of return?

46. *Tribally-Owned and Operated Carriers.* The Commission seeks comment on how to account for Tribally-owned and operated carriers in this prescription, and whether a different rate of return is warranted for these carriers. Tribal governments, and by extension, Tribally-owned and operated carriers, play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country. Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country. Tribal Nations also cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital. The Commission seeks comment on how such considerations should be reflected in its analysis.

47. *Other Considerations.* Finally, the Commission asks commenters to address any other changes that are needed to: (1) The data used in the prescription process; or (2) the calculations the Commission must perform to prescribe a new interstate rate of return. The Commission also invites commenters to provide any other relevant evidence or studies that could assist in this represcription.

D. Eliminating Support for Areas With an Unsubsidized Competitor

48. In the *USF/ICC Transformation Order,* the Commission concludes that it will phase out all high-cost support

received by incumbent rate-of-return carriers over three years in study areas where an unsubsidized competitor, or combination of unsubsidized competitors, offering voice and broadband service that meets its performance obligations serves 100 percent of the residential and business locations in the incumbent's study area. The Commission seeks comment on a proposed methodology for determining the extent of overlap, a process for preliminary determinations of such overlap, a process for the affected ETC to challenge the accuracy of the purported overlap, with input from the relevant state commission and the public, and how to adjust support levels in situations with less than 100 percent overlap.

49. To determine what rate-of-return study areas have 100 percent overlap by an unsubsidized competitor, staff performed a preliminary analysis. The analysis relies on two sets of data: TeleAtlas Wire Center Boundaries (6/2010) and data from the State Broadband Initiative (SBI) program administered by NTIA as of December, 2010.

50. First, staff identified which census blocks are in each rate-of-return study area, including a census block in a study area if the centroid of that census block is within the TeleAtlas boundaries for a wire center associated with the study area. Next, staff identified study areas where a wired provider other than the incumbent local exchange carrier offered broadband service at speeds of at least 3 Mbps downstream/768 kbps upstream to all of the census blocks in the study area. Staff excluded all resellers as identified in the SBI data and included only xDSL, cable, and fiber technologies.

51. The Commission seeks comment on whether this is an appropriate methodology for determining areas of overlap, which will result in adjustments to support levels for the rate-of-return ETC.

52. The Commission's staff performed a preliminary analysis examining census blocks smaller than two square miles and identified 18 rate-of-return study areas with 99 percent or greater overlap; and an additional 19 with greater than 95 percent overlap (a total of 37 study areas with greater than 95 percent overlap).

53. This analysis has several potential limitations. TeleAtlas data may not represent the actual incumbent local exchange carrier footprint in all instances. In addition, TeleAtlas data generally assign all geographies to one incumbent provider's footprint or another; however, in reality, there are large, generally unpopulated areas not served by any incumbent carrier facilities. As such, this analysis may over-estimate the rate-of-return ETC's footprint and under-estimate the extent to which the populated portions of that footprint are completely overbuilt by competitive networks.

54. SBI data have their limitations as well, as the Commission acknowledged in its most recent Broadband Progress Report. In addition, SBI data only measure the availability of broadband capable of delivering at least 768 kbps downstream and 200 kbps upstream. There is no direct measure of the availability of voice service, but the Commission presumed that an unsubsidized xDSL, fiber, or cable competitor that has deployed a broadband network that meets the SBI standard also is offering voice services.

55. The Commission notes that small blocks could be reported as served if as few as one location in that block has service or could have service within a typical service interval. The Commission seeks comment on whether this could lead us to count areas as served by an unsubsidized competitor even if a meaningful number of locations are, in fact, not served.

56. The Commission seeks comment on how best to deal with data relating to large blocks. Since neither NTIA nor the Commission has access to the actual location of businesses or homes, SBI population estimates data relies on estimating home locations by random placement of locations along roads. While this will provide an accurate view of the fraction of large blocks that are served in aggregate, it will likely lead to over- or under-estimates in any small number of some large blocks. How can the Commission use such data to determine whether a large block is served or not?

57. The Commission seeks comment on a process for identifying areas with greater than 75 percent overlap. The Commission proposes that WCB identify areas with greater than 75 percent overlap, utilizing the finalized methodology, and then publish the results of that analysis. The Commission proposes that WCB provide the affected ETC an opportunity to challenge the accuracy of the purported overlap and to take public comment for a period of time, such as 45 days. The Commission seeks comment on this proposal.

58. Several commenters supported state involvement in a process to determine areas of overlap. How could state commissions play a role in determining the extent of overlap? For instance, after WCB performs the overlap analysis, should there be a period of time for the relevant state commission to comment on the analysis? What would be a reasonable time frame to request an evaluation from a state commission regarding such overlap? Alternatively, could the Commission establish a process in which state commissions advise us, by a date certain, which study areas served by rate-of-return carriers have unsubsidized facilities-based competitors, and therefore should be subject to potential adjustments in high-cost support?

59. The Commission also seeks comment on whether support levels would need to be adjusted in areas where there is less than 100 percent overlap by an unsubsidized facilities-based provider of terrestrial fixed voice and broadband service. To the extent support levels do need to be adjusted, the Commission seeks further comment on how to do so.

60. In the *August 3 Public Notice,* 76 FR 49401, August 10, 2010, the Commission sought comment on how to allocate costs between the overlap areas and the ILEC-only areas, including whether the Commission should use a cost model to accomplish that allocation.

61. In response to the *August 3 Public Notice,* NCTA recommended that the Commission should identify study areas served by rate-of-return regulated incumbent LECs where (1) unsubsidized broadband providers serve more than 75 percent of homes; and (2) current high-cost support exceeds projected support under the cost model for the remaining areas by more than 10 percent. During the interim period, in any study area that meets those criteria, the Commission should provide notice to the carrier that support will be reduced to the level suggested by the cost model unless it can demonstrate that a higher amount is necessary. The Commission seeks comment on this proposal.

62. The Commission notes that in the *USF/ICC Transformation Order,* it directed WCB to develop and finalize a cost model for use in price cap territories. Would it be appropriate to use such a model, after appropriate public input, in the way described by NCTA to create a presumptive reduction in support levels for rate-of-return carriers? For purposes of determining whether model-determined support in the remaining areas (*i.e.,* the areas of no overlap) exceeded current support by more than 10 percent, would the Commission need to allocate the current high-cost support between the areas of overlap and the areas where there is no overlap? To the extent that support would need to be allocated between

areas of overlap and no overlap, what criteria or standards would govern any such allocation? Should there be a rebuttable presumption that all costs are divided pro rata among access lines, and allocated to the census block in which that access line is located, so that absent an appropriate showing the recipient would receive the same support amounts per line, but only for those lines that fall outside the area of overlap? Cablevision suggests that only costs solely attributable to the non-competitive area should be supported, and that most of the costs of overhead (which presumably are largely associated with customers in the areas where there is competitive overlap) should not be recoverable. Would that be a workable approach? How should the Commission allocate costs associated with cable and wire facilities, and central office equipment, between competitive and non-competitive areas?

63. NCTA suggests that there be a process in which a carrier subject to reductions could demonstrate that a higher amount is necessary. Should reductions commence within a specified time period, such as 120 days, absent a showing that additional support is necessary? What process should be established for rate-of-return carriers subject to potential support adjustments to contest any such adjustments? For instance, should they be required to show that the adjusted levels would be inadequate to continue to provide voice service to consumers, for example, using the criteria the Commission set forth *in the USF/ICC Transformation Order* for petitions for waiver? Should the Commission undertake a total company earnings review in those circumstances? Should the Commission seek input from the relevant state commission on whether support amounts should be adjusted, and how that would impact consumers in the relevant communities?

64. If the Commission were to adopt any of these proposals to adjust support levels, over what time period should support levels be transitioned to new levels in situations where there is less than 100 percent overlap?

E. Limits on Reimbursable Capital and Operating Costs for Rate-of-Return Carriers

65. In the *USF/ICC Transformation Order,* the Commission adopts a rule to use benchmarks for reasonable costs to impose limits on reimbursable capital and operating costs for high-cost loop support received by rate-of-return companies. A specific methodology for calculating individual company caps for HCLS is set forth in Appendix H of the *USF/ICC Transformation Order,* which is available in its entirety at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1122/FCC-11-161A1.pdf,* and is summarized herein at section *I.E.*1. The Commission seeks comment on using this methodology to impose limits on reimbursement from HCLS and proposes to implement this methodology for support calculations beginning July 1, 2012.

66. Appendix H of the *USF/ICC Transformation Order* uses, the methodology of quantile regression analyses to generate a set of limits for each rate-of-return cost company study area. These would limit the values used in eleven of the twenty-six steps in NECA's Cost Company Loop Cost Algorithm, which is used to calculate the study area's total unseparated cost per loop, and ultimately its HCLS. The regression-derived limits are set at the 90th percentile of costs for each individual step in NECA's Cost Company Loop Cost Algorithm, compared to similarly situated companies for each individual step. In other words, a company whose actual costs for a particular step in the algorithm are above the 90th percentile, compared to similarly situated companies, would be limited to recovering amounts that correspond to the 90th percentile of cost, *i.e.* the amount of cost that ninety percent of similarly situated companies are at or below when they submit costs for that particular step in the algorithm. The Commission seeks comment on whether the 90th percentile is the appropriate dividing line to disallow recovery of cost, or whether the Commission should establish a lower or higher threshold, such as the 85th percentile or the 95th percentile.

67. For the dependent variable in the regression analysis, Commission staff limited its analysis to cost data filed by rural rate-of-return companies that submit cost data, and excluded cost data filed by price cap carriers. For the independent variables, staff used 2010 block-level Census data that it mapped to each study area. The independent variables included: number of loops, number of housing units (broken out by whether the housing units are in urbanized areas, urbanized clusters, and nonurban areas), as well as several geographic measures such as land area, water area, and the number of census blocks (all broken out by urbanized areas, urbanized clusters, and nonurban areas). The analysis thereby recognizes that many smaller study areas (those with lower populations to serve) and more rural geographies (those with lower population densities) legitimately have higher costs per line (*i.e.,* compared to the national average cost per loop) than larger study areas that contain significant urban populations.

68. As explained more fully in Appendix H of the *USF/ICC Transformation Order,* quantile regression has several advantages over other statistical techniques for identifying outliers. Although the Commission finds that quantile regression is an appropriate technique to use in setting benchmarks on reimbursable investment and expenses, the Commission invites further comment on alternative statistical techniques.

69. This methodology utilized variables that are currently available to the Commission. The Commission acknowledges that in their analysis using proprietary cost data, the Nebraska Companies also included variables for frost index, wetlands percentage, soils texture, and road intersections frequency. As noted in the *USF/ICC Transformation Order,* the soils data from the Natural Resource Conservation Service (NRCS) that the Nebraska study used do not cover all the study areas used in its regressions (such as Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, Northern Mariana Islands, and Alaska). The Commission seeks comment on sources of other soil data that completely cover all the study areas or how to deal with those study areas where the SSURGO data are missing or incomplete. To the extent any commenter advocates use of a methodology that includes additional independent variables, they should identify with specificity the data source and the completeness and cost of the additional data, if not publicly available.

70. In the *USF/ICC Transformation Order,* the Commission concludes that support will be redistributed to those carriers whose unseparated loop cost is not limited by operation of the benchmark methodology. Based on 2010 NECA data filed with the Commission, and using an estimate of $455 for the national average cost per loop, it estimates this proposed methodology would reduce HCLS payments to about 280 rural rate-of-return cost study areas by an estimated $110 million, with approximately $55 million redistributed to approximately 340 cost company study areas whose unseparated loop cost is not limited by operation of the benchmark methodology. The Commission thus estimates that more study areas could see increases in HCLS than would see decreases.

71. In the *USF/ICC Transformation Order,* the Commission concludes that it should also limit recovery of excessive

capital and operating costs through the interstate common line support mechanism. The Commission seeks comment on how specifically to implement such a limit for ICLS.

72. Although the Commission currently does not receive detailed cost data for determining ICLS, the Commission believes the best approach for calculating benchmarks to limit reimbursable capital and operating costs for ICLS would be to use a methodology similar to the one developed for HCLS, and seeks comment on this proposal. In the *USF/ICC Transformation Order,* the Commission modifies its rules to require NECA to provide to the Commission upon request underlying data collected from ETCs to calculate payments under the current support mechanisms, including ICLS. In the *USF/ICC Transformation Order,* the Commission directs NECA to file the detailed revenue requirement data it receives from carriers no later than thirty days after release of the *USF/ICC Transformation Order* so that WCB could evaluate whether it should adopt a methodology using these data.

73. The Commission seeks comment on two other alternatives that would not use the detailed revenue data from NECA or require carriers to file additional data. First, the Commission could run a single regression using the total interstate revenue requirement for each carrier, but this approach does not distinguish between capital and operating costs. Second, the Commission could use the decrease in cost per loop resulting from the regressions used to limit HCLS to limit a carrier's interstate revenue requirement. While the Commission recognizes that there are some differences between the costs used to calculate unseparated loop costs and the common line revenue requirement, and between loops and access lines, the Commission seeks comment on whether they are equivalent enough for purposes of establishing benchmarks for reasonable costs.

74. The Commission seeks comment generally on whether network operation and investment by Tribally-owned and operated carriers is significantly different from non-Tribal conditions to warrant special treatment for purposes of establishing benchmarks for permissible capital and operating costs. The Commission seeks comment on whether the 90th percentile is the appropriate dividing line to disallow recovery of costs, or whether it should establish a lower or higher threshold, such as the 85th percentile or the 95th percentile. The Commission seeks comment here on whether a different percentile is appropriate for Tribally-owned and operated carriers, or whether it should otherwise alter the methodology to take into account the unique circumstances of Tribally-owned and operated carriers that are just beginning to serve their communities.

1. Modeling Limits on Reimbursable Operating and Capital Costs

75. *Overview.* This section summarizes the methodology set forth in Appendix H of the *USF/ICC Transformation Order,* which is available in its entirety at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1122/FCC-11-161A1.pdf,* for determining carrier-specific limits on High Cost Loop Support (HCLS) payments to rate-of-return cost carriers with very high capital expenses (capex) and operating expenses (opex) relative to their similarly situated peers. The methodology operates within the current HCLS calculation algorithm, using information that is readily available to the Commission and to the public. This section describes both the econometric process used to establish carrier-specific limits to HCLS payments and the implementation process.

76. This work significantly extends the analyses submitted by the Nebraska Rural Independent Companies, which use ordinary least squares regression analysis to develop a framework to predict capital and operating expenditures. The Nebraska study examines data for a subset of rural rate-of-return carriers, and uses proprietary data not available to the Commission or to the public. In contrast, the proposed methodology described herein uses data currently available to the Commission and sets forth a detailed and implementable mechanism for examining all rural rate-of-return cost study areas and limiting HCLS payments in those study areas that have costs higher than the vast majority of their similarly-situated peers. The Commission uses quantile regression for parameter estimation rather than ordinary least squares for reasons set forth below. In addition, because directly implementing caps for capex and opex cannot be accomplished without fundamentally altering the way HCLS support payments are calculated today, the methodology described can be implemented quickly within the current HCLS framework.

77. *Methodology for Imposing Limits.* This methodology creates caps for 11 of the algorithm steps in NECA's 26-step Cost Company Loop Cost Algorithm. These algorithm steps are all functions of cost categories that are defined in NECA's Appendix B. The methodology calculates the maximum amount for each of the 11 algorithm steps as the 90th percentile cost for a similarly situated company. A company whose actual costs for a particular step in the algorithm are above the 90th percentile, compared to similarly situated companies, would be limited to recovering amounts that correspond to the 90th percentile of cost, *i.e.* the amount of cost that ninety percent of similarly situated companies are at or below when they submit costs for that particular step in the algorithm

78. The methodology involves a quantile regression analysis using data from nearly all the rural rate-of-return cost carriers for each algorithm step. The quantile regression parameter estimates are used to calculate a cap equal to the 90th percentile prediction for each carrier for that algorithm step. This is repeated for each of the rest of the examined algorithm steps. Once all the 90th percentile caps are calculated, the lesser of the company's capped algorithm step value and the original value is inserted into the appropriate algorithm step, which then flows into the later algorithm steps as before. The 11 algorithm steps in the analysis are identified below.

79. The Commission considered using an ordinary least squares-based analysis to set the caps, but decided that quantile regression was preferable for two reasons. First, error terms in bivariate OLS models of each algorithm step on the *loops* variable exhibit heteroscedasticity. While ordinary least squares-based analyses such as weighted least squares can certainly deal with heteroscedasticity, it complicates efforts to deal with other problems such as outliers and non-Gaussian error terms.

80. Further, ordinary least squares can produce biased parameter estimates in the presence of outliers. Ordinary least squares has methods available for dealing with outliers, such as excluding them from the analysis or using dummy variables to deal with them, but that requires exercise of judgment as to which observations are truly outliers. Also, given the data currently available to the Commission, distinguishing between study areas with high idiosyncratic costs (*i.e.,* those that truly are the most expensive-to-serve areas) and others with excessively high cost (*e.g.,* due to imprudent or unnecessarily large past investments) is challenging. Further complicating matters, some carriers may enjoy especially low costs compared to their peers for idiosyncratic reasons. While these observations would be outliers, they

would be masked by the virtue that they are somewhat ''too low'' and therefore it would be difficult to properly identify and deal with those outliers. Thus, simply looking only for observations that are too high may be insufficient. When using ordinary least squares, failing to account for all outliers (including the difficult-to-find outliers that are ''too low'') could bias the regression coefficients which would then bias payments to carriers. Quantile regression solves this problem.

81. *Use of Quantile Regression.* Quantile regression, developed by Roger Koenker and Gilbert Basset in 1978, is a good solution to address these problems. It is similar to ordinary least squares regression, but where ordinary least squares minimizes the sum of squared residuals from the regression line, the median quantile regression minimizes the sum of absolute residuals from the regression line; for quantiles other than the median, quantile regression minimizes the sum of asymmetrically-weighted absolute residuals.

82. While ordinary least squares requires the error terms be homoscedastic, quantile regression makes fewer assumptions about the error term than ordinary least squares, and so there is no need to correct for heteroscedasticity. Thus the quantile regression methodology is robust to error structures that are non-Gaussian or violate the assumption of the normal distribution of errors required for unbiased estimation using ordinary least squares.

83. Quantile regression is also resistant to outliers, so the parameter estimates would be little changed by accounting for (or not) particular observations as outliers. That is, if one were to modify the analysis to account for any known outliers, then the Commission would not expect the list of study areas affected by the caps or the levels of those caps to change very much. Given the complexities of identifying outliers mentioned above, this is an attractive property.

84. Another significant advantage of quantile regression is that it allows the independent variables to have different effects on the study areas in the different quantiles. Thus, for illustrative purposes, if the number of housing units in a rural area increased while holding everything else constant, the size of the study area's cost increase could differ based on which quantile it is in. Hypothetically, the marginal effect of a change could even be positive for a carrier in one quantile (such as the 90th percentile) and negative for a carrier in another (such as the 10th percentile). This is not allowed in ordinary least squares, which assumes that the marginal effect is the same on all carriers. Given that the Commission is examining carriers with high costs relative to other carriers, this is an especially helpful property.

85. *Setting the Quantile Threshold.* This methodology uses the 90th percentile because carriers with costs exceeding 90 percent of their similarly-situated peers may raise questions about the prudence of such expenditures. In the Further Notice, the Commission seeks comment on whether to set the exact quantile to a lower or higher level such as the 85th percentile or the 95th percentile.

86. All of the regressions were log-log: all dependent and most independent variables were logged using the natural log. For those variables that were logged, the Commission added one before taking the log so that observations with values equaling zero could be included in the analysis.

87. While many of the measures of density are collinear, this is not problematic for this methodology because our goal is prediction, not statistical inference. Multicollinearity does not harm predictions.

88. *Dependent Variables.* Consistent with the idea of limiting reimbursements for capex, the Commission creates caps for algorithm steps 1, 2, 17 and 18. Algorithm steps 1 and 2 represent the two categories of gross plant. Algorithm steps 17 and 18 represent the depreciation and amortization associated with the plant represented in algorithm steps 1 and 2.

89. Consistent with the idea of limiting reimbursements for opex, the Commission creates caps for algorithm steps 7, 8, 13, 14, 15, 16, and 21. Algorithm steps 7 and 8 represent materials and supplies. Algorithm steps 13 and 14 represent maintenance. Algorithm steps 15 and 16 represent network support and general support expenses. Algorithm step 21 represents benefits other than corporate operations expenses. By creating caps for these 11 algorithm steps, the Commission limits the reimbursements for capex and opex expenditures that exceed those of the vast majority of similarly-situated carriers.

90. The Commissions excludes algorithm step 19 (corporate operations expense) from the regression analysis because limitations for that cost category have been separately adopted in the *USF–ICC Transformation Order,* and also excludes algorithm step 20 because it represents taxes. Additionally, the Commissions excludes algorithm step 22 (rents) because the regression fit is so poor. Because the regressions are run independently, the exclusion of algorithm step 22 from the methodology does not affect the other regressions.

91. As mentioned above, some of the early algorithm steps calculate factors (based on the reported cost categories) that flow into later algorithm steps. While the Commission does not directly modify algorithm steps 3, 4, 5, 6, 9, 10, 19, 20, and 22, the Commission allows changes in algorithm steps 1 and 2 to flow through to these algorithm steps. For example, algorithm steps 1 and 2 flow into algorithm step 20, which accounts for operating taxes to be assigned to loop costs. Thus, a reduction to algorithm step 1 and/or 2 could lead to a reduction in algorithm step 20, which would be in accordance with the approach of limiting HCLS payments to study areas with very high capital expenses.

92. As with the independent variables, the values of the algorithm steps in our analysis were logged to linearize the model. In two instances, a study area had a negative algorithm step value, which prevented us from taking the natural log for those two values. These two observations were omitted. The data from these two study areas were still included in all the other regressions. Where the algorithm step value was negative, the study area's original algorithm step value was retained.

93. *Independent Variables.* The independent variables in this study are those that the Commission believes correlate with each carrier's costs, are currently available to the Commission, and exist for all study areas in the regression analysis. The independent variables in the methodology are proxies for scale, density, and terrain. Other than the number of loops the study area serves, all the independent variables are from the 2010 United States census. As with the algorithm step variables, the Commission took the natural logs of all the independent variables to linearize the model.

94. Census block data were rolled up to study area boundaries using Tele Atlas data. There were 28 study areas without census block information that were excluded from this analysis. There are two significant advantages to using block-level census data. First, census blocks are most granular areas at which the Census Bureau publishes data, so using census blocks allows for the most accurate mapping of demographic data such as housing units to study areas. Second, census blocks are designated as being part of (in decreasing urbanness order) an urbanized area, urbanized

cluster or nonurban. In this fashion, the Commission allowed the nonurban (rural) independent variables to have different effects from the urban variables. For instance, the additional cost of serving an additional urban housing unit (holding all else constant) is likely to be different than the cost of serving an additional rural housing unit. Therefore, for each of the census-based independent variable in our analysis, the Commission rolled the data up based on whether they are in an urbanized area, urbanized cluster or rural area within the study area.

95. Not all the variables are significant in each regression, and there are some variables (such as the log of land area in urbanized clusters) that are not significant in any of the regressions. The Commission chose to use all the variables in all the regressions so long as the parent variable (such as land area) had at least one child variable (such as land area in a non-urbanized area) that was significant for at least one of the regressions in the analysis. While this meant that some regressions had many insignificant variables, this was not a problem because the goal of the regression was not to determine statistically significant correlations, but instead to generate 90th percentile predictions, which are unaffected by the addition of insignificant variables.

96. The Commission used two measures of scale, *loops* and *housing units.* The more loops the carrier is serving, the higher its expenses will be. The Commission uses the number of loops in NECA's October 2011 filing. The NECA data do not disaggregate loop data by urbanized clusters, urbanized areas or non-urban areas, so the Commission includes an additional scale variable with the urbanness breakout: housing units.

97. The Commission included two measures of density in our analysis, the *weighted housing unit density* and the *number of census blocks* in the study area. Because it is easier to wire businesses and homes when they are close to each other than when they are far apart, the Commission expects that costs will decrease with density. There are several ways one can measure density, however.

98. The simple method, which merely divides the study area's number of housing units by total area (or just land area) does not take into account the possibility that large swaths of land in a study area may have absolutely no homes or businesses. So the Commission calculated the weighted average density for each study area using census block data.

99. For each census block in each study area, the Commission calculated the block's density by dividing the number of housing units in the block by the area of the block. The Commission then set the weight for each block equal to the number of housing units in the block divided by the total number of housing units in the study area. Thus, blocks without any homes had no weight. Again, census data do not include the number of businesses in the block, so they could not be included in the density calculation.

100. The Commission included *land* and *percent water* in each study area as a rough indicator of terrain-driven costs. The Commission expects that holding everything else constant, the more land area that a carrier has in its territory, the more expensive it is to serve. Similarly, the more water area in the study area, the more expensive it should be to serve, because roads are typically routed around such water, so the natural pathways for the carrier's cabling are longer than they otherwise would be.

101. *Results.* The regression analysis was run for the four most recent years of data that NECA reported to the Commission: 2007–2010. The results for each year of data were very consistent with each other. The regression results from 2010 are available at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1122/FCC–11–161A1.pdf.*

102. Two versions of the quantile regression analysis are presented there: Table 1 includes the *weighted density* variable, and Table 2 excludes it. Perhaps surprisingly, weighted density was significant in only one of the regressions in Table 1. One may think weighted density is insignificant in this model because of the inclusion of the other density measures (the three blocks variables), but weighted density is still insignificant when the *blocks* variables are omitted. (Further, the pseudo R^2 drops when the Commission omits the *blocks* variables, so it keeps the *blocks* variables in the analysis and drops the *weighted density* variable.) The Commission therefore uses the model that excludes weighted density.

103. As expected, the *loops* variable was the most influential independent variable in predicting the values for the algorithm steps. The remaining variables are significant in many of the regressions (both when including and excluding the *weighted density* variable), and so they remain in the regressions.

104. As mentioned above, the study area's capped algorithm step values (or the original algorithm step values where they are lower than the capped algorithm step values) are inserted into the algorithm. These step values then flow into later algorithm steps that ultimately determine the Study Area Cost Per Loop value.

105. In addition, WCB has released additional relevant data at: at *http://fcc.gov/encyclopedia/rate-return-resources* under the heading ''Connect America Fund FNPRM Appendix H Data [zip file].''

106. *Implementation.* This proposed methodology would be updated annually to establish limits on the Study Area Cost Per Loop values, which are used to determine eligibility for HCLS payments.

F. ETC Service Obligations

107. The Commission seeks comment on what action may be appropriate to adjust ETCs' existing service obligations as funding shifts to new, more targeted mechanisms. The Commission's aim is to ensure that obligations and funding are appropriately matched, while avoiding consumer disruption in access to communications services.

108. Under the new funding mechanisms established in the *USF/ICC Transformation Order* and proposed in the FNPRM, ETCs may receive reduced support in their existing service areas, and ultimately may no longer receive any federal high-cost support. The Commission seeks comment on whether such reductions should be accompanied by relaxation of those carriers' voice service obligations under 47 U.S.C. 214(e)(1) in some cases. For example, under the CAF Phase II process, an incumbent LEC that declines to undertake a state-level service commitment may lose some or all of its ongoing support in that state. Similarly, the Commission will gradually phase out all high-cost support received by incumbent rate-of-return carriers in study areas where an unsubsidized competitor—or a combination of unsubsidized competitors—offers voice and broadband service that meets the performance requirements for 100 percent of the residential and business locations in the incumbent's study area. Likewise, competitive ETCs that today receive support under the identical support rule will see funding in their existing service areas phased down over time as set forth in the *USF/ICC Transformation Order,* although those ETCs will be eligible for targeted funding to extend advanced mobile services through the Mobility Fund Phase I and Phase II. Some commenters have proposed that as these reductions occur, the Commission should relax or eliminate ETCs' voice service

obligations. The Commission seeks comment on this suggestion.

109. In addition, even in service areas where ETCs retain existing support levels or receive greater funding under the Connect America Fund, that funding will increasingly be targeted at the census block level, or to other precisely defined geographic areas. For example, in the *USF/ICC Transformation Order,* the Commission directed WCB to develop a cost model to estimate on a granular level, such as the census block, the amount of support necessary for deployment of a broadband-capable wireline network in high-cost areas above a specified threshold, and to use the output of that model to calculate the support that incumbent price cap companies would receive if they undertake state-level broadband service commitments. These price cap ETCs will still be subject to voice service obligations under 47 U.S.C. 214(e)(1), however, and the model-derived support amount will not include a separate estimate of support for the cost of providing voice service to locations below the specified threshold or those locations that will receive funding from the Remote Areas Fund that the Commission establishes in the *USF/ICC Transformation Order.* Likewise, competitive ETCs that bid for Phase I Mobility Fund support will be required to offer advanced mobile service in specific unserved census areas, but their state or federally-defined service territory may be substantially larger than their bid areas. The Commission seeks comment on whether, in situations such as these, some adjustment in affected ETCs' 47 U.S.C. 214(e)(1)obligation to offer service throughout their service area may be appropriate. Alternatively, the Commission seeks comment on whether it should adopt a federal framework for the process to be used in redefining service areas, by the states or the Commission, as appropriate. What specific modifications to 47 CFR 54.207 would be appropriate? Should there be uniform procedures for service area redefinition for ETCs that are incumbent carriers, regardless of whether the incumbent is classified as a rural carrier or a non-rural carrier in a particular study area?

110. The Commission proposes that existing ETC relinquishment and service area redefinition procedures, backstopped by the availability of forbearance from federal requirements, provide an appropriate case-by-case framework in which to address these issues in the near term, but the Commission also seeks comment on other approaches. To the extent that carriers find that the ETC relinquishment and service area redefinition procedures prove insufficient, the Commission proposes that case-by-case federal forbearance would provide an appropriate remedy in the near term, as the Commission gains experience under the new universal service mechanisms established in the *USF/ICC Transformation Order.* Under section 10 of the Act, 47 U.S.C. 160, the Commission must forbear from applying any regulation or any provision of the Act to a telecommunications carrier. The Commission has forborne from the 47 U.S.C. 214(e)(1) requirement that ETCs offer service using at least some of their own facilities and the 47 U.S.C. 214(e)(5) requirement that the service area of a competitive ETC conform to the service area of any rural telephone company service. The Commission sees no reason why it could not likewise forbear from the 47 U.S.C. 214(e)(1) requirement that carriers offer service throughout their service area if the statutory criteria for forbearance are met. In particular, the Commission notes that 47 U.S.C. 160 expressly grants it authority to tailor forbearance relief to any or some of telecommunications carriers' geographic markets, which the Commission believes would allow it forbear from enforcing a carrier's 47 U.S.C. 214(e)(1) obligations in some parts of its service area, while maintaining those obligations elsewhere. The Commission seeks comment on its interpretation of 47 U.S.C. 160, and on its proposal to use case-by-case forbearance to adjust carriers' 47 U.S.C. 214(e)(1) service obligations under its new funding mechanisms as necessary and in the public interest.

111. The Commission notes that some commenters have sought broader modifications to the 47 U.S.C. 214(e)(1) framework, and the Commission also seeks comment on these suggestions as alternatives or supplements to the case-by-case approach it proposed. In particular, some commenters suggest that the Commission adopt a rule under section 47 U.S.C. 201 or 47 U.S.C. 254(f) providing that an ETC's 47 U.S.C. 214(e)(1) service area should be limited to those specific geographies (*e.g.,* wire centers) where the ETC is receiving universal service support.

112. These commenters also suggest that the Commission grant blanket 47 U.S.C. 160 forbearance to the extent 47 U.S.C. 214(e)(1) requires ETCs to offer service in areas where they receive no universal service support. In the alternative, commenters suggest that the Commission reinterpret 47 U.S.C. 214(e)(1) to require the provision of service only in areas where those services actually are supported, contending that the requirement in 47 U.S.C. 214(e)(1) that ETCs offer the services that *are supported* suggests that the service obligation only attaches where support actually flows.

113. The Commission seeks comment on each of these proposals. In particular: Do these approaches appropriately balance federal and state roles in the designation and oversight of ETCs? Are they in tension with the requirement in 47 U.S.C.214(e)(4) that ETCs may only be allowed to relinquish their designations in areas served by more than one eligible telecommunications carrier, *i.e.,* areas where service will continue even if relinquishment is permitted? Are they in tension with the statutory language in 47 U.S.C. 214(e)(5) that the service area of a rural telephone company is its study area, unless the Commission and the states, establish a different definition? Are there ways to address this tension and ensure continued voice service to consumers in all areas of the country, while still taking steps to better align targeted funding with service obligations, as some commenters advocate? Is the proposed interpretation of 47 U.S.C. 214(e)(1) consistent with that section's requirement that carriers offer the services that are supported throughout the service area for which their ETC designation is received?

114. If the Commission were to establish a general rule that service obligations should only attach in the specific geographies (*e.g.,* wire centers) where the ETC is receiving universal service support, the Commission also seeks comment on what would be the appropriate geography to use. Should the Commission use geographies based on the actual network architectures of fund recipients, like wire centers? Or should the Commission pick technology-neutral geographies, such as census blocks, census tracts, or counties? How granular should the Commission's definition of the service requirement be? What would be the practical implications of an ETC having service obligations in certain census blocks and not others within a community (for instance having obligations outside of town, but not within the footprint of an unsubsidized provider that services only the town), and would that variation in obligation result in consumer confusion?

115. Finally, the Commission also seeks comment on how to ensure that low-income consumers across America continue to have access to Lifeline service, both in urbanized areas that

will not, going forward, receive support from the new CAF, and in rural areas that will, over time, receive support from the CAF. As a practical matter, how can the Commission ensure that low-income consumers that only wish to subscribe to voice service continue to have the ability to receive Lifeline benefits? The Commission emphasizes its ongoing commitment to ensuring that low-income consumers in all regions of the county have access to telecommunications and information services. Some commenters have suggested that the Commission create Lifeline-only ETCs. As a matter of federal policy, would it thwart achievement of the objectives established by Congress to relieve an existing ETC of the obligation to provide Lifeline if there was no other ETC in that particular area willing to offer Lifeline services?

G. Ensuring Accountability

116. The Commission proposes various alternative remedies available to it in the event an ETC fails to comply with its rules regarding receipt of high-cost universal service support.

117. *Financial Guarantees.* The first alternative remedy the Commission proposes for non-compliance with its rules is a financial guarantee. The Commission proposes that a recipient of high-cost and CAF support should be required to post financial security as a condition to receiving that support to ensure that it has committed sufficient financial resources to complying with the public interest obligations required under its rules and that it does in fact comply with the public interest obligations set forth in Section VI of the *USF/ICC Transformation Order.* In particular, the Commission seeks comment on whether all ETCs should be required to obtain an irrevocable standby letter of credit (LOC) no later than January 1, 2013. The Commission's goal in proposing this requirement is to protect the integrity of the USF funds disbursed to the recipient and to secure return of those funds in the event of a default, even in the event of bankruptcy.

118. The Commission seeks comment on applying post-auction procedures, including performance guarantees, to ETCs that apply for funding after a competitive bidding process. The Commission seeks comment on adopting financial performance guarantee requirements for ETCs that receive funding through processes other than competitive bidding.

119. Should ETCs that will receive less than a specified amount of support be exempted from any requirement to provide an LOC? On what basis should the Commission adopt such a blanket exemption? For instance, should it be based on the aggregate amount of support provided on a study area basis, and at what dollar level should the Commission grant such an exemption?

120. The Commission seeks comment on how to determine the amount of the LOC necessary to ensure compliance with the public interest obligations imposed in the *USF/ICC Transformation Order,* as well as the length of time that the LOC should remain in place. For example, the amount of the LOC could be determined on the basis of the ETC's estimated annual funding amount. Should the amount of an initial LOC, or a subsequent LOC, also ensure the continuing maintenance and operation of the network? The Commission also recognizes that a recipient's failure to fulfill its obligations may impose significant costs on the Commission and, potentially, on the USF itself if there is a need to provide additional support to another ETC to serve the area. Should the amount of an initial LOC or a subsequent LOC include an additional amount that would serve as a default payment? Under what circumstances should the ETC be required to replenish the LOC? For how long should an ETC be required to keep the LOC in place? Is there a finite time after which the LOC will no longer be necessary to safeguard the Fund?

121. The Commission proposes that under the terms of the LOC, failure to satisfy essential terms and conditions upon which USF support was granted, including failure to timely renew the LOC, will be deemed a failure to properly use USF support and will entitle the Commission to draw the entire amount of the LOC to recover that support and any default payment. The Commission, for example, would draw upon the LOC when the recipient fails to meet its required deployment milestone(s) or other public interest obligations. Are there any situations in which the Commission should deem non-compliance to be non-material, and therefore not warrant a draw on the letter of credit? Should recipients be provided a period of time to cure non-performance before drawing on the letter of credit? The Commission proposes that failure to comply will be evidenced by a letter issued by the Chief of either WTB or WCB or their designee, which letter, attached to an LOC draw certificate shall be sufficient for a draw on the LOC.

122. *Penalties.* The Commission seeks comment on alternatives to the financial guarantees including whether revocation of ETC designation, denial of certification resulting in prospective loss of support, or recovery of past support amounts is an appropriate remedy for failure to meet their public interest obligations. The Commission also seeks comment on the specific circumstances in which these alternatives might apply, if they are different than the specific circumstances in which financial guarantees would apply.

123. The Commission also seeks comment on what specific triggers might lead to support reductions, how much support should be reduced, how best to implement support reductions, and how the review and appeal process should be revised. If the Commission adopts a framework for partial withholding of support, should it establish levels of non-performance that would result in the loss of specific percentages of support? For example, should the Commission establish levels one through four of non-compliance, with corresponding loss of support of 25, 50, 75, and 100 percent? If so, what criteria would the Commission use to determine a carrier's level of non-performance?

124. USAC recovers support when recipients have received support to which they are not entitled, typically accomplishing the recovery through adjustments in future disbursements. Should the Commission adopt rules identifying what constitutes a material failure to perform, warranting recovery of past funding? For instance, should price cap companies be subject to a loss of prospective support for failure to meet intermediate build-out requirements? Should they be subject to recovery of past support amounts if they fail to meet the performance requirements at the end of the five-year term? Should there be a sliding scale for recovery of past amounts depending on the degree to which the carrier fails to meet a specified milestone? Should the Commission continue the current practice of offsetting any support adjustments against future disbursements?

125. Should the Commission adopt rules that create self-executing reductions in support that would be administered by USAC? The Commission notes that under its current rules, any party that disputes action by USAC may seek review by the Commission. What additional processes, if any, should the Commission put in place for ETCs to dispute any support adjustments for non-performance?

126. The Commission recognizes that, under 47 U.S.C. 214, ETC designation is a responsibility shared between the states and the Commission. The Commission welcomes input from its

state colleagues on the circumstances in which ETC designations have been revoked by states in the past, and what circumstances might warrant revocation under its reformed Connect America Fund. Should the Commission adopt a national framework for when ETC revocation is appropriate?

127. The State Members of the Universal Service Joint Board suggest that denial of certification—which today results in loss of support for the coming year—is a draconian remedy that should be available if necessary, but avoidable if possible. The Commission seeks comment on what circumstances would justify such a result. The State Members also proposed in their comments that carriers should be disqualified from receiving support during periods in which they fail to provide adequate information to verify continuing eligibility to receive support and adequate to perform support calculations. The Commission seeks comment on this proposal and welcomes input from its state partners on how it can ensure there are significant consequences for material non-compliance.

128. An alternative approach might be to separately count compliance with each public interest obligation established in Section VI of the *USF/ICC Transformation Order,* with non-compliance with each individual obligation resulting in the ETC losing a set percentage of support for each obligation it fails to meet. Must non-compliance with an obligation be material? If so, how will the Commission define material for these purposes?

H. Annual Reporting Requirements for Mobile Service Providers

129. In the *USF/ICC Transformation Order,* the Commission seeks to take several steps to harmonize and update its annual reporting requirements for recipients of USF support, including extending the current annual reporting requirements to all ETCs. All ETCs that receive high-cost support, except ETCs that receive support solely pursuant to Mobility Fund Phase I, which has separate annual reporting obligations, will be required to annually file the information required by new 47 CFR 54.313 with the Commission, USAC, and the relevant state commission, authority in a U.S. Territory, or Tribal government or authority, as appropriate. In the *USF/ICC Transformation Order,* the Commission also establishes new reporting requirements for the annual reports that will ensure that recipients are complying with the new broadband public interest obligations it adopts. Because Mobility Fund support will differ in some respects from support received under other USF high-cost support mechanisms, in the section of the *USF/ICC Transformation Order* adopting the first phase of the Mobility Fund, the Commission requires recipients of Mobility Fund support to file annual reports specific to that program. Mobility Fund recipients that receive support under other high-cost programs may file a separate Mobility Fund annual report or they may include the required information with respect to their Mobility fund support in a separate section of their annual reports filed pursuant to new 47 CFR 54.313.

130. The Commission seeks comment here on whether there are certain requirements in its new annual reporting rule for ETCs, new 47 CFR 54.313, that do not reflect basic differences in the nature and purpose of the support provided for mobile services. Specifically, the Commission seeks comment on whether it should revise 47 CFR 54.313 reporting requirements or adopt new reporting requirements that would apply to support an ETC receives to provide mobile services. For example, new 47 CFR 54.313 requires ETCs to include in their annual reports, beginning with their April 1, 2014 report, information regarding their progress on their five-year broadband build-out plan. What type of similar information would be appropriate to require of mobile service providers who receive support from Phase I or Phase II of the Mobility Fund? ETCs are currently required to report annually on the number of requests for service from potential customers within the ETC's service areas that were unfulfilled during the past year. Should the Commission continue to require this information from mobile service providers in view of the fact that the measure of performance for ETCs receiving Mobility Fund support is coverage of the supported areas, and not the number of subscribers to the supported service?

131. ETCs must also include in their annual reports detailed information on outages that meet certain minimum criteria described in the rule, including the geographic areas affected and the number of customers affected. For mobile service providers, how should the number of affected customers be counted? Should the number of affected customers be the number of customer billing addresses within the affected areas, the average number of customers served by the towers that are out-of-service during the outage, or some other measure?

132. The Commission seeks comment on the annual reporting issues and on any other aspects of its annual reporting requirements that commenters believe do not reflect the nature of mobile services being offered and the objectives of the USF support they receive and that require a new annual reporting rule specifically directed to mobile service providers.

I. Mobility Fund Phase II

133. The *USF/ICC Transformation Order* establishes an annual budget for Mobility Fund Phase II of $500 million, up to $100 million of which will be reserved to support Tribal lands, including Alaska. The Commission proposes rules to use the Mobility Fund Phase II to ensure 4G mobile wireless services in areas where such service would not otherwise be available, and seeks comment on certain alternative approaches.

i. Overall Design

134. The Commission proposes to use a reverse auction mechanism to distribute support to providers of mobile broadband services in areas where such services cannot be sustained or extended without ongoing support. The Commission proposes that the reverse auction be designed to support the greatest number of unserved road miles or other units within the overall Mobility Fund budget. Assigning support in this way would be consistent with its general decision to use market-driven policies to maximize the value of limited USF resources, and should enable us to identify those providers that will make most effective use of the budgeted funds, thereby benefiting consumers as widely as possible. The Commission discusses the proposed framework for the program and the auction mechanism and seeks comment on alternatives, including the use of a model to determine both the areas that would receive support and the level of support.

ii. Framework for Support Under Competitive Bidding Proposal

a. Identifying Geographic Areas Eligible for Support

135. The Commission seeks to provide funding only in geographic areas where there is no private sector business case to provide mobile broadband and high quality voice-grade service. The Commission proposes to identify such areas by excluding all areas where unsubsidized 3G or better services are available. The Commission proposes to use census blocks as the minimum size geographic unit for identifying eligible areas.

136. *Identifying Areas Eligible for Support.* The Commission proposes to identify areas eligible for support on a census block basis, which would permit us to target Phase II support more precisely than if the Commission were to use a larger area. As a proxy for identifying areas where private investment is likely to undertake to provide mobile broadband services, and thus, areas not eligible for support, the Commission proposes to use areas where an unsubsidized provider offers 3G or better service based upon the most recent available data prior to auction. Under this proposal, any census block where 3G or better service is available from at least one unsubsidized provider would not be eligible for support. Census blocks with 2G service available from an unsubsidized provider as well as census blocks where 3G service is provided only by subsidized provider(s) would be eligible. Specifically, the Commission would use American Roamer data to identify areas where there are mobile networks that offer service using EV–DO, EV–DO Rev A, UMTS/HSPA and HSPA+, LTE, and any other technologies offering equivalent speeds or better. The Commission may wish to prioritize support to areas that also lack 2G coverage, and American Roamer data could also be used for this purpose. As with Phase I, the Commission proposes to use the centroid method to establish whether service using particular technologies is available to a particular census block. Census blocks that do not have such service would be eligible for Phase II support. The Commission seeks comment on these proposals. In particular, the Commission seeks comment on whether there are other proxies for determining where private investment will deploy mobile broadband, other data sources, other technologies, or methods other than the centroid method that the Commission should consider in determining whether particular census blocks should be excluded from eligibility for support to promote its objectives.

137. The Commission also seeks comment on how a cost model could be used to identify areas for which providers would be able to seek support in a Phase II auction. The Commission notes that US Cellular and MTPCS have filed analyses based on cost models for the deployment of wireless services. Elsewhere, the Commission seeks comment on their submissions. In particular, the Commission discusses at greater length how a cost model could be used both to identify areas where support should be offered and, as an alternative to competitive bidding, to determine the amount of support to be offered. The Commission invites comment on the possibility of using a mobile wireless cost model only to identify the areas that would be eligible for Phase II support, with the actual award of support through a reverse auction. The Commission also seeks comment on using other criteria—such as the availability of unsubsidized services to refine a model-based definition of areas for which providers will be eligible to seek support in the auction. For example, the Commission could make ineligible for Phase II support areas with unsubsidized providers, or areas where any provider has made a public or regulatory commitment to provide unsubsidized service, even if a cost model indicates that costs are high.

138. *Minimum Size Unit for Bidding and Support.* The Commission proposes to identify eligible areas at the census block level and that the census block should be the minimum geographic building block for defining areas for which support is provided. Because census blocks are numerous and can be quite small, the Commission believes that the Phase II auction should provide for the aggregation of census blocks for purposes for bidding. The Commission could set out by rule a minimum area for bidding comprised of an aggregation of eligible census blocks. In addition, the auction procedures could provide for bidders to be able to make all-or-nothing package bids on combinations of bidding areas. Package bidding procedures could specify certain predefined packages, or could provide bidders greater flexibility in defining their own areas, here comprised of census blocks. The Commission seeks comment on possible approaches to aggregating census blocks.

139. Under the Census Tract Approach, the Commission would define a minimum aggregation of blocks by rule, for example by aggregating eligible census blocks based on the census tract in which they lie, so that bidders would bid for support for all eligible census blocks within that tract. Under the Bidder-Defined Approach, the Commission would not require a minimum aggregation of census blocks, but would establish package bidding procedures that would allow bidders to group the specific census blocks on which they wanted to bid.

140. *Census Tract Approach.* Under this approach the Commission would create a minimum unit for bidding that is larger than an individual block. For example, the Commission could use a census tract, so bidders would bid for support to serve all the eligible blocks within the census tract. The Commission asks for comment on whether tracts would be an appropriate unit here or whether there is some other minimum grouping of census blocks that would be preferable, such as block groups. Should the Commission use a different minimum geographic unit in areas where census blocks and/or census tracts are especially large? For example, if the Commission group blocks into tracts for bidding, should it consider making an exception if the particular tract is especially large, and use individual blocks or block groups for bidding in those cases, as the Commission has done in Alaska for Mobility Fund Phase I? Regardless of the minimum unit, there are a number of different auction designs that could be used. For example, one possibility would be to use a clock auction format with bidding on tracts. Without package bidding, bidders could manage aggregations of tracts through multiple rounds of bidding. For package bidding, the Commission could allow bidders to flexibly aggregate census tracts (or other units) of their choosing or it could allow bidders to place package bids on pre-defined packages of tracts. The Commission seeks comment on bidders' interest in and need for package bidding as it relates to its choice of a minimum unit for bidding and support. Under the Census Tract Approach bidders would be required to serve a specified percentage (*e.g.,* 75 percent) of the units (or road miles, as proposed) in the unserved census blocks.

141. *Bidder-Defined Approach.* Under this approach, the Commission would not specify a minimum aggregation of census blocks but would provide bidders with considerable flexibility to aggregate the specific census blocks they proposed to serve. Bidders would be able to make bids that specify a set of census blocks to be covered, and a total amount of support needed. The Commission seeks comment on whether there should be a boundary on bids under such procedures—for example, would it be useful to have a rule that all the census blocks in a given bid must be within a cellular market area (CMA)? Under this approach, a bidder could be permitted to submit several bids, up to a limit that would be specified in the auctions procedures. Bids by that bidder that contained some geographic overlap would be treated as mutually exclusive, *i.e.,* only one could be awarded. Bids that do not overlap could win simultaneously. The Commission would use a computer optimization to identify the set of bids that maximizes the

number of eligible road miles (or other supported units) covered subject to the budget constraint. Under this general approach, there may be some limited scenarios where eligible road miles may be covered by multiple winners—*i.e.,* whenever the optimization determines that the set of winning bids that would maximize the total road miles or other units covered within the budget requires limited duplicative coverage, the Commission would permit that coverage. The Commission seeks comment on whether such an approach could be sufficiently contained to ensure that it is truly making the most efficient use of the fund given limited resources. The Commission also notes that allowing overlap among providers could reduce the revenues a bidder expects from customers, and therefore could increase the support a bidder would seek. The Commission seeks comment on whether this is a significant concern, and whether it could be addressed by allowing bidders to make bids contingent on the overlap being less than some percentage. In addition providers would be required to serve all the units in the census block.

142. In order to bid effectively, presumably bidders would need to match eligible census blocks to their business plans, and know the number of road miles (or other supported units) within each census block. Prior to an auction, WTB and WCB would provide information on the specific eligible census blocks and the units associated with each. The Commission could provide information through one or more bidder tools on its Web site. Those tools, for instance, could allow bidders to readily match up their own information on the geographic areas in which they are interested with the blocks available in the auction. Bidder tools could also make readily accessible to potential bidders various online data, including maps, regarding the unserved blocks in which they are interested—such as associated road mile or population (or other units) data so that bidders could consider potential per-unit bids for coverage of various possible geographic areas. Providing these tools could facilitate participation by small as well as large providers. The Commission seeks comment on whether there is additional information or help that the Commission should provide to bidders would need from the Commission or whether the tools needed for this matching and calculation can be developed by bidders.

143. The Commission invites comment on any other advantages and disadvantages of the Census Tract and Bidder-Defined approaches from a provider's perspective. Commenters should address the minimum scale at which providers may want to incorporate Phase II support into their existing networks; the simplicity of the auction mechanism; the ability of providers to capture efficiencies, and to formulate and implement bidding strategies; and ease of administration.

144. *Prioritizing Areas.* The Commission seeks comment on whether it should target areas currently without any mobile service for priority treatment under Phase II. For instance, should it provide a form of bidding credit that would promote the support of areas with no mobile service at all or only mobile service at lower than current generation or 3G levels?

145. The Commission also seeks comment on whether it should prioritize coverage to any areas in which previously provided support is being phased down. To the extent that parties believe there is a risk of meaningful loss of coverage, the Commission welcomes comments on how to define the areas at risk, and how to address the risk. Once the areas are defined, they could be prioritized, for example, by making available bidding credits for these areas.

b. Establishing Bidding and Coverage Units

146. The Commission proposes to base the number of bidding units and the corresponding coverage requirement on the number of road miles in each eligible geographic area. Requiring coverage of road miles directly reflects the Mobility Fund's goals of supporting *mobile* services, and indirectly reflects many other important factors—such as business locations, recreation areas, and work sites—since roads are used to access those areas. And while traffic data might be superior to simple road miles as a measure of actual consumer need for mobile coverage, the Commission has not found comprehensive and consistent traffic data across multiple states and jurisdictions nationwide. Because bidders are likely to take potential roaming and subscriber revenues into account when deciding where to bid for support under Phase II, the Commission expects that support will tend to be disbursed to areas where there is greater traffic. The Commission seeks comment, however, on the use of other units for bidding and coverage—such as population and workplaces—instead of or in combination with road miles.

147. The Commission proposes to use the TIGER data collected by the Census Bureau to determine the number of road miles associated with each eligible geographic area. TIGER data is available nationwide on a standardized basis and can be disaggregated to the census block level. The Commission anticipates that the Bureaus would exercise their delegated authority to establish the units associated with each eligible census block and identify the specific road categories within TIGER considered—primary, secondary, local, etc.—to calculate the units associated with a given area. The Commission seeks comment on this proposal.

c. Maximizing Consumer Benefits

148. The Commission's goal is to maximize the coverage of mobile broadband services supported with its annual Mobility Fund Phase II budget. In contrast to the former rules, under which multiple providers are entitled to an award of portable, per-subscriber support for the same area, the Commission expects that to maximize coverage within its budget it will generally be supporting a single provider for a given geographic area. The Commission would support more than one provider in an area only if doing so would maximize coverage. The Commission seeks comment on whether allowing overlap among providers would unduly compromise its objective to maximize consumer benefits. The Commission plans to take into account its experience implementing Mobility Fund Phase I to ascertain whether there are ways to further minimize overlap during the implementation of Mobility Fund Phase II. The Commission is mindful that its statutory obligation runs to consumers, rather than carriers, and that it must target limited public funds in a way that expands and sustains the availability of mobile broadband services to maximize consumer benefits. To further protect consumer interests, the Commission also proposes to adopt certain terms and conditions to promote leveraging of publicly funded investment by other providers operating in the same areas as a recipient of support under Phase II of the Mobility Fund. The Commission invites comment on this approach, which is consistent with one the Commission has taken elsewhere with respect to universal service support.

149. The Commission also seeks comment on whether and to what extent recipients of Mobility Fund Phase II support should be permitted to partner with other providers to fulfill the public interest obligations associated with Phase II. For example, should the Commission permit eligible providers to seek support together, provided that they disclose any such arrangements when applying for a Mobility Fund

auction? The Commission invites comment on whether it should establish any limit on the number of geographic areas for which any one provider may be awarded Phase II support. If the Commission were to do so, what effect would this have on those mobile providers that focus on serving rural areas? Is there another basis on which it should limit the amount of Phase II support that goes to any one provider?

d. Term of Support

150. The Commission proposes a fixed term of support of 10 years and, in the alternative, seeks comment on a shorter term. In considering the optimal term for ongoing support, the Commission seeks to balance providing adequate certainty to carriers to attract private investment and deploy services while taking into account changing circumstances. How should the timeframes for deployment and private investment be synchronized with the pace of new technology? What is the minimum period for making deployment practicable? In light of possible improvements in technology, would it be more practicable to provide for a longer term and require an increase in performance during the term? Or, would it be more appropriate to provide for a shorter term that reflects the likely life cycle of existing technologies? The Commission seeks comment on this proposal and on the option for a shorter term.

151. The Commission also seeks comment on whether it is appropriate to establish any sort of renewal opportunity for support, and on what terms. For instance, should the Commission follow its licensing regime which allows for a renewal expectancy if buildout and service obligations have been met? Alternatively, should the Commission take into account the extent to which a recipient utilizes new technologies to exceed the minimum performance requirements established at the outset of the term of support? To what extent should the unforeseen development of new products and services in unsupported areas be taken into account when assessing a support recipient's performance and qualification for renewal?

e. Provider Eligibility Requirements

152. With a narrow exception, discussed *infra,* the Commission proposes to require that parties seeking Mobility Fund Phase II support satisfy the same eligibility requirements that it has adopted with respect to Phase I. The Commission seeks comment on this proposal. Is there any reason to alter the requirements previously adopted in light of the differences between Phase I's one-time support and Phase II's ongoing support? Parties providing suggestions should be specific and explain how the eligibility requirements would serve the ultimate goals of Phase II. The Commission also seeks comment on ways the Commission can encourage participation by the widest possible range of qualified parties.

f. Public Interest Obligations

153. *Voice.* The *USF/ICC Transformation Order* sets out general requirements applicable to all recipients of support from the CAF, including recipients of Mobility Fund support. Consistent with those requirements, recipients of Mobility Fund support will have to offer voice service that satisfies the public interest obligations shared by all recipients of CAF support. Likewise, all recipients of Mobility Fund support must offer a standalone voice service to the public.

154. *Mobile Broadband Performance Requirements and Measurement.* Unlike requirement for voice service, recipients' public interest obligations with respect to broadband vary depending upon the particular public interest goal being met by the support provided. The Commission proposes that, as for Mobility Fund Phase I recipients that elect to offer 4G service, recipients of Mobility Fund Phase II support will be required to provide mobile voice and data services that meet or exceed a minimum bandwidth or data rate of 768 kbps downstream and 200 kbps upstream, consistent with the capabilities offered by representative 4G technologies. The Commission further proposes that these data rates should be achievable in both fixed and mobile conditions, at vehicle speeds consistent with typical vehicle speeds on the roads covered. As the Commission notes in its *USF/ICC Transformation Order* regarding Phase I, the proposed measurement conditions may enable users to receive much better service when accessing the network from a fixed location or close to a base station. These minimum standards must be achieved throughout the cell area, include at the cell edge, at a high probability, and with substantial sector loading. The Commission seeks comment on these initial performance metrics. The Commission also seeks comment from providers of services used by people with disabilities, such as Internet-based telecommunications relay services, including video relay services (VRS), and point-to-point video communications or videoconferencing services, as to whether these performance metrics will be sufficient to support such services and communications.

155. In order to assure that recipients offer service that enables the use of real-time applications, the Commission also proposes that round trip latencies for communications over the network be low enough for this purpose.

156. The Commission further seeks comment on whether, and if so, in what ways these metrics should be modified during the term of support to reflect anticipated advances in technology. The Commission also seeks comment from providers of services used by people with disabilities as to whether or not and how these performance metrics should be modified over time to support such services and communications. In the *USF/ICC Transformation Order* the Commission notes the obligations applicable to certain CAF recipients will evolve over time. The Commission proposes that the performance characteristics required of Mobility Fund Phase II recipients likewise be required to evolve over time, to keep pace with mobile broadband service in urban areas. How exactly should those obligations evolve? Should the term of support provided be synchronized with anticipated changes in obligations?

157. The Commission further proposes that recipients be required to meet certain deployment milestones in order to remain qualified for the ongoing support awarded in Phase II. Specifically, consistent with the approach the Commission is taking for Phase I support used to deploy 4G, the Commission proposes that providers be required to construct a network offering the required service in the required area within three years. Commenters are invited to address the feasibility of the proposed three year deployment deadline, given the projected availability of 4G equipment and any other issues that may affect deployment, such as compliance with local, state, or federal laws and requirements, and weather. To the extent the Commission modifies recipients' public interest obligations over time, the Commission seeks comment on when such metrics must be achieved. Should the Commission also adopt interim deadlines for upgrading service to comply with revised requirements with respect to 50 percent of the covered area?

158. If the Commission adopts the Census Tract Approach, it proposes to require Phase II recipients to provide coverage meeting their public service obligations to at least 75 percent of the road miles in all of the unserved census blocks for which they receive support. To the extent that a recipient covers

additional road miles or other units beyond the minimum requirement, the Commission proposes to provide support based on its bid unit up to 100 percent of the units associated with the specific unserved census blocks covered by a bid. If the Commission adopts the Bidder-Defined Area approach, it proposes that Phase II recipients should be required to provide coverage meeting their public service obligations to a higher percentage, perhaps to all of the unserved units within the census blocks.

159. The Commission proposes that recipients demonstrate that they have met relevant performance and coverage obligations by submitting drive test data, consistent with the industry norm and the provisions the Commission adopts for Phase I. The Commission seeks comment on how frequently such data should be submitted during the term of support.

160. *Collocation and Voice and Data Roaming Obligations.* The Commission requires that Phase I recipients allow the collocation of additional equipment under certain circumstances and condition their receipt of support on compliance with voice and data roaming requirements. The Commission seeks comment on adopting similar requirements for Phase II recipients. Are there additional requirements the Commission might consider in order to ensure that publicly funded investment can be leveraged by other providers to the extent they may operate in areas that need universal service support?

161. *Reasonably Comparable Rates.* The Commission seeks comment on how to implement, in the context of the Mobility Fund Phase II, the statutory principle that supported services should be made available to consumers in rural, insular, and high-cost areas at rates that are reasonably comparable to rates charged for similar services in urban areas. The Commission proposes that recipients be subject to the same requirements regarding comparable rates that apply to all recipients of CAF support.

162. The Commission will consider rural rates for service supported by the Mobility Fund to be reasonably comparable to urban rates under 47 U.S.C. 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable service. The Commission seeks additional comment here with respect to the evaluation of reasonably comparable voice and broadband services for purposes of Mobility Fund Phase II specifically.

163. For purposes of the Mobility Fund, the Commission proposes to focus on mobile broadband service that meets the universal service performance characteristics. For instance, the Commission invites further comment as to whether there are additional sources of information or aspects of service to consider in light of the fact that Mobility Fund support is for mobile service over a geographic area. The Commission also seeks comment on whether the mobile nature of the service supported by Mobility Fund Phase II, or the pricing of mobile voice and broadband services, present any unique features for purposes of adopting a methodology for evaluating rates under its reasonable comparability standard. The Commission proposes to require recipients of funding under Mobility Fund Phase II to provide information regarding their pricing for mobile broadband service offerings.

iii. Auction Process Framework

164. The Commission proposes general auction rules governing the auction process itself, including options regarding basic auction design, application process, information and competition, and auction cancellation.

165. As the Commission did for Mobility Fund Phase I, it proposes to delegate to the Bureaus authority to establish detailed auction procedures consistent with the auction rules the Commission establishes here, take all other actions necessary to conduct a Phase II auction, and conduct program administration and oversight. Under this proposal, a public notice would be released announcing an auction date, identifying areas eligible for support through the auction and the road miles associated with each area, and seeking comment on specific detailed auction procedures to be used.

a. Auction Design

166. The Commission proposes rules outlining various auction design options and parameters, while at the same time proposing that final determination of specific auction procedures to implement a specific design be delegated to the Bureaus as part of the subsequent pre-auction notice and comment proceeding.

167. The Commission proposes a rule providing that a Phase II auction may be conducted in a single round of bidding or in a multiple round format, or in multiple stages where an additional stage could follow depending upon the results of the previous stage. The Commission also proposes that maximum bid amounts, reserve prices, bid withdrawal provisions, bidding activity rules and other terms or conditions of bidding would be established by the Bureaus. Should reserve prices be set using the results of a wireless model for each state, similar to the CAF Phase II auction where price cap carriers decline the state-level commitment? The Commission also proposes that the Bureaus may consider various procedures for grouping geographic areas within a bid—package bidding—that could be tailored to the needs of prospective bidders as indicated during the pre-auction notice and comment period.

168. It appears that some form of package bidding will likely enhance the auction by helping bidders incorporate network-wide efficiencies into their bids. The Commission invites preliminary comment on whether package bidding may be appropriate for this auction and if so, why. The Commission asks for input on package bidding as it relates to its choice of the Census Tract or Bidder-Defined approaches. The Commission asks for any additional comments on the potential advantages and disadvantages of possible package bidding procedures and formats. The Commission asks for input on the reasons why certain package bidding procedures would be helpful or harmful to providers bidding in an auction, and what procedures might best meet its goal of maximizing the benefits of Phase II support for consumers. For example, regardless of whether the Commission adopt the Census Tract or Bidder-Defined approach, should it impose some limits on the size or composition of package bids, such as allowing flexible packages of blocks or larger geographic units as long as the geographic units are within the boundaries of a larger unit such as a county or a license area (*e.g.,* a CMA)? Or, if the Commission adopts the Census Tract approach, should it establish package bidding procedures that allow bidders to place package bids on predetermined groupings of areas that follow a particular hierarchy—such as blocks, tracts, and/or counties, which nest within the census geographic scheme?

b. Potential Bidding Preference for Small Businesses

169. The Commission seeks comment on whether small businesses should be eligible for a bidding preference in a Phase II auction. If adopted, the preference would act as a reverse bidding credit that would effectively reduce the bid amount of a qualifying small business for the purpose of comparing it to other bids. The preference would be available with respect to all census blocks on which a qualified small business bids. Would a bidding credit be an effective way to

help address concerns regarding smaller carriers' ability to effectively compete at auction for support? Would such a bidding credit be consistent with the objective of the Phase II fund to support the greatest number of unserved road miles within the overall Mobility Fund budget? Should the Commission adopt a preference to assist small businesses even if the bidding credit results in less coverage achieved than would occur without the bidding credit?

170. The Commission also seeks comment on the appropriate size of any potential small business bidding credit. The Commission notes that, in the spectrum auction context, the Commission typically awards small business bidding credits ranging from 15 to 35 percent, depending on varying small business size standards. The Commission seeks comment on what bidding credit percentage, if any, would be appropriate to increase the likelihood that the small business would have an opportunity to win support in the auction.

171. The Commission also seeks comment on how it should define small businesses. In the context of the Commission's spectrum auctions, the Commission has defined eligibility requirements for small businesses seeking to provide wireless services on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold.

172. The Commission seeks comment on the use of a small business definition in the Mobility Fund Phase II context based on an applicant's gross revenues, as it has done in the spectrum auction context. Specifically, should a small business be defined as an entity with average gross revenues not exceeding $40 million for the preceding three years? Alternatively, should the Commission consider average gross revenues not exceeding $125 million for the preceding three years? In determining an applicant's gross revenues under what circumstances should the Commission attribute the gross revenues of the applicant's affiliates? The Commission also invites input on whether alternative bases for size standards should be established in light of the particular circumstances or requirements that may apply to entities biding for Mobility Fund Phase II support. Commenters should explain the basis for their proposed alternatives, including whether anything about the characteristics or capital requirements of providing mobile broadband service in unserved areas or other considerations require a different approach.

c. Application Process

173. The Commission proposes a two-stage application process, similar to that used in spectrum license auctions, and as described more completely in the *USF/ICC Transformation Order.* Under this proposal, the Commission would require a pre-auction short-form application from potential auction participants. Commission staff would review the short-form applications to determine whether applicants had provided the necessary information to participate in an auction. Commission staff would then release a public notice indicating which short-form applications were deemed acceptable and which were deemed incomplete. Applicants whose short-form applications were deemed incomplete would be given a limited opportunity to cure defects and to resubmit correct applications. Only minor modifications to an applicant's short-form application would be permitted. The Commission would release a second public notice designating the applicants that qualified to participate in the Phase II auction. The Commission seeks comment on its proposal, and on any alternative approaches.

d. Information and Communications

174. The Commission does not see circumstances specific to Phase II that warrant departure from its usual auction policies regarding permissible communications during the auction or the public release of certain auction-related information. Hence, the Commission proposes, in the interests of fairness and maximizing competition, to prohibit applicants from communicating with one another regarding the substance of their bids or bidding strategies. The Commission further proposes a rule to provide for auction procedures to limit public disclosure of auction-related information. Specific details regarding the information to be withheld would be identified during the pre-auction procedures process, upon delegated authority to the Bureaus.

e. Auction Cancellation

175. The Commission proposes that it have discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding. The Commission seeks comment on this proposal, which is consistent with its approach in spectrum auctions, as well as Phase I of the Mobility Fund.

f. Post-Auction Long-Form Application Process for Mobility Fund Phase II

176. The Commission proposes to apply the same post-auction long-form application process adopted with respect to Phase I for Phase II support. Accordingly, applicants for Phase II support would be required to provide the same showing that they are legally, technically and financially qualified to receive Phase II support as required of applicants for Phase I support. In addition, the Commission proposes that a winning bidder for Phase II support will be subject to the same auction default payment adopted for winning bidders of Phase I support, if it defaults on its bid, including if it withdraws a bid after the close of the auction, fails to timely file a long form application, is found ineligible or unqualified to be a recipient of Phase II support, or its long-form application is dismissed for any reason after the close of the auction. In addition, the Commission proposes that a recipient of Phase II support be subject to the same performance default payment as recipients of Phase I support.

iv. Tribal Issues

177. In view of the relatively low level of telecommunications deployment, and distinct connectivity challenges on Tribal lands, the Commission reaffirms its commitment to address Tribal needs and establishes a separate budget to provide ongoing USF support for mobility in such areas. In the *USF/ICC Transformation Order* the Commission establishes an annual budget of up to $100 million to provide ongoing support for mobile broadband services to qualifying Tribal lands. In addition, the Commission notes that the CAF will separately support broadband for homes, businesses, and community anchor institutions, including on Tribal lands.

178. The Commission proposes to apply the same Tribal engagement obligation and a 25 percent bidding credit preference for Tribally-owned or controlled providers in Phase II as it does for Phase I. To the extent the Commission adopts a cost model, discussed *infra,* are there particular measures the Commission should take to help ensure that the needs of Tribes are met? What modifications might be needed to the proposed Tribal engagement obligations? Are there other alternatives the Commission should consider?

179. In addition, to afford Tribes an increased opportunity to participate at

auction, in recognition of their interest in self-government and self-provisioning on their own lands, the Commission proposes to permit a Tribally-owned or controlled entity to participate at auction even if it has not yet been designated as an ETC. Consistent with the approach adopted in Phase I, the Commission proposes that a Tribally-owned or controlled entity that has an application for ETC designation pending at the relevant short form application deadline may participate in an auction to seek support for eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribe that owns or controls the entity that has not yet been designated as an ETC.

180. To the extent practicable, the Commission proposes to award ongoing support for mobile broadband services on Tribal lands on the same terms and conditions as it proposes for the ongoing support mechanism for Phase II in non-Tribal lands. The Commission recognizes that there are several aspects for which a more tailored approach may be appropriate, as evidenced in the record. The Commission proposes to apply in Phase II the specific provisions adopted in the context of the Tribal Mobility Fund Phase I. Are there any differences in its proposals to award ongoing support that would justify an alternative approach here? To the extent that providers in Alaska may be dependent on satellite backhaul for middle mile, should the Commission modify its Phase II performance obligations for some limited period of time, similar to what the Commission adopts more generally as a performance obligation for ETCs? Should a similar accommodation be made for areas in which there is no affordable fiber-based terrestrial backhaul capability? If so, how should the Commission define affordability for these purposes? Further, in areas with only satellite backhaul, should the Commission require funded deployments to be able to support continued local connectivity in case of failure in the satellite backhaul? How would such a requirement be structured to ensure continued public safety access?

181. The Commission seeks comment on GCI's proposal that new mobile deployments be given some priority in Phase II. Commenters supporting such an approach should explain how such a priority mechanism could work, which deployments would be eligible for prioritization, and any other implementation issues. Similarly, the Commission seeks comment on GCI's proposal that priority be given to areas that do not have access to the National Highway System to account for the lack of roads and highways in many remote parts of Alaska. Are there alternative means in Phase II to account for remote areas, including those in Alaska, where roads and other infrastructure may be lacking?

182. In addition, to afford Tribes an opportunity to identify their own priorities, the Commission seeks further comment on a possible mechanism that would allocate a specified number of priority units to Tribal governments. The priority units for each Tribe would be based upon a percentage of the total population in unserved blocks located within Tribal boundaries. Tribes would have the flexibility to allocate these units in whatever manner they choose. Tribes could elect to allocate all of their priority units to one geographic area that is particularly important to them, or to divide the total number of priority units among multiple geographic units according to their relative priority. By giving Tribes the opportunity to allocate a substantial number of additional units to particular unserved geographic areas within the boundaries of their Tribal lands, the Commission would allow Tribes to reduce the per-unit amount of bids covering those unserved areas, so as to increase the likelihood that these areas would receive funding through the proposed competitive bidding process.

183. The Commission is mindful that the record developed to date suggests that the effectiveness of this approach depends, in part, on providing a significant number of priority units for Tribes to allocate. The Commission proposes that an allocation in the range of 20 to 30 percent of the population in unserved areas on the Tribal land would provide Tribes a meaningful opportunity to provide input on where support could be effectively targeted. Commenters should address whether this approach should apply to both the general and Tribal Mobility Fund Phase II. The Commission also seeks comment on how such priority units should be awarded in Alaska, given the unique Alaska Native government structure and the large number of Alaska Native Villages likely to be clustered in any given geographic area. Should the Commission allocate priority units proportionately, according to the relative size and/or number of unserved units of all Alaska Native Villages in any given geographic area? Would a similar approach be warranted for Hawaiian Home Lands, or are there alternative approaches that best reflect conditions in Hawaii? Alternatively, the Commission seeks comment on whether the Tribal engagement obligations adopted for Phase I are sufficient to ensure that Tribal priorities are met with respect to ongoing support under Phase II. To the extent the Commission adopts its proposal for Tribal priority units, the Commission seeks comment on whether a Tribally-owned and controlled provider should also be eligible to receive a bidding credit within its Tribal land or if the Tribe must choose between one or the other. If the Commission offers a bidding credit to Tribally-owned and controlled providers seeking Phase II support, would a 25 percent bidding credit, like the one the Commission has adopted for Phase I be sufficient, or does it need to be set at a different level to achieve its objectives?

184. The Commission also seeks comment on whether a different approach is warranted for Tribal lands in Alaska given the unique operating conditions in Alaska. The Commission proposes that carriers serving Alaska would be eligible for the same funding opportunities as carriers serving Tribal lands in the rest of that nation. Is this the right approach? In the alternative, should an amount of any Tribal funding be set aside only for carriers serving Alaska to ensure some minimal level of funding representative of the need in that state? The Commission seeks comment on the size of any Alaska-specific set aside, and the need to adjust the total Tribal component of Mobility Fund II to account for any Alaska-specific figure. The Commission also seeks comment on whether any Alaska-specific funding should be focused on middle mile connectivity, which is one of the core impediments to 3G and 4G service in Alaska. How could such a mechanism be structured to facilitate the construction of microwave and fiber-based middle mile facilities, which are lacking in portions of remote areas of Alaska?

v. Accountability and Oversight

185. The Commission proposes to apply to Mobility Fund Phase II the same rules for accountability and oversight that will apply to all recipients of CAF support, including reporting, audit, and record retention requirements. Because Mobility Fund support will differ in some respects from support received under other USF high-cost support mechanisms, the Commission also proposes that recipients of Phase II support be required to include in their annual reports the same types of additional information that is required of recipients of Phase I support. Should any of these requirements be modified or omitted for recipients of Mobility Fund Phase II support? Are there

additional types of information that should be required?

vi. Economic Model-Based Process

186. Instead of determining support for mobile wireless providers through competitive bidding, the Commission could determine support using a model that estimates the costs associated with meeting public interest obligations, as well as a provider's likely revenues from doing so. Regardless of which method is used, the objectives of the Mobility Fund's Phase II remain the same. That is, the Commission seeks to maximize the reach of mobile broadband services supported with its established budget in areas where there is no private sector business case for providing such services. Accordingly, commenters advocating for a model should address why a model-based approach would better serve this purpose than its proposal. The Commission seeks more detailed comment on the design of such a model and a framework for support in which a model might be used, as compared with its proposed market-based mechanism for determining the level and distribution of necessary support.

a. Model Design

187. In considering this alternative to a market-based mechanism, the Commission seeks to develop a more detailed record than it has received to date regarding the possible design of a forward looking economic model of costs and revenues of mobile wireless services. Generally, the Commission observes that cost structures, revenue sources, and available data all may vary in the mobile service context from other services, such as fixed wireline voice or broadband. What components of a model for mobile wireless services are critical in accurately forecasting costs and revenues? Is the model more or less sensitive to certain potential errors than others? How does the pace of change in the mobile service industry affect the reliability of a model for projections of greater than five years, or seven years, or ten years?

188. Two parties already have offered the results of a model-based analysis in selected states to argue for the benefits of a model-based approach for the Mobility Fund. Both US Cellular and MTPCS have pointed to a CostQuest Associates model for estimating costs and revenues related to mobile service. The Commission seeks comment generally on the model that US Cellular and MTPCS describe in their submissions.

189. In their model-based analyses, both US Cellular and MTPCS estimated the costs of expanding their existing networks in order to provide service in unserved areas. Taking existing networks into account when modeling costs is sometimes referred to as a brownfield approach. A brownfield approach assumes that providers will make use of existing assets. The results of such an analysis may be unreliable if the provider controlling the relevant assets chooses not to receive support and uses those assets for other purposes. Moreover, the costs for one provider may be very different from the costs for another provider, due to differences in their access to existing assets. The Commission seeks comment on how best to construct a brownfield model when the goal is not to model the costs of individual mobile wireless provider, but of a generic provider in an area.

190. The parties claim that CostQuest's model also enables users to determine the cost of offering wireless service without using existing assets. Modeling costs of providing service without pre-existing assets is sometimes referred to as a greenfield approach. A greenfield approach runs the risk of overestimating the necessary costs of providing service by failing to make efficient use of existing assets. The Commission seeks comment on the relative advantages of a brownfield or greenfield approach in the context of mobile services when determining which areas require support and when determining how much support is required.

191. Modeling also raises concerns regarding the accuracy of data (inputs) used in the model. How critical is it that the model accurately forecast base station locations? In an efficient network providing mobile service, base station locations are interdependent—the signal from one should overlap with another sufficiently to assure effective coverage but not so much as to create interference. Assumptions regarding any base station location in a network may be significant with respect to the final number and location of all base stations, and therefore the cost of the entire network. This is especially true with respect to pure greenfield models, which make assumptions about the possible locations of cell sites without being able to take account of actual constraints in locating such sites. The Commission seeks comment on the ways, if any, to assess the sensitivity of model-based results to potential errors regarding site location when estimating costs for providing mobile service. Would the use of a brownfield approach substantially reduce such sensitivity?

192. The CostQuest model employed by US Cellular and MTPCS also assesses incremental revenues from expanded mobile coverage when determining an area's need for support. If a provider can count on generating revenue from the network expansion that meets or exceeds related costs, even the highest cost area may not require support. How could the Commission take into account revenues in a model used for mobile support? Could the Commission develop non-party-specific estimates of incremental revenues? Should the Commission consider potential revenues from non-supported services that could be offered over the network infrastructure that provides supported voice service, including the mobile broadband service required as a condition of Mobility Fund support, or other services, like subscription video services? What estimates could the Commission use with respect to the potential costs and revenues associated with the provision of such services?

193. Notwithstanding their significance in determining the need for support, estimating revenues may be difficult, particularly over longer periods of time. Given difficulties in estimating consumer interest in particular service offerings at particular prices, errors in estimating revenues may be more likely to occur and, when they occur, more likely to result in larger errors in determining the appropriate level of support. The Commission seeks comment on the extent to which it might be able to achieve the appropriate balance between the inclusion of revenue estimates and the likely accuracy of the model's outcomes, and, if so, how the Commission would do so.

194. A model might be used simply to determine what areas require support for the public interest obligations to be met, rather than determine that as well as the amount of support to be provided. The Commission seeks further comment on whether a mobile wireless model may be sufficiently reliable for more limited purposes. Could a model offer guidance on the appropriate level of support, such as determining a maximum that might be offered in a competitive bidding process in a particular area, without being sufficiently accurate to rely on for determining the actual level of support in that area?

b. Framework for Economic Model-Based Process

195. If the Commission were to use an economic model to determine support levels, the goals and objectives of the Phase II Mobility Fund would continue to be to support next generation mobile service where support is needed in as

many areas as possible, given the limited funds available. The public interest obligations attaching to the receipt of support would remain the same. The Commission seeks comment on which, if any, elements of its proposed framework would need to change if it decides to use a model-based process for determining support.

196. The Commission also seeks comment specifically on whether the granularity with which an economic model produces reliable cost and/or revenue estimates would have any impact on the geographic areas being made available for mobile services support. If a model is more likely to determine support amounts accurately only over an area larger than a census block, does it mean that the Commission should increase the minimum area for which support is offered? The Commission seeks comment on the minimum area for offering model-based support. Would a model be more accurate in estimating support for areas based on resident population instead of road miles? If so, would the Commission have to use resident population as a metric for offering support and measuring compliance with public interest obligations if the Commission adopts a model-based approach?

197. In order to extend its limited budget to reach the widest possible coverage, the Commission generally expects to offer support to only one mobile services provider in an area. The Commission seeks comment on how to implement that principle under a model-based approach. In contrast to competitive bidding, the Commission notes the model-based approach does not include a mechanism for selecting among multiple parties. Should the Commission determine the party that receives support through a qualitative review of would-be providers? If so, what factors should that review take into account? Should the Commission reserve support for a particular area to the provider currently receiving universal service support that has the most extensive network within a defined area? What other method could the Commission use to select among providers? In addition, the Commission could use the results of a wireless model to set reserve prices in the context of competitive bidding. The Commission seeks comment here on how to use the results of a wireless model to distribute Mobility Fund Phase II, support consistent with its use of a wireline cost model in CAF–Phase II to target support to high-cost areas subject to its budget.

198. The Commission notes that US Cellular and MTPCS proposed permitting multiple providers to receive support for service in the same area. Given the economics of the underlying terrestrial wireless technology, permitting multiple providers to receive support could increase the amount of support required per subscriber, as the number of subscribers per provider will decline. The Commission seeks comment on this concern.

199. The Commission also seeks comment on whether using mobile model-based support would change the appropriate length of the term of support. Are there aspects of the model that link its estimates to particular time periods? Is that reason to offer the support for any particular length of time? Is it possible to estimate the cost of meeting the proposed increases in public interest obligations several years in advance? Particularly with respect to a mobile wireless model used to determine ongoing support for a term of years, how should the Commission address potential changes in circumstances or technology over time that would change modeled costs and/or revenues?

200. Finally, commenters addressing the possible use of a model-based approach should discuss whether the Commission would need to make any changes to the management and oversight of the program, as well as any other changes they believe it should make to the framework the Commission proposed for a competitive bidding mechanism.

J. Competitive Process in Price Cap Territories Where the Incumbent Declines To Make a State-Level Commitment

201. The Commission adopts a framework for USF reform in areas served by price cap carriers where support will be determined using a combination of a forward-looking broadband cost model and competitive bidding to efficiently support deployment of networks providing both voice and broadband service over the next several years. In each state, each incumbent price cap carrier will be asked to undertake a state-level commitment to provide affordable broadband to all high-cost locations in its service territory in that state, excluding locations served by an unsubsidized competitor, for a model-determined efficient amount of support. In areas where the incumbent declines to make that commitment, the Commission will use a competitive bidding mechanism to distribute support in a way that maximizes the extent of robust, scalable broadband service and minimizes total cost. The FNPRM addresses proposals for this competitive bidding process, which the Commission refers to here as the CAF auction for price cap areas.

i. Overall Design of the Competitive Bidding Process

202. Consistent with the Commission's decision to use incentive-driven policies to maximize the value of scarce USF resources, the Commission proposes to use a reverse auction mechanism to distribute support to providers of voice and broadband services in price cap areas where the incumbent ETC declines to accept model-determined support. Assigning support in this way should enable the Commission to identify those providers that will make most effective use of the budgeted funds, thereby extending services to as many consumers, businesses, and community anchor institutions as possible. The Commission proposes to use a competitive bidding mechanism to identify those eligible areas—and associated providers—where supported services can be offered at the lowest cost per unit.

ii. Framework for Awarding Support Under Competitive Bidding

a. Identifying Geographic Areas Eligible for Competitive Bidding

203. *Identifying Eligible Areas.* In any areas where the price cap ETC declines to make a state-level commitment, the Commission proposes to conduct competitive bidding to award support using the same areas identified by the CAF Phase II model as eligible for support. The Commission also seeks comment on other approaches to defining the areas to be used in this auction. The Commission could exclude areas that, based on the most recent data available, are served—at any speed, at 4 Mbps downstream/1 Mbps upstream, or at 6 Mbps downstream/1.5 Mbps upstream. In addition, the Commission could use different cost thresholds for defining service, for example, including all unserved areas regardless of cost in the auction. As it did for the Mobility Fund, the Commission proposes to use census blocks as the minimum size geographic unit eligible for competitive bidding. Using census blocks will allow the Commission to target support based on the smallest census geography available. The Commission seeks comment on this proposal, as well as alternatives.

204. *Minimum Size Unit for Bidding and Support.* The Commission proposes that the census block should be the minimum geographic building block for

defining areas for which support will be provided. Because census blocks are numerous and can be quite small, the Commission believes that it will need to provide at the auction for the aggregation of census blocks for purposes for bidding. There are a number of ways to permit such aggregation, including the possibility of adopting a rule regarding a minimum area for bidding comprised of an aggregation of eligible census blocks, such as tracts, and/or the use of auction procedures that provide for bidders to be able to make all-or-nothing package bids on combinations of bidding areas. As discussed elsewhere, two possible approaches for census block aggregation include a Census Tract-type approach and a Bidder-Defined approach. The Commission seeks comment here on whether a Census Tract-type approach, Bidder-Defined approach, or another approach would best meet the needs of bidders in the CAF auction for support in price cap areas.

205. *Prioritizing Areas.* In addition, the Commission seeks comment on whether it should target areas currently without any broadband service for priority treatment in whatever competitive bidding mechanism it adopts. Should the Commission provide a form of bidding credit that would promote the support of such areas?

b. Establishing Bidding and Coverage Units

206. In order to compare bids, the Commission proposes to assign a number of bidding units to each eligible census block. Consistent with the terms of the public interest obligations undertaken by bidders, the Commission proposes to base the number of units in each block on the number of residential and business locations it contains, using the 2010 decennial census data. The Commission seeks comment on this proposal, and on any alternatives.

c. Maximizing Consumer Benefits

207. The Commission's objective is to distribute the funds it has available to bring advanced services to as many consumers as possible in areas where there is no economic business case for the private sector to do so. Where the incumbent declines to make a state-level commitment to provide affordable broadband to all high-cost locations in its service territory in return for model-determined support in each state, the Commission proposes to use the competitive bidding mechanism described here, which will be open to any provider able to satisfy the public interest obligations associated with support. Thus, the Commission envisions that there may be more than one ETC that seeks such support for any given area. In contrast to the former rules, under which multiple providers are entitled to an award of portable, per-subscriber support for the same area, the Commission expects that to maximize coverage within its budget it will generally be supporting a single provider for a given geographic area through this auction. As with Mobility Fund Phase II, the Commission would support more than one provider in an area only if doing so would maximize coverage. The Commission is mindful that its statutory obligation runs to consumers, rather than carriers, and that it must target its limited funds in a way that expands and sustains the availability of broadband services to maximize consumer benefits. The Commission also proposes that a competitive ETC would become ineligible to receive support for any area under its phase down of frozen legacy support formerly distributed pursuant to the identical support rule as soon as it began receiving CAF support for that same area.

208. The Commission also seeks comment on whether and to what extent ETCs that receive such support through a competitive bidding process should be permitted to partner with other providers to fulfill their public interest obligations. The Commission invites comment on whether it should establish any limit on the geographic extent to which any one provider may be awarded such support. Is there another basis on which it should limit the amount of support that goes to any one provider?

d. Term of Support

209. The Commission proposes a term of support for providers that receive support through this auction that is equal to that adopted for providers that accept state-level model-determined support. Accordingly, the Commission proposes a term of support of five years, subject to recipients complying with the obligations of the program. The Commission seeks comment on this proposal, and whether a longer time-period, *e.g.,* ten years, would better serve its goals. The Commission also seeks comment on whether it is appropriate to establish any sort of renewal opportunity, and on what terms, including whether there should be any difference here from universal service support awarded under a state-level-commitment.

e. Provider Eligibility Requirements

210. *ETC Designation.* For the same reasons that apply with respect to other CAF programs, the Commission generally proposes to require that applicants for support be designated as ETCs covering the relevant geographic area prior to participating in an auction. As a practical matter, this means that parties that seek to participate in the auction must be ETCs in the areas for which they will seek support at the deadline for applying to participate in the competitive bidding process. The Commission seeks comment on this proposal.

211. *Certification of Financial and Technical Capability.* The Commission also proposes that each party seeking to receive support determined in this auction be required to certify that it is financially and technically capable of providing the required service within the specified timeframe in the geographic areas for which it seeks support. The Commission seeks comment on how best to determine if an entity has sufficient resources to satisfy its obligations. Should the Commission require that any entity finance a fixed percentage of any build-out with non-CAF or private funds? The Commission seeks comment on certification regarding an entity's technical capacity. Does the Commission need to be specific as to the minimum showing required to make the certification? Or can the Commission rely on its post-auction review and performance requirements?

212. *Eligibility of Carriers Declining a State-Level Commitment Covering the Area.* The Commission is not inclined to restrict the eligibility of carriers that could have accepted model-determined support for the area that will be auctioned, but seeks comment on this approach. What effect does the opportunity to seek support in a subsequent auction have on incentives to accept or decline a state-level commitment in exchange for model-determined support? How should the differences in potential service areas be taken into account, given that potential bidders in the auction will not be required to bid on the entire territory of the price cap carrier in that state?

213. *Other Qualifications.* The Commission seeks comment on other eligibility requirements for entities seeking to receive support in an auction after the price cap incumbent declines to make a state-level commitment. Parties providing suggestions should be specific and explain how the eligibility requirements would serve its objectives. At the same time that the Commission establish minimum qualifications consistent with these goals, are there ways the Commission can encourage participation by the widest possible

range of qualified parties? Are there any steps the Commission should take to encourage smaller eligible parties to participate in the bidding for support?

f. Public Interest Obligations

214. *Service Performance Requirements and Measurement.* The Commission proposes that recipients of support awarded through this competitive bidding process be obligated to provide service meeting specified performance requirements. The Commission proposes that these performance requirements be the same as those required of providers that accept model-determined support. Under this proposal, the Commission seeks to maximize via competitive bidding (both within and across regions) the amount of broadband service being offered at the same full performance levels required for incumbent providers willing to undertake a state-level broadband commitment. The Commission seeks comment on this proposal.

215. Alternatively, the Commission seeks comment on relaxing the minimum performance requirements sufficiently to expand the pool of technologies potentially eligible to compete for support. Under this approach, providers could offer different performance characteristics, such as download and/or upload speeds, latency, and limits on monthly data usage, and the Commission would score such quality differences in evaluating bids. That is, individual providers could propose different prices at which they would be willing to offer services at different performance levels, and the Commission would select the winning bids based on both the prices and the performance scores. To simplify the bidding process, the Commission could limit the set of performance levels that providers could bid to offer—for instance, to a standard broadband offering and a higher quality broadband offering. This general approach would give the Commission the option of making tradeoffs between supporting a higher quality service to fewer locations versus supporting a standard service for more locations. Such an approach should result in more competitive bidding by allowing more technologies to compete for funding (both within a region and across regions), thereby enabling the CAF budget to yield greater coverage at acceptable broadband performance standards than under the proposal. The Commission seeks comment on how it could best implement this alternative—including how to score different performance dimensions, and, whether providers should specify as part of their bids the retail prices they would charge consumers and, if so, how to include such prices in scoring the bids. Parties should further address how the Commission should assess the public interest tradeoffs between offering a higher quality to fewer customers and accepting a lower quality for some customers but serving more customers. The Commission also seeks comment on whether and how the possibility of obtaining support for a lower quality service would affect the incentives of incumbent providers to accept or decline a state-level broadband commitment. The Commission seeks comment from providers of services used by people with disabilities, such as Internet-based telecommunications relay services, including VRS, and point-to-point video communications or video conferencing services, as to the minimum performance requirements needed to support such services and communications.

216. *Requesting Locations.* The Commission proposes that support recipients be required to provide subsidized service to as many locations as request service in their areas during the term of support. Alternatively, the Commission seeks comment on whether it should limit the number of locations that must be served in any area based on the number of locations identified at the time of the auction. Such a limit would be consistent with limiting the total amount of support available. However, it would not take into account changes in the number of eligible locations during the term for which support will be provided. In order to take growth into account while maintaining a limit on the total amount of support, should it provide for a presumed growth rate in the number of locations during the term of support? Or should the Commission simply require providers to serve whatever number of future locations there may be, effectively requiring providers to take into account their own estimates of such growth when bidding for support?

217. *Reasonably Comparable Rates.* The Commission proposes that recipients of support through CAF auctions for price cap areas will be subject to the same requirements regarding comparable rates that apply to all recipients of CAF support.

218. *Deployment Deadlines.* The Commission proposes that recipients be required to meet certain deployment milestones in order to remain qualified for the full amount of any award. The Commission proposes that deployment milestones that apply to ETCs through a competitive process be the same as those that apply to price cap ETCs that accept a state-level commitment. The Commission seeks comment on whether recipients of CAF auction support should instead be subject to different deployment deadlines.

iii. Auction Process Framework

219. Consistent with its approach for the Mobility Fund, the Commission proposes to delegate to the Bureaus authority to establish detailed auction procedures, take all other actions to conduct this competitive bidding process, and conduct program administration and oversight consistent with any rules and policies the Commission establish in light of the record it receives based on the proposals made for this CAF auction process for support. The Commission seeks comment on this proposal.

a. Auction Design

220. Consistent with its approach for the Mobility Fund, the Commission proposes certain general rules outlining various auction design options and parameters, while at the same time proposing that final determination of specific auction procedures to implement a specific design based on these rules be delegated to the Bureaus as part of the subsequent pre-auction notice and comment proceeding. Among other issues, the Commission proposes to give the Bureaus discretion to consider various procedures for grouping eligible areas to be covered with one bid—package bidding—that could be tailored to the needs of prospective bidders as indicated during the pre-auction notice and comment period.

221. The Commission is inclined to believe that some form of package bidding may enhance the auction by helping bidders to incorporate efficiencies into their bids. While the Bureaus will establish specific procedures to address this issue later, the Commission invites preliminary comment on whether package bidding may be appropriate for this auction, and if so, why. The Commission asks for input on package bidding as it relates to its choice of a Census Tract-type or Bidder-Defined approach for the Mobility Fund Phase II. The Commission seeks comment on the potential advantages and disadvantages of possible package bidding procedures and formats in the context of awarding support to ensure the universal availability of modern networks capable of delivering broadband and voice service to homes, businesses, and community anchor institutions. The Commission asks for input on the

reasons why certain package bidding procedures would be helpful or harmful to providers bidding in an auction, and what procedures might best meet its goal of maximizing such universal availability. Should the Commission impose some limits on the size or composition of package bids, such as allowing flexible packages of blocks or larger geographic units as long as the geographic units are within the boundaries of a larger unit such as a county or a state? If the Commission adopts the Census Tract-type approach, it could establish package bidding procedures that allow bidders to place package bids on predetermined groupings of eligible areas that follow a particular hierarchy—such as blocks, tracts, counties, and/or states, which nest within the census geographic scheme.

222. The Commission seeks preliminary comment on determining reserve prices for the auction based on the support amounts estimated by a forward looking broadband cost model.

b. Potential Bidding Preference for Small Businesses

223. The Commission seeks comment on whether small businesses should be eligible for a bidding preference in a CAF auction for support in price cap areas and whether such a bidding preference would be consistent with the objective of providing such support. Consistent with the approach discussed for Mobility Fund Phase II, the preference would act as a reverse bidding credit that would effectively reduce the bid amount of a qualifying small business for the purpose of comparing it to other bids. The Commission also seeks comment on the size of any small business bidding credit that would be appropriate to increase the likelihood that the small business would have an opportunity to win support in the auction. The Commission also seeks comment on how it should define small businesses if it adopts a bidding credit for auctions to award support in price cap areas. For the reasons provided in its discussion of Mobility Fund Phase II, the Commission seeks comment on whether a small business should be defined as an entity with average gross revenues not exceeding $40 million for the preceding three years. Alternatively, should the Commission consider a larger size definition for this purpose, such as average gross revenues not exceeding $125 million for the preceding three years? In determining an applicant's gross revenues under what circumstances should it attribute the gross revenues of the applicant's affiliates? The Commission seeks comment on these definitions and invites input on alternatives.

c. Auction and Post-Auction Process

224. *Short-Form Application Process.* The Commission proposes to use the same two-stage application process described in the *USF/ICC Transformation Order* for Phase I of the Mobility Fund. The Commission seeks comment on this proposal and on whether there are any reasons to deviate from the process already adopted for the Mobility Fund.

225. *Information and Communications.* The Commission does not expect there to be circumstances specific to this auction that would indicate that it should deviate from the usual auction policies with respect to permissible communications during the auction or the public release of certain auction-related information. The Commission proposes to use the same rules and procedures regarding permissible communications and public disclosure of auction-related information as it does for the Mobility Fund. The Commission seeks comment on this proposal.

226. *Auction Cancellation.* Consistent with its approach regarding the Mobility Fund, the Commission proposes to provide the Bureaus with discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances. The Commission seeks comment on this proposal.

227. *Post-Auction Long-Form Application Process.* The Commission proposes to apply the post-auction long-form application process for Mobility Fund Phase I to participants in auctions for price cap CAF. Accordingly, applicants that win competitive bidding in such auctions would be required to demonstrate in their long-form applications that they are legally, technically and financially qualified to receive the support. The Commission seeks comment on this approach.

228. In addition, the Commission proposes that a winning bidder will be subject to an auction default payment, if it defaults on its bid, including if it withdraws a bid after the close of the auction, fails to timely file a long form application, is found ineligible or unqualified to be a recipient of support, or its long-form application is dismissed for any reason after the close of the auction. In addition, the Commission proposes that recipients of support will be subject to a performance default payment. The Commission proposes the same rules for both of these default payments as it has have adopted for Mobility Fund Phase I. The Commission seeks comment on these proposals.

iv. Tribal Issues

229. The Commission seeks comment on whether to establish special provisions to help ensure service to Tribal lands. To the extent practicable, the Commission anticipates that support is best awarded using the same framework, and on the same terms and conditions, as it proposes for other areas where the price cap carrier declines to make a state-level commitment to provide services. The Commission recognizes, however, that there are several aspects for which a more tailored approach may be appropriate on Tribal lands, as evidenced in the record developed to date. The Commission seeks comment on whether to adopt revisions to identify eligible geographic areas and appropriate coverage units, consistent with the approach it took in the Tribal Mobility Fund Phase I. The Commission also proposes Tribal engagement requirements, preferences that reflect its unique relationship with Tribes, including a bidding credit of 25 percent for Tribally-owned and controlled recipients, and ETC designation provisions to allow a Tribally-owned or controlled entity to participate at auction provided that it has an application for ETC designation pending at the short-form application stage. The Commission seeks comment on these issues. The Commission seeks comment on establishing a Tribal priority along the lines the Commission proposes for the Tribal Mobility Fund Phase II. The Commission believes that these measures would help to ensure service in a way that acknowledges the unique characteristics of Tribal lands and reflects and respects Tribal sovereignty. To the extent the Commission adopt its proposal for Tribal priority units, the Commission seeks comment on whether a Tribally-owned and controlled provider should also be eligible to receive a bidding credit within its Tribal land or if the Tribe must choose between one or the other. Would a 25 percent bidding credit, like the one it has adopted for Phase I and proposed for Phase II of the Mobility Fund be sufficient, or does it need to be set at a different level? The Commission seeks comment on whether to adopt an alternative backstop support mechanism for any Tribal land in which the auction fails to attract a bidder.

v. Accountability and Oversight

230. The Commission proposes that all recipients of CAF support awarded through a competitive process would be

subject generally to the same reporting, audit, and record retention requirements adopted in the *USF–ICC Transformation Order.* The Commission seeks comment on this proposal.

231. In structuring support, the Commission is mindful that it must comply with the Anti-Deficiency Act (31 U.S.C. 1341(a)(1)(B)). Commenters are invited to address how to structure an award of support for a period of years to provide recipients with the requisite level of funding and certainty, while ensuring that the Commission's Anti-Deficiency Act obligations are met.

vi. Areas That Do Not Receive Support

232. Any areas that do not receive support either via a price cap carrier accepting a state-level commitment or via the subsequent auction would be eligible for support from the Remote Areas Fund budget.

K. Remote Areas Fund

233. The *USF–ICC Transformation Order* adopts a number of reforms aimed at ensuring universal availability of robust and affordable voice and broadband services to all Americans. A key element of these reforms is the Commission's dedication of an annual budget of at least $100 million to ensure that the less than one percent of Americans living in remote areas where the cost of deploying traditional terrestrial broadband networks is extremely high can obtain affordable broadband. The Commission seeks comment on how best to implement the CAF for remote areas (Remote Areas Fund).

234. The obstacles to ensuring that affordable voice and broadband service are available in extremely high-cost areas differ somewhat from the obstacles to ensuring that such services are available in other areas supported by the CAF. With respect to those latter areas the Commission focus has been on how best to facilitate the deployment of robust fixed and mobile broadband technologies where its universal service fund budget can support such deployment. In contrast, in extremely high-cost areas, available universal service support is unlikely to be sufficient for the deployment of traditional terrestrial networks supporting robust voice and broadband services. The CAF can help fulfill its universal service goals in these areas by taking advantage of services such as next-generation broadband satellite service or wireless internet service provider (WISP) service, which may already be deployed (or may be deployable with modest upfront investments) but may be priced in a way that makes service unaffordable for many consumers. In addition, the Commission recognizes that some of the most likely providers of service to these remote areas have cost structures, price structures, and networks that differ significantly from those of other broadband providers. For instance, the cost of terminal equipment and installation for satellite broadband often is greater than for other broadband offerings. The Commission asks commenters to focus in particular on these characteristics and explain what, if any, impact they should have on the structure of the Remote Areas Fund.

i. Program Structure

235. The Commission seeks comment on how to structure the Remote Areas Fund. The Commission proposes that support for remote areas be structured as a portable consumer subsidy. Specifically, the Commission seeks comment on CAF support being used to make available discounted voice and broadband service to qualifying residences/households in remote areas, in a manner similar to its Lifeline and Link Up programs (together, Lifeline). As with Lifeline and Link Up, ETCs providing service in remote areas would receive subsidies only when they actually provide supported service to an eligible customer. Such a program structure would have the effect of making voice and broadband more affordable for qualifying consumers, thus promoting consumer choice and competition in remote areas. The Commission seeks further comment on how to implement such a proposal below.

236. The Commission also seeks comment on an alternative structure for the Remote Areas Fund, which would use a competitive bidding process. Such a process could be conducted in one of three ways: (a) A per-subscribed-location auction, (b) a coverage auction, or (c) an auction of support that would include not only remote areas but also areas where the incumbent LEC declines to undertake a state-level commitment. The Commission seeks further comment on how it could implement such a proposal.

237. Another alternative would be to structure CAF support for remote areas as a competitive proposal evaluation process, or Request for Proposal (RFP) process.

238. The Commission also seeks comment generally on whether there are other ways to structure CAF support for remote areas. Are there other alternatives that the Commission should consider? Commenters should address considerations of timeliness, ease of administration, and cost effectiveness relative to the proposed portable consumer subsidy and auction approaches. For any proposed alternative, the Commission also seeks comment on whether its approach to management and oversight of this program.

ii. General Implementation Issues

a. Definition of Remote Areas

239. The Commission intends to use a forward-looking cost model—once finalized—to identify a small number of extremely high-cost areas in both rate-of-return and price cap areas that should receive support from the Remote Areas Fund. However, given its goal of implementing the program by the end of 2012, the Commission will not be able to use the model to identify, at least in the first instance, remote areas eligible for CAF support.

240. The Commission therefore seeks comment on how to identify the areas eligible for the Remote Areas Fund while the model is unavailable. The Commission proposes to provide support to those census blocks in price cap territories that are identified by National Broadband Map data as having no wireline or terrestrial wireless broadband service available, subsidized or unsubsidized. The Commission seeks comment on this proposal. Could this test be used as a proxy for identifying extremely high-cost areas? Is the National Broadband Map data sufficiently granular? Given that it is reported voluntarily by broadband providers, may the data be considered reliable enough for this purpose? Is there a risk that use of that metric would result in overlap with areas that likely would be supported by Mobility Fund monies or by funding made available post-state-level commitment? Could any overlap be addressed by making areas ineligible to the extent they are supported by other CAF funds? Given the goal of increasing broadband availability quickly, might the benefits of permitting overlaps for some time period outweigh the costs? Are there other data sources that could be used in conjunction with National Broadband Map data to improve its identification of remote areas? Are there alternative methods to using National Broadband Map data that the Commission could use to identify those remote areas in which CAF support should be available? What would be the advantages and disadvantages of such methods?

241. Should the Commission switch from its initial method of identifying remote areas eligible for support (*e.g.,* by using National Broadband Map data) to

the forward-looking cost model once the model is available? How frequently should the Commission reexamine whether an area is appropriately classified as remote for the purposes of Remote Area Fund support? The National Broadband Map is updated approximately every six months—would that be an appropriate interval? Is a periodic reexamination of the classification of remote areas sufficient to ensure that Remote Areas Fund support is not provided in areas where other carriers are providing broadband supported by other CAF elements? Likewise, is it sufficient to ensure eligibility for the Remote Areas Fund for consumers in areas where a carrier that currently receives USF support ceases to provide broadband service because that support is no longer available in whole or in part?

242. The Commission notes that whether the Remote Area Fund is distributed as one-time awards or as ongoing support may affect the impact of any reexamination of the classification of remote areas. If one-time awards were distributed, up to $100 million for a given year, additional money would be available in subsequent years. If ongoing support were awarded, and $100 million were committed for a term of years, it would foreclose the possibility of support for additional areas later identified as remote by the model. Therefore, regardless of the distribution mechanism (portable consumer subsidy, auction, or RFP), the Commission proposes to use one-time support until the model is complete. Thereafter, the Commission may decide to use one-time support, ongoing support, or a combination of the two.

b. Provider Qualifications

243. *ETC Designation.* For the same reasons that apply with respect to other components of CAF, the Commission proposes to require that applicants for CAF support for remote areas be designated as ETCs covering the relevant geographic area as a condition of their eligibility for such support. The Commission seeks comment on this proposal.

244. The Commission also seeks comment on the Commission's authority to designate satellite or other providers as ETCs pursuant to section 214(e)(6). Section 214(e)(6) authorizes the Commission to designate ETCs in the limited cases where a common carrier is not subject to the jurisdiction of a state commission. Under current procedures, when a carrier seeks ETC designation by the Commission, it must obtain from the relevant state an affirmative statement that the state lacks authority to designate that provider as an ETC. In order to streamline the implementation of CAF support for remote areas, should the Commission change its determination that carriers seeking non-Tribal land ETC designation must first seek it from the state commissions? Likewise, to the extent that providers may seek to serve remote areas in multiple states, can and should the Commission establish a streamlined process whereby the Commission could grant providers a multi-state or nationwide ETC designation? What modifications, if any, should be made to its ETC regulations in light of the particular characteristics of CAF support for remote areas? Would forbearance from any of the existing obligations be appropriate and necessary?

245. *Certification of Financial and Technical Capability.* The Commission also proposes that each party seeking to receive CAF support for remote areas be required to certify that it is financially and technically capable of providing the required service within the specified timeframe in the geographic areas for which it seeks support. The Commission seeks comment on what specific showings should accompany any such certification.

246. *Other Qualifications.* The Commission seeks comment on other eligibility requirements for entities seeking to receive support for remote areas and how such requirements would advance its objectives. At the same time that the Commission establish minimum qualifications consistent with these goals, are there ways the Commission can encourage participation by the widest possible range of qualified parties, including smaller entities?

c. Term of Support

247. The Commission seeks comment on whether to establish a term of support in conjunction with the Remote Areas Fund. To the extent the Commission adopts a structure that requires a term of support, the Commission proposes a five-year term, and seeks comment on alternative terms. The Commission also seeks comment on whether it is appropriate to establish any sort of renewal opportunity, and on what terms.

d. Public Interest Obligations

(i) Service Performance Criteria

(a) Voice

248. The Commission requires all recipients of federal high-cost universal service support (whether designated as ETCs by a state commission or the Commission), as a condition of receiving federal high-cost universal service support, to offer voice telephony service on a standalone basis throughout their supported area. ETCs may use any technology in the provision of voice telephony service. Additionally, consistent with the section 254(b) principle that consumers in all regions of the Nation * * * should have access to telecommunications and information services * * * that are available at rates that are reasonably comparable to rates charged for similar services in urban areas, ETCs must offer voice telephony service, including voice telephony service offered on a standalone basis, at rates that are reasonably comparable to urban rates. The Commission finds that these requirements are appropriate to help ensure that consumers have access to voice telephony service that best fits their particular needs.

(b) Broadband

249. Because different technologies, which may provide lower speeds and/or higher latencies, are likely to be used to serve locations in extremely high-cost areas than in other areas, and because it is not reasonably feasible to overcome this difference with the limited resources available through the CAF, the Commission proposes to tailor broadband performance requirements to the economic and technical characteristics of networks likely to exist in those remote areas. The Commission therefore proposes to modestly relax the broadband performance obligations for fixed voice and broadband providers to facilitate participation in the Remote Areas Fund by providers of technologies like next-generation satellite broadband and unlicensed localized fixed wireless networks, which may be significantly less costly to deploy in these remote areas. The Commission seeks comment on the appropriate performance requirements for broadband service to remote areas.

250. *Speed Requirement.* The Commission notes that satellite broadband providers and WISPs are capable of offering service at speeds of at least 4 Mbps downstream and 1 Mbps upstream or intend to do so in the near future. The Commission proposes that broadband services eligible for CAF support for remote areas must, consistent with other CAF requirements, offer actual speeds of at least 4 Mbps downstream and 1 Mbps upstream. The Commission seeks comment on this proposal. Are adjustments to those speeds appropriate given the nature of satellite service, WISP service, or other services? Is the availability of sufficient

backhaul capacity a limiting factor that must be taken into account in some circumstances?

251. *Latency.* Consistent with other CAF requirements, the Commission proposes to require ETCs to offer service of sufficiently low latency to enable use of real-time applications, including VoIP. The Commission recognizes that providers that operate satellites in geosynchronous orbits will, as a matter of physics, have higher latency than most terrestrial networks, and seeks comment on how to operationalize that requirement. Would it be appropriate to set a latency standard, measured in milliseconds, for satellite services delivered in remote areas? If so, what should that standard be?

252. *Capacity.* The Commission seeks comment on whether services supported by CAF for remote areas should have a minimum capacity requirement, and if so what that requirement should be. The Commission notes that both WildBlue and HughesNet currently limit daily or monthly usage by their residential subscribers. Upon launch of their new satellites, both providers may be able to adjust their usage limits.

253. Other elements of CAF require that usage limits for broadband services must be reasonably comparable to usage limits for comparable residential broadband offerings in urban areas. Is this standard appropriate for satellite, WISP, and other broadband services in remote areas? Could the Commission establish a different capacity standard for services supported by CAF in remote areas that still enable consumers to utilize distance learning, remote medical diagnostics, video conferencing, and other critical applications, while allowing network operators the flexibility necessary to manage their networks? How would such a standard be operationalized?

(ii) Pricing

254. *Reasonably Comparable Rates.* The fourth performance goal adopted in the *USF–ICC Transformation Order* is to ensure that rates are reasonably comparable for voice as well as broadband service, between urban and rural, insular, and high-cost areas. Rates must be reasonably comparable so that consumers in rural, insular, and high-cost areas have meaningful access to these services. The Commission proposes to utilize the standards discussed in the *USF–ICC Transformation Order* to determine whether rates for voice and broadband service in remote areas are reasonably comparable to those in urban areas. The Commission seeks comment on this proposal.

255. Specifically, the Commission proposes to consider rates for voice service in remote areas to be reasonably comparable to urban voice rates under section 254(b)(3) if rates in remote areas fall within a reasonable range of urban rates for reasonably comparable voice service. Consistent with precedent, the Commission proposes to presume that a voice rate is within a reasonable range if it falls within two standard deviations above the national average.

256. As with voice services, for broadband services, the Commission proposes to consider rates in remote areas to be reasonably comparable to urban rates under section 254(b)(3) if rates in remote areas fall within a reasonable range of urban rates for reasonably comparable broadband service. The Commission expects that the specific methodology to define that reasonable range that the Bureaus elsewhere have been directed to develop will be of equal use here.

257. The Commission is committed to achieving its goal of ensuring that voice and broadband are available at reasonably comparable rates for all Americans. It is unlikely, however, that the Commission will be able to ensure that every residence/household in extremely high-cost, remote areas has access to subsidized voice and broadband service given the overall budget for the CAF. The Remote Areas Fund is, therefore, focused primarily on making voice and broadband affordable for consumers who would not otherwise have the resources to obtain it. The Commission seeks comment in the following sections on whether to implement a means test to ensure that those residences/households in remote areas that are most in need of support to make voice and broadband affordable are able to obtain it.

258. The Commission recognizes that this approach would be different from the current Commission approach for advancing universal service in high-cost areas, which does not look at the income levels of individual consumers that are served by carriers that receive funding from the high-cost program. These past decisions, however, were made in the context of a high-cost fund that lacked a strict budget. The Commission has now established an annual budget of no more than $4.5 billion for the high-cost fund. In the context of this budget, the Commission has considered how best to achieve its goals with respect to the relatively small number of extremely costly to serve locations. Supporting robust fixed terrestrial networks in these remote areas would be so expensive that it would impose an excessive burden on contributors to the fund, even recognizing the section 254(b)(3) comparability principle, which the courts and the Commission have held must be balanced against the other principles. Imposing such a burden on consumers that contribute to the universal service fund would undermine its universal service goals by raising the cost of communications services.

259. The Commission seeks to ensure that consumers in extremely high-cost areas have a meaningful opportunity to obtain both voice and broadband connectivity, and has concluded that it should support the provision of some service to those who might otherwise have no service at all. The Commission believes this is a reasonable balancing of the section 254(b) principles in the context of remote areas that would be unreasonably expensive to serve by the means contemplated in the other CAF programs. In the *USF–ICC Transformation Order,* the Commission believes it can achieve this goal for these remote customers for approximately $100 million per year. It is appropriate to revisit, in this narrow context, the question of whether it should direct the limited available funds to support residences/households with limited means, rather than offering discounted rates to residences/households for which a somewhat higher price is unlikely to be a barrier to adoption.

260. *Subsidy Pass Through.* To the extent the Remote Areas Fund is structured in a way that support is provided to ETCs on a per-subscriber basis (*e.g.,* as a portable consumer subsidy or as a per-subscribed-location auction), the Commission proposes that ETCs be required to pass the subsidy it receives for a subscriber on to that subscriber—in its entirety—in the form of a discount. This requirement is consistent with Lifeline, and will help to ensure that consumers in remote areas have access to services at reasonably comparable rates. The Commission seeks comment on this proposal.

261. *Price Guarantees.* The Commission seeks comment on how to ensure that providers do not raise their prices in response to the availability of the Remote Areas Fund subsidy. One proposal would be to require each ETC to establish an anchor price for its basic service offering—including installation and equipment charges—as a condition of eligibility to receive Remote Areas Fund support. Such an approach would provide ETCs with pricing flexibility for all but their basic service offerings, while ensuring that low-income

consumers have access to at least one product that is affordable. The Commission seeks comment on how to establish appropriate anchor prices. Would it be enough to require that the lowest discounted rate be reasonably comparable to rates in urban areas?

262. *Consumer Flexibility.* The Commission proposes that consumers that receive discounts by virtue of Remote Areas Fund support should be permitted to apply that discount to any service package that includes voice telephony service offered by their ETC—not just to a basic package that is available at an anchor price or to other limited service offerings. Consumers in urban areas generally have the ability to purchase multiple service packages with varying levels of service quality at varying prices. It seems reasonable to afford a consumer in a remote area the same opportunity. The Commission seeks comment on this proposal.

iii. Portable Consumer Subsidy Issues

a. Subscriber Qualifications

263. The Commission proposes that CAF support for remote areas be used to make available discounted voice and broadband service to qualifying residences/households in remote areas, in a manner similar to its Lifeline program. The Commission proposes to limit CAF support for remote areas to one subsidy per residence/household. The Commission further proposes that in order for an ETC to receive a subsidy for a residence/household (which subsidy will be used to provide that service to that residence/household at a discounted rate), the residence/household be located in a remote area. Finally, the Commission seeks comment on whether to require that residences/households meet a means test.

264. *Eligibility Limited to One Per Residence/Household.* The Commission proposes to limit support to a single subsidy per residence/household in order to facilitate its statutory universal service obligations while preventing unnecessary expenditures for duplicative connections. A single fixed broadband connection should be sufficient for a single residence/household. The Commission seeks comment on this proposal.

265. The Commission also seeks comment on how to implement this proposal in the context of CAF support for remote areas. First, the Commission proposes to adopt the use and definition of residence or household ultimately adopted by the Commission in connection with the *Lifeline and Link Up Reform and Modernization NPRM,* 76 FR 16482, March 23, 2011. The Commission seeks comment on this proposal. The Commission also seeks comment on how best to interpret the one per residence/household restriction in light of current service offerings and in the context of situations that may pose unique circumstances. How should the Commission or Administrator determine that CAF support for remote areas is being provided in a manner consistent with any definitions of household or residence ultimately adopted? Should providers be able to rely on the representation of the person signing up for the discounted service?

266. The Commission seeks comment on the relationship between CAF support for remote areas and the Lifeline program. Should a consumer's decision to obtain services supported by the Remote Areas Fund affect or preclude their eligibility for Lifeline, or vice versa? What other issues must the Commission address in order to ensure that these programs are structured in a complementary fashion?

267. *Remote Area.* The Commission proposes that CAF support for remote areas should be available only for service provided to residences/households located in extremely high-cost areas, consistent with the discussion above. The Commission seeks comment on this proposal.

268. *Limiting Support to New Subscribers.* It is likely that there are residences/households located in remote areas that are capable of and willing to pay for satellite voice and broadband services at current prices. These residences/households do not, by definition, require assistance in overcoming the barrier to affordability in remote areas. The Commission therefore seeks comment on whether it is appropriate to limit Remote Areas Fund support to new subscribers only. If so, how would such a restriction be implemented? Can an ETC determine whether a potential new subscriber is a current or past subscriber to itself or to another ETC? Should residences/households be considered new customers some period of time after cancelling service with an ETC? If so, how long a period is appropriate?

269. *Means Test.* The Commission seeks comment on whether to use a means test to identify qualifying locations for which support can be collected in each eligible remote area. It would appear that using a means test for determining qualifying residences/households is particularly appropriate in supporting services in extremely high-cost, remote areas that may be most cost-effectively served by satellite technology. This is because such service is readily available over broad areas, but often at higher prices to the end user than common terrestrial broadband services. In addition, by limiting its support to locations that meet a means test the Commission assure that it stretch the available funds as far as possible to support service to those that would not otherwise be able to afford it. The Commission seeks comment on whether an approach that provides a portable subsidy to only a subset of consumers in remote areas is consistent with the statutory principle that consumers in all regions of the Nation, including low-income consumers * * * should have access to * * * advanced telecommunications and information services * * * at rates that are reasonably comparable to rates charged for similar services in urban areas. The Commission seeks comment on these proposals, and on any alternatives.

270. The Commission seeks comment on what standard it would use for such a means test. For instance, would it be appropriate to set a threshold means test for residences/households of 200 percent of the poverty level as established annually, based on residence/household size? That would, for example, provide support for a family of four that has income of $44,700 or lower. What would be the relative advantages and disadvantages of setting a higher or lower level? Would it be appropriate to also specify other governmental programs that could serve as models or as proxies for a means test, as is done with the Commission's low-income program?

271. *Community Anchor Institutions and Small Businesses.* The Commission seeks comment on whether small businesses and/or community anchor institutions also should be eligible for the Remote Areas Fund. How would the proposals set forth in this *FNPRM* need to be modified to administer a Remote Areas Fund that includes small businesses? How should small businesses be defined? Would small businesses receive the same subsidy as residences/households, or a different subsidy? As the Commission observed in the *USF–ICC Transformation Order,* community anchor institutions in rural America often are located near the more densely populated area in a given county—the small town, the county seat, and so forth—which are less likely to be extremely high-cost areas and therefore may not require support. If the Commission is to provide support to community anchor institutions, how should that term be defined?

b. Setting the Amount of the Subsidy

272. The Commission seeks comment on how to set the CAF support amount

for remote areas for ETCs for voice and broadband services.

(i) Stand-Alone Voice Service

273. The Commission seeks comment on how to set the CAF support amount for remote areas for stand-alone voice service. One proposal would be to adopt rules consistent with those that establish the tiered Lifeline support amounts for voice telephony service. Would these support amounts be sufficient to overcome the barrier to affordability for voice service faced by individuals in remote areas? Would a greater or lesser amount be more appropriate? If so, how would such an amount be calculated?

(ii) Voice and Broadband Service

274. The Commission seeks comment on how to set the CAF support amount for remote areas for a bundle of voice and broadband (voice-broadband) service. The Commission notes that current satellite services tend to have significantly higher monthly prices to end-users than many terrestrial fixed broadband services, and frequently include substantial up-front equipment and installation costs.

275. *Monthly Payments.* The Commission seeks comment on the appropriate support amount for monthly satellite voice-broadband service charges. One proposal would be to provide a monthly amount equal to the difference between the retail price of a basic satellite voice-broadband service and an appropriate reference price for reasonably comparable service in urban areas. How would the appropriate reference price for satellite voice-broadband be calculated? How would the appropriate reference price for a reasonably comparable voice-broadband service in urban areas be calculated? What performance criteria should be applied when selecting a service or services from which to derive the price? Should a discount be applied to the price of services which are of lower quality (*e.g.,* have higher latency or stricter capacity limits)? Could the survey of urban broadband rates the Bureaus have been authorized to conduct provide the necessary data? How should the presence or absence of mandatory contract terms or other terms and conditions that may differ be taken into account? Are there other data sources available that could be relied upon to determine one or both reference prices?

276. What other methods could be used to establish the appropriate support amount? Proposals should be detailed and specific, and commenters should be mindful of the need to balance the goal of ensuring access to affordable broadband in remote areas with the need to operate within the budget and minimize opportunities for waste, fraud and abuse.

277. *Installation and Equipment.* The cost of purchasing or leasing terminal equipment and installation necessary for satellite service to be initiated often are greater than for other services. The Commission seeks comment on how and whether Remote Areas Fund support should be allocated to defray these startup costs.

278. The Commission proposes that subscribers be required to pay, or provide a deposit of, a meaningful amount to help ensure that subscribers have the means to pay for the services to which they subscribe and to provide an incentive to comply with any terms of their service agreements regarding use and return of equipment. What would be an appropriate payment or deposit amount?

279. By extension, the Commission proposes that the subsidy for installation services and equipment sale or lease be the difference between the payment or deposit amount described in the preceding paragraph and the ETC's routine charges for initiating service. The Commission seeks comment on whether this would result in an appropriate subsidy level. Should the Commission instead establish a fixed subsidy amount? If so, how should that subsidy amount be calculated? Should the subsidy be paid at the time service is initiated, or should smaller payments be made during the duration of the subscription? What other factors must be taken into account so as to ensure that the costs of installation and equipment do not serve as a barrier to affordable broadband service in remote areas while minimizing incentives for customer churn and opportunities for waste, fraud and abuse?

280. *Satellite Service Availability.* The Commission recognizes that some of the most likely providers of service to remote areas are satellite providers. Are there issues relating to the nature of satellite service that could prevent potential subscribers from obtaining service? For example, WildBlue and HughesNet both require that subscribers have a clear view of the southern sky in order to obtain a signal. How many potential subscribers in remote areas may not be able to obtain a signal due to the nature of their dwelling unit (*e.g.,* a multi-unit dwelling), terrain surrounding their dwelling unit (*e.g.,* proximity to mountains), heavy foliage, or other obstructions? To what extent can such issues be resolved by antenna masts or other solutions? Should the cost of resolving such issues be subsidized by CAF support for remote areas? If so, how would the amount of such subsidy be calculated?

c. Terms and Conditions of Service

281. The Commission notes that both WildBlue and HughesNet require subscribers to enter into a 24-month contract as a condition of service, and impose an early termination fee if service is terminated prior to the end of the contract term. Should ETCs be permitted to impose such contract terms when consumers subscribe to services supported by CAF for remote areas? Are there other terms or conditions that should be prohibited or restricted in connection with the provision of supported services? For example, should an ETC be permitted to require subscribers to pay by credit card, or to pass a credit check before service is initiated?

d. Budget

282. The Commission seeks comment on how to ensure that it stay within the annual Remote Areas Fund budget under a portable consumer subsidy structure. Should support be available on a first come, first served basis, or should some other method be used to identify which applicants receive support? If, in a given funding year, support expenditures begin to approach the budgeted amount, should the Commission tighten the eligibility criteria to reduce demand (*e.g.,* by lowering the threshold established for a means test, if adopted)? If so, how? What other tools or techniques can the Commission use to ensure that demand for CAF for remote areas support does not outstrip the budgeted supply?

283. The Commission also seeks comment on what the Commission should do if requests for reimbursement from the Remote Areas Fund are lower than the budget. If, in a given funding year, support expenditures do not reach the budgeted amount, should the Commission modify its eligibility criteria to allow additional residences/households in remote areas to obtain service supported by the Remote Areas Fund? If so, how?

iv. Auction Approaches

284. As alternatives to its proposals the Commission could use one of several competitive bidding approaches to target the provision of CAF funding in extremely high-cost areas. Using an auction in which providers compete across areas for support from the Remote Areas Fund could enable us to identify those providers that would offer the services at least cost to the fund, so

as to maximize the number of locations that could be served within the budget. More specifically, the Commission seeks comment on three auction-related alternatives. If the Commission uses an auction framework, it would have to consider some additional questions regarding how to address aspects of the program that would be different under an auction approach than for its voucher proposal. Commenters advocating for auction options should discuss to what extent the choice of a particular auction approach should affect decisions about the general implementation issues discussed above including definition of remote areas, provider qualifications, and public interest obligations.

285. *Per-Subscribed Location Auction.* This competitive bidding alternative would have much in common with the portable consumer subsidy proposal in that it would offer a subsidy based on service provided to qualifying locations. In contrast, however, under an auction approach, the subsidies would not necessarily be available in all the areas identified as extremely high-cost, but only in those areas for which winning bids were accepted. Further, in an auction for per-location support, only the providers submitting the winning bids would be eligible to collect the subsidy payments to serve qualifying locations in the area. And under an auction approach, the subsidy amount would be determined based on bids in the auction, and would not be set by the Commission.

286. In a per-subscriber location auction, the Commission would establish a benchmark price level for services meeting the performance criteria defined for voice and broadband in extremely high-cost areas. Bidders would then indicate in the auction a subsidy amount at which they would be willing to offer services meeting its specifications while charging consumers no more than the benchmark price, which would represent a discount off the otherwise available price. The Commission seeks comment on how it should establish this price, and how to adjust it over time. Many of the same considerations discussed above with respect to the portable consumer subsidy would apply to the per-subscriber-location auction, and the Commission asks commenters to address these issues.

287. With respect to the choice of areas for competitive bidding under this option, the Commission seeks comment on whether it should use a geographic area other than census blocks as a minimum geographic unit for bidding, and how that choice relates to whether and how it might provide for bidding on packages of areas. In order to evaluate the effect of bids with respect to available funds, the Commission would determine the number of qualifying locations in each eligible census block based on 2010 decennial census data (*e.g.,* those locations meeting a required means test).

288. The Commission could design the auction to select one or possibly more than one provider that would be eligible to receive a subsidy amount to provide services in a given area, and the Commission seeks comment on these possible approaches. Enabling more than one provider to receive support could provide qualifying customers with the benefits of a choice of service providers. Selecting a single provider per area, however, could give the providers more certainty regarding potential customers, which may permit lower bids. The Commission also asks commenters to consider whether picking one provider or two or more would have an effect on auction competition and the auction's ability to drive subsidy prices to efficient levels. In this regard, the Commission asks commenters to indicate the likely impact on subsidy levels of picking one provider or two or more through an auction, as well as the concomitant effect on the number of locations that could be served within the budget.

289. *Coverage Auction.* This competitive bidding option could be appropriate if the Commission finds that it needs to spur significant new deployment (*e.g.,* launching a new satellite or directing a dedicated spot beam to a particular area) to make voice and broadband services available in extremely high-cost areas. Thus, a coverage auction would have much in common with its proposals for competitive bidding for Mobility Fund Phase II and price cap areas in which a state-level commitment was not made in that it would offer support to service providers in exchange for making service available at reasonably comparable rates to any requesting location within a particular geographic area. Similar to the other proposed CAF auctions, requesting locations would not be subject to a means test, and support would not be tied to the number of subscribers a provider serves. As a threshold matter, the Commission seeks comment on whether a coverage auction would displace private investment, given existing and planned capacity and coverage that may be achieved without support. If adequate capacity and coverage is unlikely to be achieved absent support, the Commission seeks input on how to structure a competitive auction, given the nature of competition among satellite broadband providers and the possibility of competition from providers using other technological platforms, such as WISPs.

290. The Commission seeks comment on the appropriate geographic area to use as a minimum geographic unit for bidding, and how that choice relates to whether and how the Commission might provide for bidding on packages of areas. In order to evaluate the impact on available funds of bids made for different geographic areas the Commission would determine the number of potential locations in each eligible census block based on 2010 decennial census data. The Commission would anticipate that, in order to maximize the consumer benefits, it would generally be supporting a single provider for a given geographic area. The Commission would support more than one provider in an area only if doing so would maximize coverage.

291. *Combined Auction.* This auction option would combine the budgets available for the post-state-level commitment competitive bidding process and for remote areas, relaxing the performance requirements applicable to providers of fixed services receiving CAF support in order to increase the number of technologies service providers could use. In such an auction, providers could offer different performance characteristics, such as download and/or upload speeds, latency, and limits on monthly data use, and the Commission would score such quality differences in evaluating bids. This would give the Commission the ability to make trade-offs between subsidizing a higher quality service to fewer customers versus subsidizing a lower quality for more customers. Additionally, such an approach should result in more competitive bidding and lower prices, by allowing more technologies to compete for funding (both for an area and across areas), thereby permitting the CAF budget to yield greater quality for a given coverage, expanded coverage, or some combination thereof. This could allow the auction to determine a more cost effective distribution of budgets for services that meet potentially different performance obligations, rather than having the Commission decide in advance how to distribute the budgets across different auctions.

292. The Commission seeks comment on the appropriate geographic area to use as a minimum geographic unit for bidding, and how that choice relates to whether and how it might provide for bidding on packages of areas. The Commission also seeks comment on how to establish the number of units in

eligible geographic areas. For instance, should the Commission apply a means test to determine the number of qualifying locations that must be served? Further, the Commission seeks comment on whether and how to score different performance dimensions, and, whether providers should specify as part of their bids the retail prices they would charge consumers and, if so, how to include such prices in evaluating the bids. The Commission also asks whether it should prioritize areas currently lacking availability of any terrestrial broadband service at any speed by, for example, providing a form of bidding credit.

293. *Competitive Bidding Procedures.* Should the Commission use any of its competitive bidding alternatives, the Commission would generally structure the procedures as it has done for Mobility Fund Phase I and proposed for Phase II and for the CAF auction for price cap areas. The Commission proposes to use the same general auction rules as adopted or proposed for other contexts, including rules on potential auction designs, and rules on governing an auction application phase, a bidding phase, and a post-auction process whereby selected providers would show they are legally, technically and financially qualified to receive the support. As with other adopted and proposed auctions for CAF components, the Commission proposes to delegate to the Bureaus authority to establish detailed auction procedures and take all other actions to implement a competitive bidding process and other program aspects of the subsidies for remote areas to be determined through competitive bidding.

294. *Auction Design.* The Commission proposes to use the same general rules established for the Mobility Fund Phase I and proposed for the Mobility Fund Phase II, regarding various auction design options and parameters, which would form the basis for auction procedures to implement a specific design as part of the pre-auction notice and comment proceeding. The Commission contemplates that the specific procedures to be adopted for this auction would be identified in a public notice. Among other issues, the Commission proposes to give the Bureaus discretion to consider various procedures for grouping eligible areas to be covered with one bid—package bidding—that could be tailored to the needs of prospective bidders as indicated during the pre-auction notice and comment period. The Commission seeks comment on these proposals and invites commenters to identify any alternatives.

295. *Potential Bidding Preference for Small Businesses.* The Commission also seeks comment on whether small businesses should be eligible for a bidding preference if it uses any of its competitive bidding alternatives to provide support from the Remote Areas Fund, and whether such a bidding preference would be consistent with the objective of providing such support. The preference would be similar to the small business preference on which the Commission seeks comment for auctions of Mobility Fund Phase II support, and would act as a reverse bidding credit that would effectively reduce the bid amount for the purpose of comparing it to other bids. The Commission also seeks comment on the appropriate size of any small business bidding credit. The Commission also seeks comment on how it should define small businesses. Specifically, for the reasons provided in its discussion of Mobility Fund Phase II, the Commission seeks comment on whether a small business should be defined as an entity with average gross revenues not exceeding $40 million for the preceding three years. Alternatively, should the Commission consider a larger size definition for this purpose, such as average gross revenues not exceeding $125 million for the preceding three years? In determining an applicant's gross revenues under what circumstances should the Commission attribute the gross revenues of the applicant's affiliates? The Commission seeks comment on these definitions and invites input on whether an alternative basis for a size standard should be established.

296. *Application, Auction and Post-Auction Process.* The Commission proposes to use the same two-stage application process described more completely elsewhere. Similarly the Commission proposes to use the same rules and procedures regarding permissible communications and public disclosure of auction-related information, and regarding delay, suspension, or cancellation of bidding. The Commission also proposes to use the same rules regarding the post-auction long-form application process and the same rules regarding auction defaults and performance defaults.

297. The Commission seeks comment on all of these proposals. Specifically, the Commission asks whether there are reasons related to the specific circumstances it seeks to address in remote areas that should cause us to deviate from the process established for the Mobility Fund.

v. Competitive Evaluation Approach

298. The Commission seeks comment on structuring CAF for remote areas as a competitive proposal evaluation process, or RFP process. With this option the Commission would solicit proposals to provide broadband service in eligible areas, consistent with its technical requirements, and award support for a fixed term to those proposals that offered the best value in terms of meeting its stated criteria. Using such an RFP process, perhaps modeled after the Rural Utilities Service Broadband Initiatives Program, might permit the Commission more flexibility than an auction in balancing evaluation criteria—for example, with respect to quality standards such as capacity and latency, or quality and price.

vi. Other Issues

a. Certification and Verification of Eligibility

299. The Commission's obligation to minimize waste, fraud and abuse in Commission programs suggests that it should require individuals who are eligible for CAF support for remote areas be required to certify as to their eligibility and periodically verify their continued eligibility. Given the Commission's experience in administering the Lifeline program, the Commission proposes to adopt the Lifeline certification and verification procedures proposed by the Commission in connection with the *Lifeline and Link Up Reform and Modernization NPRM.* The Commission seeks comment on this proposal and on whether any modifications would be necessary to reflect the differences between the Lifeline and Link Up programs and the Remote Areas Fund. Would other rules be more appropriate? To the extent that the proposals for Lifeline contemplate that states be permitted to implement additional verification procedures, should it consider permitting similar state-specific procedures here? Should it consider the same uniform sampling methodology proposed for Lifeline? What other modifications to the Lifeline and Link Up rules might be necessary?

b. Accountability and Oversight

300. Except for disbursing support, the Commission proposes to apply to its program of support for remote areas the same rules for accountability and oversight as it does for CAF. Thus, recipients of this support would be subject generally to the same reporting, audit, and record retention requirements that apply to recipients of CAF support. The Commission proposes to disburse

support for the remote areas budget on a quarterly, per-location served basis, beginning upon notification that a qualifying location has contracted with the designated support recipient for service consistent with the program technical requirements.

301. The Commission proposes that providers notify the Commission quarterly of newly served locations by submitting a certification specifying the number of signed contracts for qualifying locations, along with a certification that each location meets the qualifying criteria (*e.g.,* a means test) established in this proceeding. Signed contracts would be covered by the record retention requirements applicable to all recipients of CAF support.

302. The Commission proposes that payments for newly acquired customers be submitted and paid quarterly. The Commission seeks comment on how often support for continuing qualifying customers should be paid out, *e.g.,* in quarterly installments.

303. In structuring an appropriate payment plan, the Commission is mindful that it must comply with the Anti-Deficiency Act. Commenters are invited to address how to structure an award of support that provides recipients with the requisite level of funding and certainty, while ensuring that the Commission's Anti-Deficiency Act obligations are met.

L. Introduction to Intercarrier Compensation

304. In this portion of the FNPRM, the Commission seeks comment on additional topics that will guide the next steps to comprehensive reform of the intercarrier compensation system initiated in the *USF–ICC Transformation Order.*

M. Transitioning All Rate Elements to Bill-and-Keep

305. The Commission adopts a bill-and-keep pricing methodology as the default methodology that will apply to all telecommunications traffic at the end of the complete transition period. In the *USF/ICC Transformation Order,* the Commission finds that a bill-and-keep methodology has numerous consumer benefits, best addresses access charge arbitrage, and will promote the transition from TDM to all-IP networks. Although the Commission specifies the implementation of the transition for certain terminating access rates in the *USF/ICC Transformation Order,* the Commission did not do the same for other rate elements, including originating switched access, dedicated transport, tandem switching and tandem transport in some circumstances, and other charges including dedicated transport signaling, and signaling for tandem switching. The Commission seeks further comment to complete its reform effort, and establish the proper transition and recovery mechanism for the remaining elements. Commenters warn that failure to take action promptly on these elements could perpetuate inefficiencies, delay the deployment of IP networks and IP-to-IP interconnection, and maintain opportunities for arbitrage. The Commission agrees, and seeks to reach the end state for all rate elements as soon as practicable, but with a sensible transition path that ensures that the industry has sufficient time to adapt to changed circumstances. As a result, the Commission seeks comment on transitioning the remaining rate elements consistent with its bill-and-keep framework, and adopting a new recovery mechanism to provide for a gradual transition away from the current system.

306. *Origination.* Other than capping interstate originating access rates and bringing dedicated switched access transport to interstate levels, the *USF/ICC Transformation Order* does not fully address the complete transition for originating access charges. Instead, it provides on an interim basis that interstate originating switched access rates for all carriers are to be capped at current levels as of the effective date of the rules adopted pursuant to the *USF/ICC Transformation Order.* As the Commission acknowledges in the *USF/ICC Transformation Order,* 47 U.S.C. 251(b)(5) does not explicitly address originating charges. The Commission determines, therefore, that such charges should be eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime. The Commission seeks comment on that final transition for *all* originating access charges.

307. Beyond the interim steps set forth in the *USF/ICC Transformation Order,* the Commission seeks comment on the need for an additional multi-year transition for originating access as part of the final transition to bill-and-keep. Commenters warn that establishing separate transitions for different intercarrier charges invites opportunities for arbitrage. Should any final transition of originating access be made to coincide with the final transition for terminating access adopted? Should a separate transition schedule be established for originating access only after the transition the Commission adopts for terminating access is complete? If a separate transition schedule is established after the transition is complete, would a two-year transition beginning in year 2018 for price cap carriers and 2020 for rate of return carriers be an appropriate time period? If not, what other time period should be considered and when should it commence? Should rate of return carriers be given additional time to transition such rates? If so, how much? How should reductions of originating access rates be structured? Should rates be reduced in equal increments over a period of years? Should the timing of rate reductions vary by type of carrier? The Commission seeks comment on an appropriate schedule, and the timing of any necessary interim steps.

308. The Commission seeks further comment as to what, if any, recovery would be appropriate for originating access charges and how such recovery should be implemented. For instance, should any recovery be limited to those incumbent LECs that do not provide retail long distance through affiliates? In addition, the Commission asks for comment on the legal basis for the Commission to provide or deny recovery for originating access. The Commission seeks comment on how to minimize any additional consumer burden associated with the transition of originated access traffic, and how best to promote IP-to-IP interconnection in this transition.

309. The Commission also seeks the input of the states on how to transition to bill-and-keep for originating access charges. Although the Commission can exercise its authority to implement a transition, as it does in the *USF/ICC Transformation Order* the Commission could also defer to the states to create a transition to bill-and-keep for originating access. Since originating intrastate access rates are not capped for rate of return carriers, the Commission asks whether it should initially defer the transition to bill-and-keep for originating access to the states to implement. If so, how much guidance should the Commission provide states? Should the Commission provide the date that the transition must be complete? Should states also be responsible for determining any appropriate recovery mechanism?

310. Relatedly, the Commission also seeks comment on the appropriate treatment of 8YY originated minutes. In the case of 8YY traffic, the role of the originating LEC is more akin to the traditional role of the terminating LEC in that the IXC carrying the 8YY traffic must use the access service of the LEC subscribed to by the calling party. Stated differently, in the case of 8YY traffic, because the calling party chooses

the access provider but does not pay for the toll call, it has no incentive to select a provider with lower originating access rates. For this reason, the Commission asks parties to address whether it should distinguish between originating access reform for 8YY traffic and originating access reform more generally.

311. The Bureaus has previously sought data and comment on the relative proportion of 8YY originated minutes to traditional originated minutes. In its response, the Nebraska Companies estimated that approximately 20–30 percent of originating traffic is to an 8YY number, while Texas Statewide Telephone Cooperative suggested that this figure could be as much as 50 percent. Are these figures commensurate with the average number of minutes that customers originate to 8YY numbers on other networks? The Commission again invites carriers to provide us with this data to help evaluate originating access reform, and the need for a distinct 8YY resolution. The Nebraska Companies further contend that a 251(b)(5) regime in which originating compensation does not exist, is unworkable in an environment of originating 8YY traffic and equal access obligations. The Commission seeks comment on this conclusion and any alternatives.

312. Finally, the Commission seeks comment on other possible approaches to originating access reform, including implementation issues and its legal authority to adopt any such reforms.

313. *Transport and Termination.* The initial transition described above does not fully address tandem switching and transport charges. For rate-of-return carriers, these charges are capped at interstate levels. For price cap carriers, where the terminating carrier owns the tandem in the serving area, these charges are subject to the transition established in the *USF/ICC Transformation Order* but the Commission does not address the transition for tandem switching and transport charges if the price cap carrier does not own the tandem in the serving area. Because the Commission's *USF/ICC Transformation Order* does not address the transition for all transport charges and the relationship between these charges and interconnection obligations more generally, the Commission seeks further comment on the proper transition for these charges. The Commission seeks comment on the proper scope of its reform and on the transition for these elements.

314. Several commenters express concern about the treatment of transport and tandem services under the ABC Plan and Joint Letter. T–Mobile asserts that as rates are reduced, ILECs will have powerful incentives to shift costs from end office functions to transport and tandem switching functions, requiring the Commission to devote additional time and effort to its scrutiny of ILEC tariff filings. Sprint raises concern that transport rate elements bear no relationship to the miniscule incremental cost of performing the traffic termination functions and that these rates serve as a disincentive for efficient interconnection and may have potential to extend arbitrage behavior. Competitive LECs argue that, even at interstate levels between the years 2013 to 2017, transport rates create significant opportunities for price cap ILECs to raise rivals' costs and, at the end state, price-cap ILECs would have the incentive to charge as high a price for that transport as possible. Commenters further argue that there are definitional ambiguities about the scope of transport that deserve clarification. The Commission agrees that such elements must be transitioned to bill-and-keep at the end state, as required by the *USF/ICC Transformation Order,* and seeks comment on the final transition to bill-and-keep for these charges.

315. The Commission invites comment regarding the appropriate transition for tandem switching and transport charges, and the need for any additional recovery mechanisms. At what point in time should tandem switching and transport charges be transitioned? Some commenters suggest that transport rates be reduced at a pace that coincides with its current transition for end office switching. Alternatively, tandem switching and transport rates could be reduced after the conclusion of the transition for end office switching. The Commission seeks comment on these proposals as well as other possible transition timeframes. Should the transition for these rate elements differ based upon the type of carrier? The Commission asks parties to comment on what, if any, unintended consequences may arise in connection with a longer transition for these charges, and whether any delay would impede the transition to IP-to-IP interconnection.

316. The Commission also seeks comment on possible recovery for tandem switching and transport as part of its recovery mechanism. Should recovery be made available for these charges? If a tandem switching and transport provider renegotiates an agreement for these services in anticipation of reform, should any increased revenue it receives be offset against eligible recovery? Should any recovery for these rate elements differ based upon the type of carrier?

317. The Commission notes that some of these issues are closely related to the network edge for purposes of delivering traffic. In the traditional access charge system, tandem switching and transport charges were typically assessed against interexchange carriers. Meanwhile, in the traditional reciprocal compensation system, the originating carrier was typically responsible for transport to the point of interconnection, which may be located at the end office of the called party's carrier. As the Commission moves to a new intercarrier compensation system governed by a 47 U.S.C. 251(b)(5) bill-and-keep methodology, the Commission invites parties to comment on the existing and future payment and market structures for dedicated transport, tandem switching, and tandem switched transport. EarthLink has suggested that charges such as tandem switching and transport charges could become obsolete in an all-IP world. Is this correct? If so, how should it impact possible reform?

318. *Transit.* Currently, transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network. Thus, although transit is the functional equivalent of tandem switching and transport, transit refers to non-access traffic, whereas tandem switching and transport apply to access traffic. As all traffic is unified under 47 C.F.R. 251(b)(5), the tandem switching and transport components of switched access charges will come to resemble transit services in the reciprocal compensation context where the terminating carrier does not own the tandem switch. In the *USF/ICC Transformation Order,* the Commission adopts a bill-and-keep methodology for tandem switched transport in the access context and for transport in the reciprocal compensation context. The Commission has not addressed whether transit services must be provided pursuant to 47 U.S.C. 251 of the Act; however, some state commissions and courts have addressed this issue.

319. Commenters also express concern that, as a result of the reforms adopted in the *USF/ICC Transformation Order,* transit providers will have the ability and incentive to raise transit service rates both during the transition and at the end state of reform. Specifically, one commenter alleges that without regulation of transit, ILECs would have opportunities to exploit their termination dominance. Commenters also express concern with the end state for tandem switching and

transport for price cap carriers when the tandem owner does not own the end office, which, under 47 U.S.C. 251 framework is typically considered a transit service. As part of the transition for price cap carriers, the *USF/ICC Transformation Order* provides that bill-and-keep will be the pricing methodology for all traffic and includes the transition for transport and termination within the tandem serving area where the terminating carrier owns the serving tandem switch. However, the *USF/ICC Transformation Order* does not address the transition in situations where the tandem owner does not own the end office. NCTA states that in this regard the ABC Plan is unclear and may attempt to significantly undermine competition by suggesting that such services would fall outside of the regulatory regime. As a result, commenters suggest that these services are transit services and should be provided pursuant to 47 U.S.C. 251 at cost-based and reasonable rates.

320. The Commission seeks comment on the need for regulatory involvement and the appropriate end state for transit service. Given that transit service includes the same functionality as the tandem switching and transport services subject to a default bill-and-keep methodology, should the Commission adopt any different approach for transit traffic given that providers pay for transit for IP services and transit may apply to get traffic to a network edge in a bill-and-keep framework? The Commission invites parties to comment on the current market for these services. Does the transit market demonstrate the hallmarks of a competitive market? If transit services are not being offered competitively, how prevalent is this? How might the market evolve in light of the reforms adopted in the *USF/ICC Transformation Order*? If the Commission were to regulate these charges, what legal framework is appropriate and what pricing methodology would apply during the transition?

321. *Other Charges.* The Commission's transition to a bill-and-keep framework may implicate other charges. For example, commenters have highlighted that the ABC Plan and Joint Letter fail to specify what transition applies to dedicated transport or to other flat-rated charges. The Commission invites parties to comment on any rate elements or charges that require additional reform. What transition should apply to these charges?

N. Bill-and-Keep Implementation

322. In the *USF/ICC Transformation NPRM* the Commission also sought comment on issues related to the implementation of a bill-and-keep pricing methodology. Now that the end point to comprehensive intercarrier compensation reform has been determined, the Commission seeks comment on any interconnection and related issues that must be addressed to implement bill-and-keep in an efficient and equitable manner. The Commission expects that the reforms adopted will not upset existing interconnection arrangements or obligations during the transition.

323. *Points of Interconnection.* Currently, under 47 U.S.C. 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA. As a threshold matter, does the Commission need to provide new or revised POI rules at some later stage of the transition to bill-and-keep or provide one set of rules to be effective at the end of the six-year transition for price cap carriers and nine-year transition for rate-of-return carriers maintain the current regime until that time? For instance, do commenters anticipate potential arbitrage schemes emerging as a result of maintaining the current POI rules until the transition is complete, or will the defined transition path and accompanying rate reductions the Commission adopts in the *USF/ICC Transformation Order* prevent such practices?

324. Also, 47 U.S.C. 251(c) does not currently apply to all rural LECs or non-incumbent LECs. How do commenters envision POIs functioning for these carriers? The Commission seeks to better understand the nature of interconnection arrangements with rural carriers today. For example, is interconnection typically pursuant to negotiated agreements, rules, or another type of framework? Is indirect interconnection the primary means of interconnection with small, rural carriers? If the Commission needs to mandate the use of POIs for rural LECs and non-incumbent LECs, should this requirement begin during or after the transition to the stated end point?

325. The Commission seeks comment on whether the Commission needs to prescribe POIs under a bill-and-keep methodology. One possible approach could be to permit interconnection at any technically feasible point on the other providers' network with a default POI being used for compensation purposes when there is no negotiated agreement between the parties. What are the pros and cons of such an approach? To what extent does the Commission's regulatory authority over interconnection allow it to prescribe POIs? Alternatively, CenturyLink proposes the use of traffic volumes to dictate the number of POI locations for traffic exchanged with an ILEC (including traffic flowing in both directions). The Commission seeks comment on this proposal and any other alternatives concerning POI obligations under a bill-and-keep regime.

326. The Commission seeks comment on how to promote IP-to-IP interconnection and facilitate the transition to all-IP networks. Some of these questions may affect the POI issues raised here. For instance, if the Commission were to adopt its proposal to require a carrier that desires TDM interconnection to pay the costs of any IP–TDM conversion, how would that affect commenters' opinions or responses to the POI questions herein? How would they be affected if the Commission adopted other IP-to-IP interconnection obligations?

327. *The Network Edge.* A critical aspect to bill-and-keep is defining the network edge for purposes of delivering traffic. The edge is the point where bill-and-keep applies, a carrier is responsible for carrying, directly or indirectly by paying another provider, its traffic to that edge. Past proposals to treat traffic under a bill-and-keep methodology typically assume the existence of a network edge, beyond which terminating carriers cannot charge other carriers to transport and terminate their traffic. In the *USF/ICC Transformation NPRM* the Commission recognized that there are numerous options for defining an appropriate network edge. For example, the edge could be the location of the called party's end office, mobile switching center (MSC), point of presence, media gateway, or trunking media gateway. The Commission has not received significant comment on the network edge issue up to this point.

328. As discussed in the *USF/ICC Transformation Order,* the Commission believes states should establish the network edge pursuant to Commission guidance. The Commission seeks comment on this and other options for defining the network edge. Assuming that defining the network edge remains a critical aspect of the transition to bill-and-keep, the Commission seeks comment on the appropriate network

edge and related issues. For instance, should the Commission adopt a competitively neutral location for the network edge, such as where interconnecting carriers have competitive alternatives—other than services or facilities provided by the terminating carrier—to transport traffic to the terminating carrier's network? In its comments, CTIA describes a Mutually Efficient Traffic Exchange (METE) proposal pursuant to which carriers would bear their own costs to deliver traffic to each other at specified network edges. Is this an appropriate way to define the network edge under a bill-and-keep approach? Do commenters have alternative suggestions on how best to define carrier obligations under a bill-and-keep approach? The Commission seeks comment on these questions and on any alternative proposals regarding the network edge.

329. *Role of Tariffs and Interconnection Agreements.* The Commission believes that generally continuing to rely on tariffs while also allowing carriers to negotiate alternatives during the transition is in the public interest because it provides the certainty of a tariffing option, which historically has been used for access charges, while still allowing carriers to better tailor their arrangements to their particular circumstances and the evolving marketplace than would be accommodated by exclusively relying on one size fits all tariffs. The Commission seeks comment on whether the Commission needs to forbear from tariffing requirements in 47 U.S.C. 203 of the Act and 47 CFR Part 61 to enable carriers to negotiate alternative arrangements pursuant to the *USF/ICC Transformation Order.*

330. As carriers transition from the existing access charge regime to the 47 U.S.C. 251(b)(5) framework and bill-and-keep methodology adopted in the *USF/ICC Transformation Order,* the Commission believes they will rely primarily on negotiated interconnection agreements rather than tariffs to set the terms on which traffic is exchanged. Specifically, 47 U.S.C. 251(b)(5) imposes on all LECs the duty to enter reciprocal compensation arrangements, and 47 U.S.C. 252 outlines the responsibility of incumbent LECs to negotiate interconnection agreements upon receipt of a request for interconnection pursuant to 47 U.S.C. 251. Although the Commission maintains a role for tariffing as part of the transition, the Commission believes the reliance on interconnection agreements is most consistent with the *USF/ICC Transformation Order's* application of reciprocal compensation duties to all carriers. The Commission seeks comment on this view. If so, do commenters believe the Commission needs to modify or eliminate any of its interconnection rules?

331. Given the potential primary reliance on interconnection agreements, the Commission seeks comment on the possibility of extending its interconnection rules to all telecommunications carriers to ensure a more competitively neutral set of interconnection rights and obligations. The *T-Mobile Order, Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs,* CC Docket No. 01–92, Declaratory Ruling and Report and Order, 70 FR 49401, March 30, 2005 (*T-Mobile Order*), extended to CMRS providers the duty to negotiate interconnection agreements with incumbent LECs under the 47 U.S.C. 252 framework to address interconnection and mutual compensation for non-access traffic. The Commission seeks comment on whether it should extend the interconnection agreement process adopted in the *T-Mobile Order* to all telecommunications carriers, including competitive LECs or other interconnecting service providers such as interexchange carriers. Competitive LECs have requested that the Commission expand the scope of the *T-Mobile Order* and require CMRS providers to negotiate agreements with competitive LECs under the 47 U.S.C. 251/252 framework. In addition, rural incumbent LECs urged the Commission to extend the *T-Mobile Order* to give ILECs the right to require all carriers to negotiate interconnection agreements under the 47 U.S.C. 252 framework. These requests stem largely from concerns about payment of intercarrier compensation charges. Thus, the Commission seeks comment on whether, in light of the reforms adopted herein, any further modification to its interconnection rules is still warranted for the end of the transition period, and the legal basis of any such modifications.

332. *Possible Arbitrage Under a Bill-and-Keep Methodology.* The Commission notes that several commenters to the *USF/ICC Transformation NPRM* suggest that a bill-and-keep approach may promote arbitrage opportunities in the industry. For example, some commenters suggest that a bill-and-keep framework may promote traffic dumping on terminating carriers' networks. Based on the current record, the Commission disagrees with these concerns, which it finds speculative. Nonetheless, to the extent the Commission's predictive judgment is incorrect, it takes take this opportunity to establish a record to ensure that it is prepared to act swiftly to address any potential arbitrage situations. The Commission asks parties to provide more detail on traffic dumping and its negative effects. Have there been incidents of traffic dumping in the wireless industry that operates largely under bill-and-keep today? How should the Commission define traffic dumping for purposes of analyzing its effect on the network? Are there concerns of traffic congestion or other harm to the network? If so, the Commission notes in the *USF/ICC Transformation Order* that carriers may include traffic grooming language in their tariffs to address such concerns. Are there any additional measures the Commission can and should take to prevent such practices? Other commenters suggest that this practice could result in carriers having every incentive to keep traffic from terminating on their networks. Do commenters agree?

O. Reform of End User Charges and CAF ICC Support

333. The Commission seeks comment on a number of questions related both to the recovery mechanism adopted in the *USF/ICC Transformation Order* as well as the pre-existing rules regarding subscriber line charges (SLCs). In particular, with respect to the recovery adopted in the *USF/ICC Transformation Order,* the Commission seeks comment on the long-term elimination of that transitional recovery mechanism beyond the provisions for reduction and elimination of elements of that recovery already adopted in the *USF/ICC Transformation Order.* In addition, some commenters question whether existing SLCs—which the Commission does not modify in the *USF/ICC Transformation Order*—are set at appropriate levels under pre-existing Commission rules or whether they should be reduced, particularly for price cap carriers where the Commission has not evaluated the costs of such carriers in nearly ten years. The Commission therefore seeks comment on the appropriate level and, longer-term, the appropriate regulatory approach to such charges, as carriers increasingly transition to broadband networks.

334. *ARC Phase-Out.* As part of its recovery mechanism, the Commission allows incumbent LECs to impose a limited access replacement charge (ARC). Because the ARC is, among other constraints, limited to the recovery of

Eligible Recovery, and because the Commission defines Eligible Recovery to decline over time, the ARC will phase down and approach $0 under the terms of the *USF/ICC Transformation Order.* This will take some time, however, under the ten percent annual reductions in Price Cap Eligible Recovery, and smaller annual percentage reductions in Rate-of-Return Eligible Recovery. The Commission notes, by contrast, that intercarrier compensation-replacement CAF support for price cap carriers is subject to a defined sunset date. Should the Commission likewise adopt a defined sunset date for ARC charges? Should those charges sunset at the same time price cap carriers' intercarrier compensation-replacement CAF support sunsets, or at some other time? Similarly, as with intercarrier compensation-replacement CAF support for price cap carriers, should the ARC be phased out after the end of intercarrier compensation rate reforms or, given that it already is subject to an independent phase-down, should it simply be eliminated? Would other modifications be appropriate for the ARC charges adopted in the *USF/ICC Transformation Order,* given carriers' transition to broadband networks and associated business plans relying more heavily on revenues from broadband services?

335. *CAF ICC Support Phase-Out.* Although the intercarrier compensation-replacement CAF support for price cap carriers is already subject to a defined phase-out under the *USF/ICC Transformation Order,* should the Commission modify the phase-out period based on a price cap carrier's receipt of state-wide CAF Phase II support? If so, how and why? Should intercarrier compensation-replacement CAF support for rate-of-return carriers be subject to a defined phase-out? If so, should it be modeled after the approach used for price cap carriers, or based on a different approach? Would other modifications be appropriate for the intercarrier compensation-replacement CAF support adopted in the *USF/ICC Transformation Order,* given carriers' transition to broadband networks and associated business plans relying more heavily on revenues from broadband services?

336. *Treatment of Demand in Determining Eligible Recovery for Rate of Return Carriers.* In years one through five, Rate-of-Return Eligible Recovery will decrease at five percent annually, with both ARC and ICC-replacement CAF provided based on a true-up process. The Commission did so to enable such carriers time to adjust and transition away from the current system. But, the Commission believes that five years is a sufficient time to adjust and, for years six and beyond, the Commission seeks comment on how to modify the recovery baseline. The Commission seeks comment on decreasing Rate-of-Return Eligible Recovery by an additional percent each year for a maximum of five years, up to a maximum decrease of 10 percent. In addition, the Commission seeks comment on an alternative approach to the use of true-ups for determining recovery after five years. For example, in place of annual true-ups, should the Commission use the average MOU loss based on data reported by rate of return carriers in years one through five? If the Commission does so, should it be instead of or in addition to changing the baseline, should the Commission use the same 10 percent decline it uses for price cap carriers, or would commenter recommend another mechanism to replace the true-up process?

337. *Magnitude and Long-Term Role of SLCs.* Some commenters contend that SLCs are not set appropriately today, particularly for price cap carriers whose costs are no longer evaluated. Moreover, given carriers' transition to business plans relying more heavily on broadband services, it is not clear what the appropriate role is for regulated end-user charges for voice service over the longer term. The Commission thus seeks comment on whether SLCs are set at appropriate levels today and whether, longer term, the Commission should retain such regulated charges under existing or modified rules, or if those charges should be eliminated.

338. When the Commission increased the residential and single-line business SLC cap above $5.00 it first sought comment on whether an increase in the SLC cap above $5.00 is warranted and, if not, whether a decrease in common line charges is warranted. In light of the evolution of network technology over time and any other marketplace developments raised by commenters, the Commission seeks comment on whether the magnitude of carriers' revenues currently associated with the common line are appropriate, or too high (or low). In particular, as in the past, the Commission seeks forward-looking cost information associated with the provision of retail voice grade access to the public switched telephone network. In addition to other data or information that commenters wish to provide in this respect. The Commission further seeks comment on how the costs of the local loop have been allocated between its use for regulated voice telephone service and its use for other services, such as broadband Internet access, video, or other nonregulated services. Are carriers' regulated common line recovery bearing an appropriate share of the cost of the local loop, or too much (or too little)?

339. More broadly, if carriers increasingly are moving to IP networks, to what extent is voice telephone service simply one of many applications on that network, such that regulated charges specific to voice might no longer be appropriate? In particular, should the Commission eliminate SLCs? If so, when should they be eliminated, and through what process? Should the Commission eliminate SLCs as of a date certain absent a showing by a carrier that such revenue is justified? If so, should the Commission require a showing comparable to that required under the Total Cost and Earnings Review, or some other showing? Likewise, to the extent that some carriers continue to receive revenue from a universal service mechanism specifically designed to address common line recovery, such as ICLS, as a supplement to SLC revenues, should that be eliminated or modified, as well? If so, when, and how, should that support be eliminated? If not, how would that continuing support mechanism operate in the absence of SLCs?

340. Even if the overall magnitude of common line revenues are justified and SLCs are retained, the Commission seeks further comment on the operation of the SLCs and the specific levels of the SLC caps, including whether they should be modified in any respect. For example, should the Commission require greater disaggregation or deaveraging of SLCs, either in terms of classes of customers or services or in terms of geographic areas? If so, what is the appropriate scope of customers, services, or geography? Would new cap(s) be appropriate for the new categories of SLCs, and if so, at what level? Conversely, as part of its intercarrier compensation reform, the Commission allows the ARC to be set at the holding-company level. Would that, or another more aggregated or averaged approach be warranted, and if so, what?

341. *Advertising SLCs.* As described in the *USF/ICC Transformation Order,* although the ARC is distinct from the SLC for regulatory purposes, the Commission expects incumbent LECs to include the new ARC charges as part of the SLC charge for billing purposes. However, commenters observe that SLC charges frequently are not included in the advertised price for incumbent LECs' services, making it more difficult for customers to evaluate and compare the price of service among different providers. Thus, the Commission seeks

comment on requiring incumbent LECs (and other carriers, if they charge a SLC or its equivalent) to include such charges in their advertised price for services subject to SLC charges. Could the Commission require that carriers include SLC charges (including ARCs) in their advertised price for services, or condition their ability to impose SLCs or ARCs or to receive CAF support on their doing so? Are there alternative approaches the Commission should take to ensure greater disclosure of such charges to customers in a way that advances price comparison and evaluation? Could the Commission adopt such requirements pursuant to its authority under 47 U.S.C. 201(b) of the Act or on another basis?

P. IP-to-IP Interconnection Issues

342. As recommended by the National Broadband Plan, the Commission has set an express goal of facilitating industry progression to all-IP networks, and ensuring the transition to IP-to-IP interconnection is an important part of achieving that goal. As stated in recommendation 4.10 of the National Broadband Plan, [t]he FCC should clarify interconnection rights and obligations and encourage the shift to IP-to-IP interconnection. Likewise, in the *USF/ICC Transformation NPRM* the Commission sought comment on steps the Commission can take to promote IP-to-IP interconnection. The Commission received some comment on the issue but hope to develop a more complete record on IP-to-IP interconnection issues, in light of the reforms undertaken in the *USF/ICC Transformation Order.* As the Commission states in the *USF/ICC Transformation Order,* the duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise. Commission requirements implementing the duty to negotiate IP-to-IP interconnection in good faith could take their primary guidance from one or more of various provisions of the Communications law—47 U.S.C. 4, 201, 251(a), or 251(c) of the Communications Act, or 706 of the 1996 Act, 47 U.S.C. 1302. The Commission seeks comment on which of the available approaches is most consistent with its statutes as a whole and sound policy. The Commission therefore seeks comment on the implementation of the good faith negotiation requirement, and also seeks comment on any additional actions the Commission should take to encourage transitions to IP-to-IP interconnection where that is the most efficient approach.

343. The comprehensive reforms the Commission adopted in its order on ICC–USF reform takes initial steps to eliminate barriers to IP-to-IP interconnection. In this regard, the Commission notes that the intercarrier compensation transition it adopts in the *USF/ICC Transformation Order* specifies default rates but leaves carriers free to negotiate alternative arrangements. The Commission concludes that the preexisting intercarrier compensation regime did not advance technology neutral interconnection policies because it provided LECs a more certain ability to collect intercarrier compensation under TDM-based interconnection, with less certain compensation for IP-to-IP interconnection. Under the Commission's new framework, even if a carrier historically has relied on intercarrier compensation revenue streams, it need not wait until intercarrier compensation reform is complete to enter IP-to-IP interconnection arrangements. Rather, to the extent that certainty regarding intercarrier compensation is important to a particular carrier during the transition, it is free to negotiate appropriate compensation as part of an arrangement for IP-to-IP interconnection under the Commission's transitional framework.

344. Some commenters express concern that additional protections are needed to ensure IP-to-IP interconnection, however. The Commission expects all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic, and that such good faith negotiations will result in interconnection arrangements between IP networks, and the Commission seeks comment on which of the various possible statutory provisions as well as standards and enforcement mechanisms it should adopt to implement its expectation that carriers negotiate in good faith. The Commission also seeks comment on actions the Commission could take to, at a minimum, encourage the transition to IP-to-IP interconnection where efficient. In particular, the Commission proposes that if a carrier that has deployed an IP network receives a request to interconnect in IP, but instead requires TDM interconnection, the costs of the IP-to-TDM conversion would be borne by the carrier that elected TDM interconnection. The Commission seeks comment on this proposal. The Commission also seeks comment on other measures that Commission might adopt to encourage efficient IP-to-IP interconnection.

345. The Commission also seeks comment on proposals to require IP-to-IP interconnection in particular circumstances under different policy frameworks. In this regard, the Commission observes that 47 U.S.C. 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral—they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks. The specific application of the interconnection requirements of 47 U.S.C. 251 depend upon factual circumstances and other considerations, and the Commission seeks comment on the resulting implications in the context of IP-to-IP interconnection, along with other legal authority that might bear on the Commission's ability to adopt any particular IP-to-IP interconnection policy framework. Moreover, the Commission seeks comment on how to carefully circumscribe the scope of traffic or services subject to any such framework to leave issues to the marketplace that appropriately can be resolved there.

346. Finally, the Commission seeks comment on proposals that the Commission leave IP-to-IP interconnection to unregulated commercial agreements. Although the Commission has relied on such an approach in some contexts in the past, the Commission seeks comment on the factual basis for whether, and when, to adopt such an approach here.

i. Scope of Traffic Exchange Covered by an IP-to-IP Interconnection Policy Framework

347. It is important that any IP-to-IP interconnection policy framework adopted by the Commission be narrowly tailored to avoid intervention in areas where the marketplace will operate efficiently. The Commission thus seeks comment on the scope of traffic exchange that should be encompassed by any IP-to-IP interconnection policy framework for purposes of this proceeding. The Commission stated in the *USF/ICC Transformation Order* that it expects carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. But, the Commission notes that various types of services can be transmitted in IP format, and commenters recognize that many pairs of providers are exchanging both VoIP traffic and other IP traffic with each

other. Further, different commenters appear to envision IP-to-IP interconnection policy frameworks encompassing different categories of services provided using IP transmission. The Commission seeks comment on those issues, along with any other recommendations commenters have for defining the scope of an IP-to-IP interconnection policy framework in this context. For any proposed scope of IP-to-IP interconnection, the Commission also seeks comment on whether it is necessary, or appropriate, to address classification issues associated with particular IP services.

348. Some comments proposed that an IP-to-IP interconnection framework address the exchange of voice traffic. For some commenters, this would broadly encompass all VoIP traffic, whether referred to as packetized voice traffic, IP voice traffic, or simply VoIP. Is it technologically possible to adopt such an approach? Does it make sense as a policy matter to adopt an IP-to-IP interconnection framework focused specifically on voice service, and how would such an approach be implemented? For example, would this approach have the result of compelling providers to exchange VoIP traffic under a different technological or legal arrangement from what those providers use to exchange other IP traffic? Could the interconnection framework be structured to provide certain interconnection rights with respect to the exchange of VoIP traffic, while giving those providers the freedom to exchange other IP traffic in a consistent manner? What impact, if any, would such an approach have on any preexisting arrangements for the exchange of non-voice IP traffic?

349. Other comments propose IP-to-IP interconnection frameworks that would encompass narrower categories of VoIP services, such as managed or facilities-based VoIP, as distinct from over the top VoIP. Are there advantages or disadvantages to focusing on this narrower universe of voice traffic as a technological, policy, or legal matter? For example, are there different costs or service quality requirements associated with such services such that those services would warrant distinct treatment? How would such traffic or services be defined? Would interconnection for other VoIP services be left unaddressed at this time? Or would they be subject to a different policy framework, and if so, what framework would be appropriate?

350. Alternatively, other comments seem to anticipate that IP interconnection policies could encompass IP traffic other than voice. Would it be appropriate to encompass any non-voice IP traffic or services in such a framework, and how would they be defined? The Commission notes, for example, that it historically has not regulated interconnection among Internet backbone providers. If a different interconnection policy framework were adopted in this context, how would it be distinguishable? To what extent would an IP-to-IP interconnection policy framework address interconnection rights for both voice and non-voice traffic, or to what extent would providers simply have the freedom to use otherwise-available interconnection arrangements to exchange particular IP traffic or services?

ii. Good Faith Negotiations for IP-to-IP Interconnection

a. Standards and Enforcement for Good Faith Negotiations

351. Building upon its statement in the *USF/ICC Transformation Order* that the duty to negotiate in good faith under the Act does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise, the Commission seeks comment on the particular statutory authority that provides the strongest basis for the right to good faith negotiations for IP-to-IP interconnection. As a threshold matter, however, the Commission seeks comment on the appropriate scope and nature of requirements for good faith negotiations generally that should apply, as well as the associated implementation and enforcement. For example, should the Commission focus on all carriers generally, or adopt differing standards for particular subsets of carriers such as terminating carriers, incumbent LECs, or carriers that may have market power in the provision of voice services, or should the Commission focus on some other scope of providers? Should the right to good faith negotiations for IP-to-IP interconnection be limited to traffic associated with particular types of services? How would the Commission determine whether or not a particular provider negotiated in good faith under such an approach? For example, should such claims be evaluated in the same manner as claims that a carrier failed to negotiate in good faith as required by 47 U.S.C. 251(c)(1) of the Act, or regulatory frameworks from other contexts? Are there other criteria that commenters believe the Commission should address with respect to the standards and enforcement for good faith negotiations? For example, should enforcement occur at the Commission, state commissions, courts, or other forums?

352. Would the Commission need to address or provide guidance regarding the contours of a range of reasonableness for IP-to-IP interconnection rates, terms, and conditions themselves to assess whether a party's negotiating positions are reasonable and in good faith? For example, would the Commission need to specify whether direct physical interconnection is required, or whether indirect interconnection could be sufficient in order to judge whether particular negotiations are in good faith? Are there other criteria or guidance regarding the substance of the underlying IP-to-IP interconnection that the Commission would need to specify to make enforcement of a good faith negotiation requirement more administrable?

353. The Commission observes that certain statutory provisions may give the Commission either broader or narrower leeway to define the scope of entities covered by the requirement, the standards for evaluating whether negotiations are in good faith, and the associated enforcement mechanisms. Thus, in addition to seeking comment on the particular statutory authority the Commission should adopt for good faith negotiation requirements, commenters should discuss any limitations on the substance and enforcement of the good faith negotiation requirements arising from the particular statutory provision at issue, or what particular approaches to defining and enforcing good faith negotiations are appropriate in the context of the Commission's exercise of particular legal authority. In addition, the Commission seeks comment not only on any rules the Commission would need to adopt or revise, but also any forbearance from statutory requirements that would be needed to implement a particular framework for good faith negotiations for IP-to-IP interconnection.

b. Statutory Authority To Require Good Faith Negotiations

354. In this section, the Commission notes that there are various sections of the Act upon which the right to good faith negotiations for IP-to-IP interconnection could be grounded, and seeks comment on the policy implications of selecting particular provisions of the Act. In the subsequent section, the Commission seeks comment on the possible legal authority commenters have cited in support of substantive IP-to-IP interconnection obligations, including 47 U.S.C. 251(a)(1), 251(c)(2), and other

provisions of the Act; section 706 of the 1996 Act, 47 U.S.C. 1302; as well as the Commission's ancillary authority under Title I. The Commission thus likewise seeks comment on those and other provisions as a basis for the right to good faith negotiations regarding IP-to-IP interconnection, as well as resulting implications for the scope and enforcement of that right.

355. The Commission seeks comment on whether the Commission should utilize 47 U.S.C. 251(a)(1) as the basis for the requirement that all carriers must negotiate in good faith in response to a request for IP-to-IP interconnection. Section 251(a)(1), 47 U.S.C. 251(a)(1), requires all telecommunications carriers to interconnect directly or indirectly. The requirements of this provision thus extend broadly to all telecommunications carriers, and are technology neutral on their face with respect to the transmission protocol used for purposes of interconnection. The Commission thus seeks comment on whether the Commission should rely upon 47 U.S.C. 251(a)(1) as the primary source of a right to good faith negotiations for IP-to-IP interconnection. Should the Commission create a specific enforcement mechanism and, if so, should the remedy be at the state level or with the Commission? The Commission notes that 47 U.S.C. 251(c)(1) of the Act expressly adopts a requirement for incumbent LECs, and requesting carriers seeking interconnection with them, to negotiate in good faith in accordance with 47 U.S.C. 252 to implement the requirements of 47 U.S.C. 251(b) and (c). Although the requirements of 47 U.S.C. 251(a)(1), standing alone, are not encompassed by that provision, the Commission does not believe that would preclude the Commission from concluding that a separate good faith negotiation requirement is required under 47 U.S.C. 251(a)(1). What is the appropriate mechanism for enforcing a right to good faith negotiations for IP-to-IP interconnection under 251(a)(1)? Similarly, to the extent that the good faith negotiation requirement adopted for 47 U.S.C. 251(a)(1) interconnection must be distinct from that imposed by 47 U.S.C. 251(c)(1), would the Commission need to adopt a different approach to evaluating claimed breaches of good faith from the framework used under 47 U.S.C. 251(c)(1)? If so, what framework for evaluating such claims should the Commission adopt?

356. The Commission also seeks comment on whether the requirement of good faith negotiations for IP-to-IP interconnection should be based on 47 U.S.C. 251(c)(2). Section 251(c)(2), 47 U.S.C. 251(c)(2), requires incumbent LECs to provide direct physical interconnection to requesting carriers when the criteria of 47 U.S.C. 251(c)(2)(A)–(D) are met. When 47 U.S.C. 251(c)(2) applies, it is subject to a statutory requirement of good faith negotiations under 47 U.S.C. 251(c)(1), with enforcement available through state arbitrations under 47 U.S.C. 252. Further, the Commission already has adopted guidance for evaluating claimed breaches of good faith negotiations under 47 U.S.C. 251(c)(1). Would that guidance remain appropriate for evaluating alleged failure to negotiate IP-to-IP interconnection in good faith under this provision? Under the terms of 47 U.S.C. 251(c), the Commission believes that the obligations of 47 U.S.C. 251(c)(2) apply only to incumbent LECs, and thus under the terms of the statute the associated duty to negotiate interconnection in good faith under 47 U.S.C. 251(c)(1) only would extend to incumbent LECs and requesting carriers seeking interconnection with them. The Commission notes, however, that good faith negotiations under the *USF/ICC Transformation Order* are expected of all carriers, not just incumbent LECs. As a result, would the Commission need to rely on additional statutory provisions for the basis of good faith negotiation requirements for IP-to-IP interconnection among other types of carriers?

357. Alternatively, the Commission seeks comment on whether the obligation to negotiate in good faith for IP-to-IP interconnection arrangements should be grounded in 47 U.S.C. 201, particularly in conjunction with other provisions of the Act and the Clayton Act. The Commission previously interpreted 47 U.S.C. 2(a), 201 and 202 collectively as requiring common carriers to negotiate the provision of their services in good faith and thus requiring LECs to negotiate interconnection in good faith with CMRS providers. It found it appropriate to extend the requirement of good faith negotiations not only to interconnection for the exchange of interstate services, but for intrastate services as well, reasoning that departures from its good faith requirement [in the context of intrastate services] could severely affect interstate communications by preventing cellular carriers from obtaining interconnection agreements and consequently excluding them from the nationwide public telephone network. The Commission further concluded that its authority to mandate good faith negotiations is also derived from 47 U.S.C. 309(a) and 314 of the Act and Section 11 of the Clayton Act, 15 U.S.C. 21, which require the Commission to remedy anticompetitive conduct, given that delays in the negotiating process could place a carrier at a competitive disadvantage. The Commission seeks comment on whether the Commission should adopt these provisions as the legal basis for a requirement of good faith negotiations among carriers regarding IP-to-IP interconnection. Would the considerations cited by the Commission in the context of LEC–CMRS interconnection likewise justify a right to good faith negotiations in this context? If so, what standards and processes should apply in evaluating and enforcing good faith negotiations under this provision? The Commission notes that interconnection with LECs for access traffic historically—and as preserved by 251(g)—was addressed through exchange access and related interconnection regulations, including through the purchase of tariffed access services. How should any right to good faith negotiation of IP-to-IP interconnection for the exchange of access traffic be reconciled with those historical regulatory frameworks? Does the Commission's action in the accompanying *USF/ICC Transformation Order* to supersede the preexisting access charge regime and adopt a transition to a new regulatory framework affect this evaluation?

358. In addition, the Commission seeks comment on the relative merits of section 706 of the 1996 Act, 47 U.S.C. 1302, as the statutory basis for carriers' duty to negotiate IP-to-IP interconnection in good faith. Some commenters suggest that section 706, 47 U.S.C. 1302, would provide the Commission authority to regulate IP-to-IP interconnection. Would the statutory mandate in section 706, 47 U.S.C. 1302, justify a requirement that carriers negotiate in good faith regarding IP-to-IP interconnection? If so, what standards and enforcement processes would be appropriate? If the Commission were to rely on section 706 of the 1996 Act, 47 U.S.C. 1302, to impose a good faith negotiation requirement, would it also need to adopt associated complaint procedures, or could the existing informal and formal complaint processes, which derive from 47 U.S.C. 208, nonetheless be interpreted to extend more broadly than alleged violations of Title II duties? Could the Commission, relying on section 706, 47 U.S.C. 1302, extend the

obligation to negotiate in good faith beyond carriers to include all providers of telecommunications? If so, should the Commission do so?

359. The Commission also seeks comment on whether 47 U.S.C. 256 provides a basis for the good faith negotiation requirement for IP-to-IP interconnection. Although 47 U.S.C. 256(a)(2) says that the purpose of the section is to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks, 47 U.S.C. 256(c) provides that nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996. Particularly in light of 47 U.S.C. 256(c), is it reasonable to interpret 47 U.S.C. 256 as a basis for the good faith negotiation requirement? If so, what are the appropriate details and enforcement mechanism? Even if it is not a direct source of authority in that regard, should it inform the Commission's interpretation and application of other statutory provisions to require carriers to negotiate IP-to-IP interconnection in good faith?

360. Alternatively, should the Commission rely upon ancillary authority as a basis for requiring that carriers negotiate in good faith in response to requests for IP-to-IP interconnection? Because it is communications by wire or radio, the Commission clearly has subject matter jurisdiction over IP traffic such as packetized voice traffic. Is the requirement that carriers negotiate in good faith in response to requests for IP-to-IP interconnection reasonably ancillary to the Commission's exercise of its authority under a statutory provision? If so, what standards and enforcement mechanisms should apply? If the Commission were to rely on ancillary authority to impose a good faith negotiation requirement, would it also need to adopt associated complaint procedures, or could the existing informal and formal complaint processes, which derive from 47 U.S.C. 208, nonetheless be interpreted to extend more broadly than alleged violations of Title II duties? Similarly, if the Commission relies on ancillary authority, could it extend the obligation to negotiate in good faith beyond carriers to include all providers of telecommunications? If so, should the Commission do so?

361. Finally, the Commission seeks comment on whether the obligation for carriers to negotiate IP-to-IP interconnection in good faith should be grounded in other statutory provisions identified by commenters. If so, what statutory provisions, and what are the appropriate standards and enforcement mechanisms? Alternatively, should the Commission rely on multiple statutory provisions? If so, which provisions, and how would they operate in conjunction?

iii. IP-to-IP Interconnection Policy Frameworks

a. Alternative Policy Frameworks

362. The Commission seeks comment on the appropriate role for the Commission regarding IP-to-IP interconnection. In particular, the Commission seeks specific comment on certain proposed policy frameworks. With respect to each such framework, the Commission seeks comment not only on the policy merits of the approach, but also the associated implementation issues. These include not only any rules the Commission would need to adopt or revise, but also any forbearance from statutory requirements that would be needed to implement the particular framework for IP-to-IP interconnection.

(i) Measures To Encourage Efficient IP-to-IP Interconnection

363. At a minimum, the Commission believes that any action the Commission adopts in response to this FNPRM should affirmatively encourage the transition to IP-to-IP interconnection where it increases overall efficiency for providers to interconnect in this manner. The Commission seeks comment on possible elements of such a framework, as well as alternative approaches for encouraging efficient IP-to-IP interconnection.

364. *Responsibility for the Costs of IP-to-TDM Conversions.* Some commenters have proposed that carriers electing TDM interconnection be responsible for the costs associated with the IP–TDM conversion. In particular, these commenters contend that carriers that require such conversion, sometimes despite the fact that they have deployed IP networks themselves, effectively raise the costs of their competitors that have migrated to IP networks. If a carrier that has deployed an IP network receives a request to interconnect in IP, but, chooses to require TDM interconnection, the Commission proposes to require that the costs of the conversion from IP to TDM be borne by the carrier that elected TDM interconnection (whether direct or indirect). The Commission seeks comment on how to define the scope of carriers with IP networks that should be subject to such a requirement. The Commission further seeks comment on what specific functions the carrier electing TDM interconnection should be financially responsible for under such a requirement. Should the financial responsibility be limited to the electronics or equipment required to perform the conversion? Or should the financial responsibility extend to other costs, such as any potentially increased costs from interconnecting in many locations with smaller-capacity connections rather than (potentially) less expensive interconnection in a smaller number of locations with higher-capacity connections? If there are disputes regarding payments, should the losing party bear the cost of those disputes?

365. Would the Commission need to take steps to ensure the rates associated with those functionalities remain reasonable, and under what regulatory framework? For example, would *ex ante* rules or *ex post* adjudication in the case of disputes be preferable? Would the costs of the relevant functions need to be measured, and if so how? In the case of rates for such functionalities charged by incumbent LECs, should the otherwise-applicable rate regulations apply to such offerings? In the case of carriers other than incumbent LECs, how, if at all, would such rates be regulated? Would the ability of the carrier electing TDM interconnection to self-deploy the IP-to-TDM conversion technology or purchase it from a third party rather than paying the other provider constrain the rate the other provider could charge for such functionality? Would the Commission also need to regulate the terms and conditions of such services? If so, what is the appropriate regulatory approach?

366. Would some pairs of carriers with IP networks that interconnect directly or indirectly in TDM today both choose to continue interconnecting in TDM? If so, how would the commission ensure that any requirements it adopted addressing financial responsibility for IP-to-TDM conversions did not alter the *status quo* in such circumstances? For example, could the obligation to pay these charges be triggered through a formal process by which one interconnected carrier requests IP-to-IP interconnection and, if the second interconnected carrier refuses (or fails to respond), the second carrier then would be required to bear financial responsibility for the IP-to-TDM conversion? Would the Commission need to specify a timeline for the process, including the time by which a carrier receiving a request for IP-to-IP interconnection either must respond or be deemed to have refused the request

(and thus become subject to the financial responsibility for the IP-to-TDM conversion)? If so, what time periods are reasonable?

367. What mechanism would be used to implement any such charges? Should carriers rely solely on agreements? Or should carriers tariff these rates, perhaps as default rates that apply in the absence of an agreement to the contrary? Should the carrier seeking to retain TDM interconnection be permitted to choose to purchase the conversion service from any available third party providers of IP-to-TDM conversions, rather than from the carrier seeking IP-to-IP interconnection? If so, how would that be implemented as part of the implementation framework?

(ii) Specific Mechanisms To Require IP-to-IP Interconnection

368. The Commission seeks comment on certain other approaches for requiring IP-to-IP interconnection raised in the record.

369. *Scope of Issues To Address Under Different Policy Frameworks Requiring IP-to-IP Interconnection.* The Commission seeks comment on the general scope of the Commission's appropriate role concerning IP-to-IP interconnection, subject to certain baseline requirements. For example, if the baseline only extended to certain terms and conditions, would providers have adequate incentives to negotiate reasonable IP-to-IP interconnection rates? What specific terms and conditions would need to be subject to the policy framework, and which could be left entirely to marketplace negotiations? Should any oversight of terms and conditions take the form of general guidelines, perhaps subject to case-by-case enforcement, rather than more detailed ex ante rules? Where in a provider's network would IP need to be deployed for it to be subject to such requirements? To inform its analysis of these issues, the Commission seeks comment on the physical location of IP POIs, with concrete examples of traffic and revenue flows, as well as who bears the underlying costs of any facilities used, whether in the original installation, or in maintenance and network management. What are the implementation costs of the provision of Session Initiation Protocol (SIP) at the point of interconnection, and the extent to which voice quality would be compromised without such provision? How would current policies, if maintained, provide efficient or inefficient incentives for point-of-interconnection consolidation, and/or the provision of efficient interconnection protocols, such as SIP? Would adopting a timetable for all-IP interconnection be necessary or appropriate, or would carriers have incentives to elect IP-to-IP (rather than TDM) interconnection whenever it is efficient to do so?

370. In addition, would it be necessary or appropriate to address providers' physical POIs in the context of IP-to-IP interconnection? What factors should the Commission consider in evaluating possible policy frameworks for physical POIs, such as the appropriate burden each provider bears regarding the cost of transporting traffic? If the Commission were to address POIs, would the Commission need to mandate the number and/or location of physical POIs, or would general encouragement to transition to one POI per geographic area larger than a LATA be appropriate? If so, what should that larger area be? How, if at all, would any regulations of physical POIs impact the relative financial responsibilities of the interconnected carriers for transporting the traffic?

371. The Commission also seeks comment on providers' incentives under a policy framework that involves some Commission oversight of IP-to-IP interconnection rates, as well as terms and conditions. If an IP-to-IP interconnection policy framework addresses interconnection rates, how should it do so? For example, would it be sufficient to require that all VoIP traffic be treated identically, including in terms of price? Would it be appropriate to require that interconnection for the exchange of VoIP traffic be priced the same as interconnection for the exchange of all other IP traffic? If the price for the interconnection arrangement itself is distinct from the compensation for the exchange of traffic, how should each be regulated? Would a differential between the costs/revenues in the pricing of IP-to-IP interconnection and traffic exchange relative to TDM interconnection and traffic exchange create inefficient incentives to elect one form of interconnection rather than the other? If so, should any charges for both the interconnection arrangement and traffic exchange under an IP-to-IP interconnection framework mirror those that apply when carriers interconnect in TDM? Or should the Commission adopt an alternative approach? For example, should the Commission provide for different rate levels or rate structures than otherwise apply in the TDM context? What is the appropriate mechanism for implementing any such framework? Should the regulated rates, terms, and conditions be defaults that allow providers to negotiate alternatives?

372. *Specific Proposals For IP-to-IP Interconnection.* Some commenters contend that the Commission should require incumbent LECs to directly interconnect on an IP-to-IP basis under 47 U.S.C. 251(c)(2) of the Act. In addition to the 47 U.S.C. 251(c)(2) legal analysis upon which it seeks comment, the Commission seeks comment on the policy merits of such an approach. What requirements would the Commission need to specify under such an approach? In addition, by its terms, 47 U.S.C. 251(c)(2) only imposes obligations on incumbent LECs. Is that focus appropriate, or would the Commission need to address the requirements applicable to other carriers, as well? If so, how could that be done under such an approach?

373. Alternatively, should the Commission adopt a case-by-case adjudicatory framework somewhat analogous to the approach of 47 U.S.C. 251(c)(2) and 252, where the Commission require IP-to-IP interconnection as a matter of principle, but leave particular disputes for case-by-case arbitration or adjudication? Under such an approach, would the Commission need to establish some general principles or guidelines regarding how arbitrations or adjudications will be resolved, and if so, with respect to what issues? Which providers should be subject to any such obligations—incumbent LECs, all carriers that terminate traffic, or a broader scope of providers? Should the states and/or the Commission provide arbitration or dispute resolution when providers fail to reach agreement, and what processes should apply? Does the Commission have legal authority to adopt such an approach?

374. Other commenters propose that the Commission require IP-to-IP interconnection under 47 U.S.C. 251(a)(1). The Commission seeks comment on the possibility of designating one of the carriers as entitled to insist upon direct (rather than indirect) interconnection under 47 U.S.C. 251(a)(1). However, if the Commission required IP-to-IP interconnection under 47 U.S.C. 251(a)(1) but permitted either carrier to insist upon indirect interconnection, could the Commission require the carrier making that election bear certain costs associated with indirect interconnection, such as payment to the third party for the indirect interconnection arrangement, bearing the cost of transporting the traffic back to its own network and customers from the point where the carriers are

indirectly interconnected, or other costs?

375. As another alternative, T–Mobile and Sprint proposed that each service provider establish no more than one POI in each state using Session Initiation Protocol (SIP) to receive incoming packetized voice traffic and be required to provide at its own cost any necessary packet-to-TDM conversion for a short-term transition period. Then, in the longer term, the parties suggest that the Commission use the Technical Advisory Committee (TAC) to develop recommendations for the protocol for receiving packet-based traffic and to propose efficient regional packet-based interconnection points. T–Mobile and Sprint suggest acting on the TAC's recommendations after public notice and the opportunity for comment. The Commission seeks comment on T–Mobile and Sprint's proposal. If the Commission moves forward with an approach like T–Mobile/Sprint's, how much time should the Commission allow for each of the two time periods proposed? Based on the transition periods adopted in the *USF/ICC Transformation Order,* how would this two-step approach work?

376. The Commission also seeks comment on XO's proposal to facilitate the move to IP-to-IP interconnection. XO recommends that the Commission require every telecommunications carrier to provide IP-based carrier-to-carrier interconnection (directly or indirectly) within [five] years, regardless of the technology the carrier uses to provide services to its end users. During the transition period parties could continue to negotiate an agreement with a third party to fulfill its interconnection obligations. XO suggests that if a carrier chose to continue delivering traffic to the TDM POI, it would continue to pay higher intercarrier compensation rates while the IP termination rate would be set lower to incentivize carriers to deliver traffic in an IP format and therefore deploy IP networks to avoid the costs of converting from TDM to IP. After the proposed five-year transition, XO recommends that terminating carriers would be able to refuse to accept traffic via TDM interconnection where IP interconnection is available. The Commission notes that it has adopted a different approach to intercarrier compensation for VoIP traffic in the *USF/ICC Transformation Order* than that recommended by XO. What impact would that have on XO's IP-to-IP interconnection proposal? In addition, is a five-year transition period to IP interconnection sufficient? Should the Commission allow providers to refuse TDM traffic as XO proposes? Are there any potential negative consequences for having different pricing for TDM and IP interconnection?

377. The Commission also observes that many providers interconnect indirectly today, and some commenters anticipate that indirect interconnection will remain important in an IP environment, as well. If an IP-to-IP interconnection policy framework granted providers the right to direct IP-to-IP interconnection, would this reduce or eliminate providers' incentives to interconnect indirectly? Alternatively, if the policy framework gave providers flexibility to interconnect either directly or indirectly, would this result in demand for indirect IP-to-IP interconnection that gives some providers incentives to offer services that enable third parties to interconnect on an IP-to-IP basis?

(iii) Commercial Agreements Not Regulated by the Commission

378. The Commission also seeks comment on proposals to adopt a policy framework that would leave IP-to-IP interconnection largely unregulated by the Commission.

379. *Incentives Under Unregulated Commercial Agreements.* Has the Commission, through its actions in the *USF/ICC Transformation Order,* sufficiently eliminated disincentives to IP-to-IP interconnection arising from intercarrier compensation rules? Even if there were no disincentive arising from the intercarrier compensation rules, would some competitors seek to deny IP-to-IP interconnection on reasonable rates, terms, and conditions to raise their rivals' costs? Are there circumstances where a refusal to interconnect on an IP-to-IP basis would result in service disruptions?

380. *Specific Proposals for Unregulated Commercial Agreements.* Verizon contends that [t]he efficient way to allow IP interconnection arrangements to develop would be to follow * * * the tremendously successful example of the Internet, which relies upon voluntarily negotiated commercial agreements developed over time and fueled by providers' strong incentives to interconnect their networks. As AT&T argues, the interdependence of IP networks, along with the multiplicity of indirect paths into any broadband ISP's network—for the transmission of a VoIP call or any other type of IP application—deprive any such ISP of any conceivable terminating access 'monopoly' over traffic bound for its subscribers. Thus, commenters contend that the government should avoid prescribing the terms that will govern complex and evolving relationships among private sector actors. In other contexts, the Commission has recognized that a provider might not always voluntarily grant another provider access to its network on just and reasonable rates, terms, and conditions and that, in certain circumstances, some regulatory protections might be warranted. Is interconnection in this context distinguishable, and if so, how? If not, how could the Commission identify the circumstances where a less regulated (or unregulated) approach might be warranted from those where some regulation is needed?

(iv) Other Proposals and Related Issues

381. In addition to the specific proposals the Commission seeks comment on any alternative approaches that commenters would suggest. In addition to the policy merits of the approach, the Commission seeks comment on its legal authority to adopt the approach, and how that approach would be implemented, including any new rules or rule changes.

382. The Commission also observes that there is a growing problem of calls to rural customers that are being delayed or that fail to connect. The Commission seeks comment on whether any issues related to those concerns are affected by carriers' interconnection on an IP-to-IP basis, or to any interconnection policy framework the Commission might adopt in that context. Are there components of, or modifications to, any such framework that the Commission should consider in light of concerns about calls being delayed or failing to connect?

b. Statutory Interconnection Frameworks

383. The Commission anticipates that the Commission may need to take some steps to enable the efficient transition to IP-to-IP interconnection, and the Commission seeks comment on the contours of its statutory authority in this regard. Just as there are varied positions regarding the appropriate policy framework for IP-to-IP interconnection, so too are there varied positions on the application of various statutory provisions in this regard. The Commission therefore seeks comment on the appropriate interpretation of statutory interconnection requirements and other possible regulatory authority for the Commission to adopt a policy framework governing IP-to-IP interconnection. In addition, insofar as the Commission addresses IP-to-IP interconnection through a statutory framework historically applied to TDM

traffic, the Commission seeks comment on whether any resulting changes will be required to the application of those historical TDM interconnection requirements, either through rule changes or forbearance.

384. *Section 251.* The Commission agrees with commenters that nothing in the language of 47 U.S.C. 251 limits the applicability of a carrier's statutory interconnection obligations to circuit-switched voice traffic and that the language is in fact technology neutral. In addition, the Commission seeks comment on whether the provisions of 47 U.S.C. 251 interconnection are also service neutral, or do they vary with the particular services (*e.g.,* voice vs. data, telecommunications services vs. information services) being exchanged? If so, on what basis, and in what ways, do they vary? A number of commenters go on to contend that the Commission can regulate IP-to-IP interconnection pursuant to 47 U.S.C. 251 of the Act. If the Commission were to adopt IP-to-IP interconnection regulations under the 47 U.S.C. 251 framework, would those regulations serve as a default in the absence of a negotiated IP-to-IP interconnection agreement between parties? In addition to those overarching considerations regarding the application of 47 U.S.C. 251 generally, the Commission recognize that the scope of the interconnection requirements of 47 U.S.C. 251(a)(1) and 251(c)(2) are tied to factual circumstances or otherwise circumscribed in various ways, and the Commission seeks comment on the resulting implications in the context of IP-to-IP interconnection.

385. *Section 251(a)(1).* Section 251(a)(1) of the Act, 47 U.S.C. 251(a)(1), requires each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. The Commission previously has recognized that this provision gives carriers the right to interconnect for purposes of exchanging VoIP traffic. However, could a carrier satisfy its obligation under 47 U.S.C. 251(a)(1) by agreeing to interconnect directly or indirectly only in TDM, or could the Commission require IP-to-IP interconnection in some circumstances?

386. Section 251(a)(1), 47 U.S.C. 251(a)(1), does not expressly specify how a particular pair of interconnecting carriers will decide whether to interconnect directly or indirectly. How should the Commission interpret 47 U.S.C. 251(a)(1) in this regard? If the Commission were to require IP-to-IP interconnection under 47 U.S.C. 251(a)(1), would this effectively require direct interconnection in situations where there was no third party that could facilitate indirect IP-to-IP interconnection? Would this be consistent with the Commission's prior interpretation of 47 U.S.C. 251(a)(1) that telecommunications carriers should be permitted to provide interconnection pursuant to 47 U.S.C. 251(a) either directly or indirectly, based upon their most efficient technical and economic choices? Should the Commission interpret 47 U.S.C. 251(a)(1) to allow the carrier requesting interconnection to decide whether interconnection will be direct or indirect or should the Commission otherwise formally designate one of the carriers as entitled to insist upon direct (rather than indirect) interconnection? If so, which carrier should be entitled to make that choice, and how would such a framework be implemented?

387. In general, how would IP-to-IP interconnection be implemented under 47 U.S.C. 251(a)(1)? To what extent should the Commission specify *ex ante* rules governing the rates, terms, and conditions of IP-to-IP interconnection under 47 U.S.C. 251(a)(1), or could those issues be left to case-by-case evaluation in state arbitrations or disputes brought before the Commission? If the Commission did not address these issues through *ex ante* rules, what standards or guidelines would apply in resolving disputes?

388. *Section 251(c)(2).* Section 251(c)(2), 47 U.S.C. 251(c)(2), requires incumbent LECs to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network, subject to certain conditions and criteria. Such interconnection is for the transmission and routing of telephone exchange service and exchange access. Interconnection must be direct, and at any technically feasible point within the carrier's network that is at least equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection. Finally, incumbent LECs must provide interconnection under 47 U.S.C. 251(c)(2) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. The Commission seeks comment on whether the Commission should set a policy framework for IP-to-IP interconnection under 47 U.S.C. 251(c)(2), including on the specific issues.

389. The Commission seeks comment on the scope of an incumbent local exchange carrier for purposes of 47 U.S.C. 251(c)(2). The Commission has recognized that an entity that meets the definition of incumbent local exchange carrier in 47 U.S.C. 251(h) is treated as an incumbent LEC for purposes of the obligations imposed by 47 U.S.C. 251 even if it also provides services other than pure telephone exchange service and exchange access. Thus, under the statute, an incumbent LEC retains its status as an incumbent LEC as long as it remains a local exchange carrier.

390. To the extent that, at some point in the future, an entity that historically was classified as an incumbent LEC ceased offering circuit-switched voice telephone service, and instead offered only VoIP service, the Commission seeks comment on whether that entity would remain a local exchange carrier (to the extent that it did not otherwise offer services that were telephone exchange service or exchange access). The Commission notes that the Commission has not broadly determined whether VoIP services are telecommunications services or information services, or whether such VoIP services constitute telephone exchange service or exchange access. To what extent would the Commission need to classify VoIP services as telecommunications services or information services to resolve whether the provider remained a LEC? Under the reasoning of prior Commission decisions, the Commission does not believe that a retail service must be classified as a telecommunications service for the provider carrying that traffic (whether the provider of the retail service or a third party) to be offering telephone exchange service or exchange access. With specific respect to VoIP, the Commission notes that some providers contend that the classification of their retail VoIP service is irrelevant to determining whether telephone exchange service and/or exchange access is being provided as an input to that service. The Commission seeks comment on these issues.

391. In addition, the record reveals that today, some incumbent LECs are offering IP services through affiliates. Some commenters contend that incumbent LECs are doing so simply in an effort to evade the application of incumbent LEC-specific legal requirements on those facilities and services, and the Commission would be concerned if that were the case. The Commission notes that the DC Circuit has held that the Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services. In reaching that conclusion, the court relied on the fact that the affiliate at issue was providing services with

equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent. That holding remains applicable here, but the Commission also seeks comment more broadly on when an affiliate should be treated as an incumbent LEC under circumstances beyond those squarely addressed in that decision. What factors or considerations should be weighed in making that evaluation? Alternatively, to what extent would those same, or similar, considerations be necessary to a finding that the affiliate is a successor or assign of the incumbent LEC within the meaning of 47 U.S.C. 251(h)(1)? Could the affiliate be a successor or assign if it satisfies only a subset of those considerations or different considerations? As another alternative, even if an affiliate is not a successor or assign of the incumbent LEC under 47 U.S.C. 251(h)(1), would the Commission nevertheless be warranted to treat it as an incumbent LEC under 47 U.S.C. 251(h)(2)? To treat the affiliate as an incumbent LEC would require finding that it is a LEC, potentially implicating many of the same issues raised regarding the classification of a retail VoIP provider or its carrier partner as a LEC. Would such affiliates be classified as LECs or based on other factors? If an affiliate is treated as an incumbent LEC in its own right under 47 U.S.C. 251(h)(1) or (h)(2), what are the implications for how 47 U.S.C. 251(c) applies? For example, if a requesting carrier were entitled to IP-to-IP interconnection with that affiliate under 47 U.S.C. 251(c)(2), could it use that interconnection arrangement to exchange traffic only with the customers of the affiliate, or could it use that arrangement to exchange traffic with the original incumbent LEC?

392. Section 251(c)(2)(A), 47 U.S.C. 251(c)(2)(A), requires that interconnection obtained under 251(c)(2) be for the transmission and routing of telephone exchange service and exchange access. The Commission seeks comment on whether traffic exchanged via IP-to-IP interconnection would meet those criteria. The Commission notes in this regard that some providers of facilities-based retail VoIP services state that they are providing those services on a common carrier basis, and expect that those services would include the provision of telephone exchange service and/or exchange access to the same extent as comparable services provided using TDM or other transmission protocols. Other providers of retail VoIP services assert that, regardless of the classification of the retail VoIP service, their carrier partners are providing telephone exchange service and/or exchange access. Although the record reveals that these carriers typically provide these services at least in part in TDM today, the Commission does not believe that their regulatory status should change if they simply performed the same or comparable functions using a different protocol, such as IP. The Commission seeks comment on these views, as well as on the need to address this question given its holdings that carriers that otherwise have 47 U.S.C. 251(c)(2) interconnection arrangements for the exchange of telephone exchange service and/or exchange access traffic are free to use those arrangements to exchange other traffic—including toll traffic and/or information services traffic—with the incumbent LEC, as well.

393. In the *Local Competition First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket Nos. 96–98, 95–185, First Report and Order, 61 FR 45476, August 29, 1996 (*Local Competition First Report and Order*), the Commission held that an IXC that requests interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others is not entitled to interconnection under the language of 47 U.S.C. 251(c)(2)(A) because the IXC is not seeking interconnection for the purpose of providing telephone exchange service, nor is it offering access, but rather is only obtaining access for its own traffic. By contrast, some commenters assert that, in applying 47 U.S.C. 251(c)(2)(A), it is sufficient for the incumbent LEC to be providing telephone exchange service or exchange access, regardless of whether the requesting carrier is doing so. The Commission seeks comment on this view. Under this interpretation, are there any circumstances when a requesting carrier would not be entitled to interconnection under 47 U.S.C. 251(c)(2) because the incumbent LEC is not providing telephone exchange service or exchange access? For example, might Congress have anticipated that incumbent LECs eventually would offer interexchange services on an integrated basis? To what extent was the Commission's prior interpretation of the *Local Competition First Report and Order* motivated by commenters' concerns that an alternative outcome would permit IXCs to evade the pre-1996 Act exchange access rules, including the payment of access charges, which were preserved under 47 U.S.C. 251(g)? Would those concerns be mitigated insofar as the Commission is superseding the pre-existing access charge regime in the *USF/ICC Transformation Order*? Are there other reasons why the new interpretation of 47 U.S.C. 251(c)(2)(A) is warranted?

394. Section 251(c)(2)(B), 47 U.S.C. 251(c)(2)(B), requires interconnection at any technically feasible point within the carrier's network. The Commission observes that IP-to-IP interconnection arrangements exist in the marketplace today, and seeks comment on whether they demonstrate that IP-to-IP interconnection is technically feasible at particular points within a carrier's network. To what extent does the requirement that incumbent LECs modify their facilities to the extent necessary to accommodate interconnection or access to network elements inform the evaluation whether IP-to-IP interconnection is technically feasible at particular points in the network?

395. Section 251(c)(2)(C), 47 U.S.C. 251(c)(2)(C), requires that the interconnection provided by an incumbent LEC be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection. To what extent are incumbent LECs interconnecting on an IP-to-IP basis with a subsidiary, affiliate, or any other party today, and at what quality? The Commission previously has interpreted this language to require incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks. Consistent with this interpretation, to what extent must an incumbent LEC be using IP transmission in its own network before it could be required to provide IP-to-IP interconnection pursuant to this language, and to what extent is that occurring today? If the incumbent LEC is not otherwise interconnecting on an IP-to-IP basis with a subsidiary, affiliate, or any other party, could the Commission require it to provide IP-to-IP interconnection as long as the other criteria of 47 U.S.C. 251(c)(2) are met? Should such interconnection be understood to be equal in quality to what the incumbent LEC provides others—albeit in a different protocol—or should it be understood to be requiring a superior network?

396. Section 251(c)(2)(D), 47 U.S.C. 251(c)(2)(D), requires that incumbent LECs provide interconnection on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. In the *Local Competition First Report and Order,* the Commission found that minimum national standards for just, reasonable, and nondiscriminatory terms and conditions of interconnection will be in the public interest and will provide guidance to the parties and the states in the arbitration process and thereafter. If the Commission concludes that IP-to-IP interconnection is required under 47 U.S.C. 251(c)(2), should it follow a similar approach and adopt minimum national standards? If so, what should those standards be? If not, what standards would be used to resolve arbitrations regarding the implementation of 47 U.S.C. 251(c)(2)?

397. *Sections 201 and 332.* Historically, the Commission has imposed interconnection obligations pursuant to 47 U.S.C. 201. Section 201, 47 U.S.C. 201, applies to interstate services, as well as to interconnection involving CMRS providers under 47 U.S.C. 332(c)(1)(B). Do sections 201 (and 332 in the case of CMRS providers), 47 U.S.C. 201, 332, provide the Commission authority to mandate IP-to-IP interconnection, including for intrastate traffic either alone, or in conjunction with other provisions of the Act and the Clayton Act? If so, what standards or requirements would be appropriate, and how would those obligations be implemented? How should any IP-to-IP interconnection requirements regarding the exchange of access traffic be reconciled with the historical regulatory framework governing the exchange of such traffic with LECs, as well as with the Commission's action in the accompanying *USF/ICC Transformation Order* to supersede the preexisting access charge regime and adopt a transition to a new regulatory framework for intercarrier compensation for access traffic?

398. *Section 706 of the 1996 Act.* Some commenters suggest that section 706, 47 U.S.C. 1302, would provide the Commission authority to regulate IP-to-IP interconnection. The Commission seeks comment on the relationship between the Commission's statutory mandate in section 706, 47 U.S.C. 1302, and regulation of IP-to-IP interconnection. If section 706, 47 U.S.C. 1302, provides Commission authority to regulate IP-to-IP interconnection, what standards or requirements would be appropriate, and how would those obligations be implemented? If the Commission were to rely on section 706 of the 1996 Act, 47 U.S.C. 1302, to require IP-to-IP interconnection, would it also need to adopt associated complaint procedures, or could the existing informal and formal complaint processes, which derive from 47 U.S.C. 208, nonetheless be interpreted to extend more broadly than alleged violations of Title II duties?

399. *Section 256.* There also is some record support for imposing IP-to-IP interconnection requirements under section 256 of the Act, 47 U.S.C. 256. Section 256(a)(2), 47 U.S.C. 256(a)(2), says that the purpose of the section is to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks. Do commenters agree that 47 U.S.C. 256 authorizes Commission regulation of IP-to-IP interconnection? In particular, to what extent could 47 U.S.C. 256 provide a source of authority for such regulation given the statement in 47 U.S.C. 256(c) that nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before February 8, 1996? Even if it is not a direct source of authority in that regard, should it inform the Commission's interpretation and application of other statutory provisions to require IP-to-IP interconnection?

400. *Title I Authority over IP-to-IP Interconnection.* Does the Commission have ancillary authority to regulate IP-to-IP interconnection? For example, Sprint notes that the Commission has subject matter jurisdiction over traffic such as packetized voice traffic, and asserts that regulation of IP-to-IP interconnection is reasonably ancillary to the Commission's authority under the Act. Sprint also asserts that its IP-to-IP interconnection proposals for the exchange of packetized voice traffic are incidental to, and would affirmatively promote, specifically delegated powers under 47 U.S.C. 251–52 regarding network interconnection, intercarrier compensation, and dispute resolution. Sprint further argues that its proposed rules would advance other statutory policies regarding the promotion of competition, and the promotion of communications services, including advanced telecommunications services and the Internet, among other things. Thus, Sprint contends that even if packetized voice services are . . . classified as information services, the Commission still possesses the authority to adopt these rule proposals under its Title I ancillary authority. The Commission seeks comment on Sprint's analysis and other evaluations of whether the Commission has ancillary authority to regulate IP-to-IP interconnection in particular ways.

401. *Other Sources of Authority.* The Commission also seeks comment on any other sources of Commission authority for adopting a policy framework for IP-to-IP interconnection. What is the scope and substance of the Commission's authority to address IP-to-IP interconnection under that authority?

Q. Further Call Signaling Rules for VoIP

402. In the *USF/ICC Transformation Order* accompanying this FNPRM, the Commission adopts revised call signaling rules to address intercarrier compensation arbitrage practices that led to unbillable or phantom traffic. These rules apply to providers of interconnected VoIP service as that term is defined in the Commission's rules. The Commission also adopts a framework of intercarrier compensation obligations that applies to all VoIP–PSTN traffic, which is defined as traffic exchanged over PSTN facilities that originates and/or terminates in IP format and includes voice traffic from interconnected VoIP service providers as well as providers of one-way VoIP service that allow end users to place calls to, or receive calls from the PSTN, but not both (referred to herein as one-way VoIP service).

403. The Commission recognizes that the scope of the intercarrier compensation obligations for VoIP providers adopted in the *USF/ICC Transformation Order* is broader than the definition of interconnected VoIP in its rules to which the call signaling obligations will apply. And, as with any instance where similar entities are treated differently under its rules, the Commission is concerned about creating additional arbitrage opportunities. But, the Commission also recognizes that there may be technical difficulties associated with applying its revised call signaling rules to one-way VoIP service providers. The *August 3 Public Notice* sought comment on the application of call signaling rules to one-way VoIP service providers. There was relatively little comment on this issue, with some commenters suggesting that the Commission should not delay adoption of other intercarrier compensation reforms pending resolution of this issue. Now that the rules applicable to VoIP service providers adopted in the *USF/ICC Transformation Order* provide additional context, the Commission seeks comment again on the need for signaling rules for one-way VoIP service providers.

404. If call signaling rules apply to one-way VoIP service providers, how

could these requirements be implemented? Would one-way VoIP service providers have to obtain and use numbering resources? If call signaling rules were to apply signaling obligations to one-way VoIP service providers, at what point in a call path should the required signaling originate, *i.e.* at the gateway or elsewhere? Are there alternative approaches for how signaling rules could operate for originating callers that do not have a telephone number? In addition, would signaling rules be needed for all one-way VoIP service providers? Or, given the terminating carrier's need for the information provided under the Commission's signaling rules, is it sufficient to focus only on providers of one-way VoIP service services that allow users to terminate voice calls to the PSTN (but not those that only allow users to receive calls from the PSTN)?

405. If one-way VoIP service providers were permitted to use a number other than an actual North American Numbering Plan (NANP) telephone number associated with an originating caller in required signaling, would such use lead to unintended or undesirable consequences? If so, should other types of carriers or entities also be entitled to use alternate numbering? Would there need to be numbering resources specifically assigned in the context of one-way VoIP services? Are there other signaling issues that the Commission should consider with regard to one-way VoIP calls?

R. New Intercarrier Compensation Rules

406. Finally, the Commission seeks comment on whether the new rules adopted in the *USF/ICC Transformation Order* may result in any conflicts or inconsistencies. This could include conflicts or inconsistencies within the newly adopted rules or conflicts or inconsistencies between the new rules and the Commission's existing rules. If commenters believe conflicts or inconsistencies are present, the Commission asks that they identify the specific rule or rules that may be affected, explain the perceived conflict or inconsistency, and proposes language to address the conflict or inconsistency. Also, the Commission seeks comment on whether the new and revised rules it adopts reflect all of the modifications to the intercarrier compensation regimes made in the *USF/ICC Transformation Order.* If not, the Commission asks that parties identify in their comments the potential problem areas and proposes specific language to address the possible oversight.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

407. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

B. Need for, and Objectives of, the Proposed Rules

408. The FNPRM seeks comment on a variety of issues relating to comprehensive reform of universal service and intercarrier compensation. As discussed in the *USF–ICC Transformation Order* accompanying the FNPRM, the Commission believes that such reform will eliminate waste and inefficiency while modernizing and reorienting these programs on a fiscally responsible path to extending the benefits of broadband throughout America. Bringing robust, affordable broadband to all Americans is the infrastructure challenge of the 21st century. To allow the Commission to help meet this challenge, the FNPRM asks for comment in a number of specific areas.

i. Universal Service

409. First, for providers receiving Connect America Fund (CAF) support, the FNPRM seeks further comment on what public interest obligations should apply to the receipt of these funds. How should broadband service be measured, and how should ''reasonable comparability'' be determined for fixed and mobile voice and broadband services.

410. The FNPRM also seeks comment on several proposed additional requirements, including whether the Commission should require CAF recipients to offer IP-to-IP interconnection for voice service, beyond whatever framework it adopts more broadly, whether CAF recipients be required to make interconnection points and backhaul capacity available so that unserved high-cost communities could deploy their own broadband networks, and whether the Commission should create a fund for a Technology Opportunities Program in order to assist communities with deploying their own broadband networks.

411. In the *USF–ICC Transformation Order,* the Commission concludes that high-cost support received by incumbent rate-of-return carriers should be phased out over five years in study areas where an unsubsidized facilities-based provider offers voice and broadband services meeting the specified public interest obligations. The FNPRM seeks comment on the specific methodology that should be used to identify those areas, including the appropriateness of the preliminary analysis staff performed.

412. The Commission also begins a represcription of the authorized interstate rate of return, and the FNPRM asks parties to identify what data the Commission should collect to complete the represcription, the current applicability of the formulas contained in the Commission's rules for performing necessary calculations, as well as whether the remaining Regional Bell Operating Companies (RBOCs) or some other group of carriers should be used as a surrogate for incumbent local exchange carriers (ILECs) that do not issue stock or borrow money solely to support interstate services.

413. In the *USF–ICC Transformation Order,* the Commission adopts a rule to use benchmarks for reasonable costs to impose limits on reimbursable capital and operating costs for high-cost loop support received by rate-of-return companies, and concludes that it should also impose limits on reimbursable capital and operating costs for interstate common line support received by rate-of-return companies. In the FNPRM, the Commission seeks comments on a specific methodology for calculating individual company caps for HCLS set forth in Appendix H, and seeks comment on how specifically to implement such a limit for ICLS.

414. In response to the *USF/ICC Transformation NPRM,* 76 FR 11632, March 2, 2011, several associations representing rural ILECs (Rural Associations) proposed the creation of a new broadband-focused CAF mechanism that ultimately would entirely replace existing support mechanisms for rate-of-return carriers. Subsequently, the Rural Associations provided draft rules that provide additional context regarding the operation of their proposed CAF. In the FNPRM, the Commission seeks comment on this proposal and ask whether and how it could be modified consistent with the framework adopted

in the *USF–ICC Transformation Order* to provide a path forward for rate-of-return or carriers to invest in extending broadband to unserved areas.

415. In the FNPRM, the Commission proposes that a recipient of high-cost and CAF support should be required to post financial security as a condition to receiving support to ensure that it has committed sufficient financial resources to complying with its public interest obligations under the Commission's rules. For example, should an irrevocable standby letter of credit be required, and if so, for what amount? Further, the FNPRM seeks comment on what penalties might be appropriate for failure to meet build-out requirements, service quality standards, or failure to provide information to verify continuing eligibility to receive support.

416. The CAF will target funding to areas where federal support is needed to maintain and expand modern networks capable of delivering broadband and voice services. In the FNPRM, aiming to ensure that obligations and funding are appropriately matched while avoiding consumer disruption in access to communications services, the Commission seeks comment on what Commission action may be appropriate to adjust existing service obligations for eligible telecommunications carriers (ETCs) as funding shifts to new, more targeted support mechanisms.

417. The FNPRM describes the Phase II of the Mobility Fund, which will provide ongoing support for mobile broadband and high quality voice-grade services. The Commission seeks comment on the overall design for this phase of the Mobility Fund, including the use of reverse auctions, or the possible use of a model. Funding in the second phase of the Mobility Fund is intended for geographic areas where there is no private sector business case to provide mobile broadband and high quality voice-grade services. Comment is sought on how best to: (1) Identify these areas; (2) establish bidding and coverage units; (3) maximize consumer benefits; (4) establish the term of support; (5) identify provider eligibility requirements; and (6) set public interest obligations.

418. The FNPRM next proposes general auction rules for Phase II of the Mobility Fund to govern the initial auction process, including options for basic auction design, application procedures, permissible communications and public disclosure of auction-related information, auction defaults, and auction suspension or cancellation. The FNPRM reaffirms the Commission's commitment to address Tribal needs and seeks comment on how ongoing universal service support for mobile advanced services could be tailored to meet the needs in Tribal lands. The Commission seeks comment on the adoption for Mobility Fund Phase II of two bidding mechanisms intended to promote greater service on Tribal lands: a bidding credit for Tribally-owned or controlled entities and a mechanism that would allocate a specified number of ''priority units'' to particular unserved geographic areas within Tribal lands that would reduce the per-unit amount of bids covering those unserved areas. The Commission also seeks comment on the adoption of a small business bidding preference and the small business definition that should apply if it adopts such a bidding preference. In addition, comment is sought on accountability and oversight rules applicable to the second phase of the Mobility Fund. Finally, the FNPRM seeks comment on the use of an economic model to determine support for mobile wireless providers rather than competitive bidding, including possible model design and potential changes to the proposed framework for mobility support that could be necessary if support is determined using a model.

419. In the *USF–ICC Transformation Order,* the Commission adopts a framework for USF support in areas served by price cap carriers where support will be determined using a combination of a forward-looking broadband cost model and competitive bidding. The FNPRM addresses proposals for this competitive bidding process, where applicable. Comment is sought on: (1) The use of a forward looking engineering cost model to identify areas eligible for competitive bidding; (2) establishing bidding and coverage units; (3) maximizing consumer benefits; (4) establishing the term of support; (5) identifying provider eligibility requirements; and (6) setting public interest obligations.

420. The FNPRM next proposes general auction rules governing the auction process, including options for basic auction design, application procedures, permissible communications and public disclosure of auction-related information, auction defaults, and auction suspension or cancellation. The FNPRM also seeks comment on whether to establish special provisions to help ensure service in Tribal lands. The FNPRM seeks comment on the adoption for the competitive bidding process of a bidding credit for Tribally-owned or controlled entities and a Tribal priority units mechanism along the same lines proposed for Phase II of the Tribal Mobility Fund. The Commission also seeks comment on the adoption of a small business bidding preference and the small business definition that should apply if it adopts such a bidding preference. In addition, comment is sought on accountability and oversight rules that would apply to recipients of CAF support awarded through a competitive bidding process.

421. In establishing a new Remote Areas Fund (RAF), the budget of which will be at least $100 million, the *USF–ICC Transformation Order* addresses the Commission's commitment to ensure that the less than one percent of Americans living in areas where the cost of deploying traditional terrestrial broadband networks is extremely high can obtain affordable broadband through other technology platforms. The FNPRM seeks comment on how RAF support should be provided and how the program should be implemented. Comment is sought on how to: (1) Identify geographic areas eligible for support; (2) establish bidding and coverage units; (3) maximize consumer benefits; (4) establish the term of support; (5) identify provider eligibility requirements; and (6) set public interest requirements. In addition, the FNPRM seeks comment on how best to structure the RAF general implementation issues, provider qualifications, and public interest obligations, such as service performance criteria and pricing. The FNPRM also seeks comment on related matters like portable consumer subsidy issues and service terms and conditions. In addition, the FNPRM requests comment on several auction approaches to target CAF funding in extremely high cost areas and general auction rules for an auction process, including options for basic auction design and for the auction and post-auction processes, as well as eligibility, accountability, and oversight issues. The FNPRM also seeks comment on the adoption of a bidding preference for small businesses if competitive bidding is used to provide support from the RAF and the size of any small business bidding credit should the Commission adopt one. The Commission seeks comment on the small business definition that should apply if it adopts such a small business preference for remote area support auctions.

ii. Intercarrier Compensation

422. The *USF–ICC Transformation Order* adopts a bill-and-keep methodology as the default end state for all intercarrier compensation traffic. Although it specifies the transition for certain terminating access rates and caps all interstate and most intrastate

charges, it does adopt a transition to a bill-and-keep methodology for all ICC rates, including originating switched access, and certain transport rate elements. The FNPRM seeks comment on the appropriate transition to bill-and-keep for those rate elements not reduced in the *USF–ICC Transformation Order,* and asks what recovery, if any, should be provided. The FNPRM also asks whether Commission action is necessary to address concerns that have been raised regarding transit services, and are other charges implicated by the transition to bill-and-keep?

423. The FNPRM seeks comment on any interconnection and related issues that must be addressed to implement bill-and-keep in an efficient and equitable manner. Specifically, comment is sought on points of interconnection, how they are established, what if anything, the Commission should do going forward, and the continued relevance of points of interconnection in a bill-and-keep regime. Likewise, comment is sought on defining the ''network edge,'' the point where bill-and-keep applies and the point to which a provider is responsible for delivering its traffic to another provider. Comment is also sought on the role of tariffs and interconnection agreements for structuring intercarrier relationships moving forward, including the feasibility of extending our interconnection rules to all telecommunications carriers, including competitive LECs and IXCs, and asks questions about commenters' concerns about potential arbitrage that might occur under a bill-and-keep methodology.

424. The FNPRM also seeks comment on the recovery mechanism adopted in the *USF–ICC Transformation Order,* as well as the pre-existing rules regarding subscriber line charges (SLCs). With respect to the recovery adopted in the *USF–ICC Transformation Order,* comment is sought about the elimination of the access replacement charge (ARC) at a date certain and, if so, when. The FNPRM also asks about modifying the baseline for recovery for rate-of-return carriers by, for example, increasing the percentage of reduction each year and also alternative approaches to the use of true-ups in calculating recovery for rate-of-return carriers. And, the FNPRM asks if ICC CAF support for rate-of-return carriers should be subject to a defined phase-out? In addition, parties are asked to comment on existing SLCs, which are not addressed here. In particular, the FNPRM asks about the appropriate cap for these charges, the long-term role, if any, for SLCs as carriers move to IP networks, and what, if anything, the Commission should do about how carriers advertise SLCs and ARCs.

425. The FNPRM seeks comment on a number of issues regarding IP-to-IP interconnection in light of the Commission's goal of facilitating industry progression to all-IP networks. In particular, the FNPRM seeks comments on implementation of the *USF–ICC Transformation Order*'s statement that the Commission expects that all carriers will negotiate in good faith for IP-to-IP interconnection arrangements for the exchange of voice traffic, as well as associated implementation and enforcement. The FNPRM seeks comment on the appropriate statutory authority for our expectation of good faith negotiations, and other possible regulatory authority for the Commission to adopt a policy framework governing IP-to-IP interconnection. In addition, if the Commission addresses IP-to-IP interconnection through a statutory framework historically applied to TDM traffic, the FNPRM seeks comment on whether any resulting changes will be required to the application of those historical TDM interconnection requirements, either through rule changes or forbearance.

426. Comment is also sought on the scope of the traffic exchange that should be encompassed by any IP-to-IP interconnection policy framework to avoid intervention in areas where the market will operate efficiently. The FNPRM seeks comment on the appropriate role for the Commission regarding IP-to-IP interconnection and seeks specific comment on certain proposed policy frameworks, including the policy merits of each approach, and associated implementation issues, including any forbearance from statutory requirements that would be needed to implement the particular framework for IP-to-IP interconnection.

427. The FNPRM asks whether call signaling rules are needed for one-way VoIP providers, and if so, what they should be and how they should apply. And finally, parties are asked to comment on any conflicts or inconsistencies they believe are present as a result of the new rules adopted in the *USF–ICC Transformation Order,* either conflicts or inconsistencies within the new rules or between the new rules and existing Commission rules.

C. Legal Basis

428. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i), 201–205, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 706, and sections 1.1 and 1.1421 of the Commission's rules, 47 CFR §§ 1.1, 1.421.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

429. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

430. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

431. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

432. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that

may be affected by the rules and policies proposed in the FNPRM.

433. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the FNPRM.

434. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

435. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

436. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

437. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

438. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

439. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the FNPRM.

440. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the FNPRM.

441. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The

Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, it estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

442. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

443. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

444. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

445. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35875, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

446. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* 64 FR 33762, June 24, 1999, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the

majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

447. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the FNPRM.

448. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

449. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

450. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

451. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

452. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately

440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

453. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

454. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

455. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order,* 72 FR 48814, August 24, 2007. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

456. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

457. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* 65 FR 17594, April 4, 2000, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight

of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

458. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

459. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

460. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

461. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, The Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

462. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the FNPRM.

463. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the FNPRM.

464. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

465. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for Cellular and Other Wireless Telecommunications services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

466. *39 GHz Service.* The Commission created a special small business size

standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the FNPRM.

467. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

468. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

469. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

470. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

471. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

472. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

473. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

474. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

475. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other

establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the FNPRM.

476. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by our action.

477. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the FNPRM.

478. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the FNPRM.

479. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

480. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Notice. In addition, the Commission notes that it has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

481. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

482. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

483. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the FNPRM.

484. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by our action.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

485. In this FNPRM, the Commission seeks public comment on additional steps to complete its comprehensive universal service and intercarrier compensation reform. The transition to complete the reform of the universal service programs and new intercarrier compensation rules could affect all carriers, including small entities, and may include new administrative processes. In proposing these reforms, the Commission seeks comment on various reporting, recordkeeping, and other compliance requirements that may apply to all carriers, including small entities. The Commission seeks comment on any costs and burdens on small entities associated with the proposed ruled, including data quantifying the extent of those costs or burdens.

1. Universal Service

486. In the Order, the Commission adopts a rule requiring that actual speed and latency be measured on each ETCs access network from the end-user interface to the nearest Internet access point, as well as a rule that requires ETCs to certify to and report the results to USAC on an annual basis. In this FNPRM, the Commission seeks comment on whether the Commission should adopt a specific measurement methodology beyond what is described in the Order and the format in which ETCs should report their results. Specifically, the Commission seeks comment on whether it should specify a uniform reporting format, such as a format that can be produced to the Universal Service Administrative Company (''USAC'') and auditable such that USAC or the state commissions may confirm that a provider is, in fact, providing broadband at the required minimum speeds. The Commission also seeks comment on whether providers should be required to provide the underlying raw measurement data to USAC and, if so, whether there are legitimate concerns with the confidentiality of such data. In the alternative, the Commission seeks comment on whether it would be sufficient to have a provider certify to USAC that its network is satisfying the minimum broadband metrics and retain the results of its own performance measurement to be produced on request in the course of possible future audits.

487. In the Order, the Commission also directs the Wireline Competition Bureau and Wireless Telecommunications Bureau to develop and conduct a survey of voice and broadband rates in order to compare urban and rural voice and broadband rates. In this FNPRM, the Commission seeks comment on the components of the survey.

488. In this FNPRM, the Commission seeks comment on the Rural Association's proposed creation of a new broadband-focused CAF mechanism that ultimately would entirely replace existing support mechanisms for rate-of-return carriers. The Commission seeks comment on what information it would need to require from carriers in order to evaluate and implement this proposal.

489. Under the Order, rate-of-return carriers will continue to receive for some time a modified version of their legacy universal service support. In this FNPRM, the Commission seeks comment on the appropriate data and methodologies the Commission should use to calculate the weighted average cost of capital used to identify the rate-of-return required to maintain the current value of a firm.

490. The Commission proposes to apply to recipients of Mobility Fund Phase II support, CAF support, and Remote Areas Fund support the same rules for accountability and oversight. Thus recipients of USF support through any of these funding mechanisms would be required to meet the same reporting, audit, and record retention requirements. Because of differences between Mobility Fund support and other USF high cost support mechanisms, the Commission proposes that Mobility Fund Phase II support recipients include the same additional information in their annual reports as Mobility Fund Phase I support recipients. This information includes maps with service area and population information, linear road mile coverage, and drive test data, as well as updated project information. To minimize waste, fraud, and abuse, the Commission proposes to require individuals who are eligible for CAF support for remote areas to certify that they are eligible and

periodically verify their continued eligibility.

491. Where the Commission uses competitive bidding to award Mobility Fund II support, support in areas where the price cap ETC declines to make a state-level commitment, or support for remote areas, the Commission proposes to use a two-stage application process, including ownership disclosure requirements, similar to that used in spectrum auctions and adopted for Mobility Fund Phase I.

492. The Commission also seeks comment in the FNPRM on whether there are specific requirements in the existing annual reporting rule for ETCs that should be modified to reflect basic differences in the nature and purpose of the support provided for mobile services. The Commission further seeks comment on any other aspects of its annual reporting requirements that should be modified to better reflect the nature of mobile services being offered and the objectives of the USF support provided for them.

2. Intercarrier Compensation

493. In the FNPRM, the Commission seeks comment and data on issues that must be addressed to complete its comprehensive reform of the intercarrier compensation system. These issues include the appropriate path or transition to modernize the existing rules as needed to bring all intercarrier compensation to the ultimate end point of bill-and-keep, if and how carriers should be allowed to recover revenues that might be reduced by any additional intercarrier compensation reforms, and data to analyze the effects of proposed reforms and need for revenue recovery.

494. Compliance with a transition to a new system for all intercarrier compensation may impact some small entities and may include new or reduced administrative processes. For carriers that may be affected, obligations may include certain reporting and recordkeeping requirements to determine and establish their eligibility to receive recovery from other sources as intercarrier compensation rates are reduced. Additionally, these carriers may need to modify some administrative processes relating to the billing and collection of intercarrier compensation to comply with any new or revised rules the Commission adopts as a result of the FNPRM.

495. Modifications to the rules to address potential arbitrage opportunities or additional call signaling rules for VoIP traffic also will affect certain carriers, potentially including small entities. To the extent that the Commission further modifies the rules adopted in the Order as a result of the FNPRM, providers might be required to modify or adopt administrative, recordkeeping, or other processes to implement those changes. Moreover, the FNPRM considers possible rule modifications to require IP-to-IP interconnection, which may require service providers to modify some administrative processes. Further, possible rule modifications to address potential arbitrage, if adopted, may affect certain carriers. For example, carriers that engage in such arbitrage may be subject to revised tariff filing or other requirements. However, these impacts are mitigated by the certainty and reduced litigation that should occur as a result of the reforms adopted, including arbitrage loopholes that the Commission has closed in the Order.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

496. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

497. The FNPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the FNPRM.

498. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. The reporting, recordkeeping, and other compliance requirements in the FNPRM could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of Section 254 of the Act are met without waste, fraud, or abuse.

499. In the FNPRM, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Specifically, the FNPRM seeks comment on whether small businesses should be eligible for a bidding preference if competitive bidding is used to provide Mobility Fund Phase II support, support in areas where the price cap ETC declines to make a state-level commitment, or support for remote areas. Entities seeking the small business bidding preference would be required to provide information about their gross revenues. The Commission believes that the benefits to small businesses of a bidding preference, if adopted, would significantly outweigh the burden of any additional information disclosure requirements. In addition, the Commission seeks comment on the data it will need to complete its represcription of the authorized interstate rate of return. Although data is requested from the industry generally, small carriers may be differently affected by the ultimate prescription of a new rate of return.

500. The FNPRM seeks comment on several issues relating to bill-and-keep implementation, including how points of interconnection obligations will function for rural and non-incumbent LECs, definition of the network edge, and the future role of tariffs and interconnection agreements, The Commission also seeks comment on the appropriate sequence and timing of intercarrier rate reductions for those rate elements not covered by its Order adopting of bill-and-keep as the ultimate end-point for reform, particularly for originating switched access, dedicated transport, tandem switching and tandem transport in some circumstances. The Commission seeks comment on the potential impact to small entities of reduced intercarrier rates for these additional rate elements, including whether a different transition period might be appropriate for particular classes of carriers.

501. The FNPRM also seeks comment on how recovery of reduced intercarrier compensation revenues in the future would impact carriers, and how recovery, if any, for those reduced revenues should be addressed. The Commission asks if the recovery approach adopted should be different depending on the type of carrier or regulation. The Commission also invites comment on specific recovery considerations for rate-of-return carriers and whether any cost or revenue recovery mechanism could provide rate-of-return carriers with greater incentives for efficient operation.

502. Finally, the Commission seeks comment on whether separate consideration for small entities is necessary or appropriate for each of the following issues discussed in the FNPRM: the potential impact of additional call signaling rules governing VoIP traffic; the potential impact of rules relating to potential future arbitrage, including revised tariff-filing requirements; and the potential impact of rules relating to IP-to-IP interconnection and related issues. Specifically with regard to the IP-to-IP interconnection, the FNPRM seeks comment on the scope of traffic exchange that should be included, responsibility for costs of IP-to-TDM conversions, and the statutory framework and appropriate scope of any IP-to-IP interconnection obligation.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

503. None.

H. Paperwork Reduction Act Analysis

504. The FNPRM contains proposed new information collection requirements. The new requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act (PRA). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

I. Filing Requirements

505. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments. Comments on the matters synopsized in paragraphs 1–303 of the Supplementary Information and proposed 47 CFR part 54, subparts L, M, and N are due on or before January 18, 2012 and reply comments on the matters synopsized in paragraphs 1–303 of the Supplementary Information and proposed 47 CFR part 54, subparts L, M, and N are due on or before February 17, 2012. Comments on the matters synopsized in paragraphs 304–406 of the **SUPPLEMENTARY INFORMATION** are due on or before February 24, 2012 and reply comments on the matters synopsized in paragraphs 304–406 of the Supplementary Information are due on or before March 30, 2012. All filings should refer to CC Docket No. 01–92, WC Docket Nos. 10–90, 07–135, and 05–337 and GN Docket No. 09–51, and WT Docket No. 10–208. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

List of Subjects in 47 CFR Part 54

Communications Common Carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Revise subpart L to part 54 to read as follows:

Subpart L—Mobility Fund

Sec.

54.1011 Mobility Fund—Phase II.
54.1012 Geographic areas eligible for support.
54.1013 Provider eligibility.
54.1014 Service to Tribal Lands.
54.1015 Application process.
54.1016 Public interest obligations.
54.1017 Letter of credit.
54.1018 Mobility Fund Phase II Disbursements.
54.1019 Annual reports.
54.1020 Record retention for Mobility Fund Phase II.

Subpart L—Mobility Fund

§ 54.1011 Mobility Fund—Phase II.

The Commission will use competitive bidding, as provided in part 1, subpart AA, of this chapter, to determine the recipients of support available through Phase II of the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.1012 Geographic areas eligible for support.

(a) Mobility Fund Phase II support may be made available for census blocks or other areas identified as eligible by public notice.

(b) Except as provided in § 54.1014, coverage units for purposes of conducting competitive bidding and disbursing support based on designated road miles will be identified by public notice for each area eligible for support.

§ 54.1013 Provider eligibility.

(a) Except as provided in § 54.1014, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase II support for that area. The applicant's designation as an Eligible Telecommunications Carrier may be conditional subject to the receipt of Mobility Fund support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase II support for that area. The applicant shall certify, in a form acceptable to the Commission, that such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase II in order to receive such support.

§ 54.1014 Service to Tribal Lands.

(a) A Tribally-owned or -controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in an auction by bidding for support in areas located within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or –controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity shall receive any Mobility Fund Phase II support only after it has become an Eligible Telecommunications Carrier.

(b) In any auction for support solely in Tribal lands, coverage units for purposes of conducting competitive bidding and disbursing support based on designated population will be identified by public notice for each census block eligible for support.

(c) Tribally-owned or -controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or -controlled entity and

identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by twenty-five (25) percent or purposes of determining winning bidders without any reduction in the amount of support available.

(d) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements.

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five (5) business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in paragraph (d)(1) of this section, at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1019(a)(5), and prior to disbursement of support, pursuant to § 54.1018, that it has substantively engaged appropriate Tribal officials regarding the issues specified in paragraph 54.1014(d)(1) of this section, at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

§ 54.1015 Application process.

(a) *Application to Participate in Competitive Bidding for Mobility Fund Phase II Support.* In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase II support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate;

(4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, and certify that the description is accurate and that the applicant will retain such access for at least ten (10) years after the date on which it is authorized to receive support;

(5) Make any applicable certifications required in § 54.1014.

(b) *Application by winning bidders for Mobility Fund Phase II support.*

(1) *Deadline.* Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase II support shall file an application for Mobility Fund Phase II support no later than 10 business days after the public notice identifying them as winning bidders.

(2) *Application Contents.* (i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter.

(ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1016 in the geographic areas for which it seeks support.

(iii) Proof of the applicant's status as an Eligible Telecommunications or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate.

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, and certification that the description is accurate and that the applicant will retain such access for at least ten (10) years after the date on which it is authorized to receive support.

(v) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the budget and describes each specific phase of the project, *e.g.,* network design, construction, deployment and maintenance.

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase II and that the applicant will comply with all program requirements.

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in § 54.1017, or a written commitment from an acceptable bank, as defined in § 54.1017(a)(1), to issue such a letter of credit.

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period during the term of the support the applicant seeks.

(ix) Any applicable certifications and showings required in § 54.1014.

(x) Certification that the party submitting the application is authorized to do so on behalf of the applicant.

(xi) Such additional information as the Commission may require.

(3) *Application Processing.* (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was

not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase II support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any Tribally-owned or -controlled applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than 10 business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Mobility Fund Phase II support.

§ 54.1016 Public interest obligations.

(a) *Deadline for Construction.* A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than three (3) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or an applicable higher percentage established by public notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(b) *Coverage Test Data.* Drive tests submitted in compliance with a recipient's public interest obligations shall cover roads designated in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's support. Scattered site tests submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's authorized support.

(c) *Collocation Obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on newly constructed towers that the recipient owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(d) *Voice and Data Roaming Obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase II support.

(e) *Liability for Failing To Satisfy Public Interest Obligations.* A winning bidder authorized to receive Mobility Fund Phase II support that fails to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase II support will be subject to repayment of the support disbursed together with an additional performance default payment. Such a winning bidder may be disqualified from receiving Mobility Fund Phase II support or other USF support. The additional performance default amount will be a percentage of the Mobility Fund Phase II support that the applicant has been and is eligible to request be disbursed to it pursuant to § 54.1018. The percentage will be determined as specified in the public notice detailing competitive bidding procedures prior to the commencement of competitive bidding. The percentage will not exceed twenty percent.

§ 54.1017 Letter of credit.

(a) Before being authorized to receive Mobility Fund Phase II support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. Each winning bidder authorized to receive Mobility Fund Phase II support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to the amount of Mobility Fund Phase II support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1018 plus the additional performance default amount described in § 54.1016(e), until at least 120 days after the winning bidder receives its final distribution of support pursuant to this section.

(1) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is

(i) Any United States Bank that

(A) Is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Federal Deposit Insurance Corporation, and

(C) Who has a long-term unsecured credit rating issued by Standard & Poor's of A− or better (or an equivalent rating from another nationally recognized credit rating agency); or

(ii) Any non-U.S. bank that

(A) Is among the 50 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date),

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission,

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to an A− or better rating by Standard & Poor's, and

(D) Issues the letter of credit payable in United States dollars.

(2) [Reserved]

(b) A winning bidder for Mobility Fund Phase II support shall provide with its Letter of Credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the ''Bankruptcy Code''), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(c) Authorization to receive Mobility Fund Phase II support is conditioned upon full and timely performance of all of the requirements set forth in § 54.1016, and any additional terms and conditions upon which the support was granted.

(1) Failure by a winning bidder authorized to receive Mobility Fund Phase II support to comply with any of the requirements set forth in § 54.1015 or any other term or conditions upon which support was granted, or its loss of eligibility for any reason for Mobility Fund Phase II support will be deemed an automatic performance default, will entitle the Commission to draw the entire amount of the letter of credit, and may disqualify the winning bidder from the receipt of Mobility Fund Phase II support or additional USF support.

(2) A performance default will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their respective designees, which letter, attached to a standby letter of credit draw certificate, and shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.1018 Mobility Fund Phase II disbursements.

(a) A winning bidder for Mobility Fund Phase II support will be advised by public notice whether it has been authorized to receive support. The public notice will detail disbursement and will be made available.

(b) Mobility Fund Phase II support will be available for disbursement to a winning bidder authorized to receive support on a quarterly basis for ten (10) years following the date on which it is authorized.

(c) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1014(d)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(d) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of Mobility Fund Phase II support at the time that it requests the disbursement.

§ 54.1019 Annual reports.

(a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit an annual report no later than April 1 in each year for the five years after it was so authorized. Each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

(1) Electronic Shapefiles site coverage plots illustrating the area newly reached by mobile services at a minimum scale of 1:240,000;

(2) A list of relevant census blocks previously deemed unserved, with road miles and total resident population and resident population residing in areas newly reached by mobile services (based on Census Bureau data and estimates);

(3) If any such testing has been conducted, data received or used from drive tests, or scattered site testing in areas where drive tests are not feasible, analyzing network coverage for mobile services in the area for which support was received;

(4) Certification that the winning bidder offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas;

(5) Any applicable certifications and showings required in § 54.1014; and

(6) Updates to the information provided in § 54.1015(b)(2)(v).

(b) The party submitting the annual report must certify that they have been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing WT Docket No. 10–208; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

§ 54.1020 Record retention for Mobility Fund Phase II.

A winning bidder authorized to receive Mobility Fund Phase II support and its agents are required to retain any documentation prepared for, or in connection with, the award of Mobility Fund Phase II support for a period of not less than ten (10) years after the date on which the winning bidder receives its final disbursement of Mobility Fund Phase II support.

3. Add subpart M to part 54 to read as follows:

Subpart M—Connect America Fund Phase II Competitive Bidding

Sec.

54.1101 Connect America Fund (CAF) Phase II Competitive Bidding.
54.1102 Geographic areas eligible for support.
54.1103 Provider eligibility.
54.1104 Service to Tribal Lands.
54.1105 Application process.
54.1106 Public interest obligations and annual reports.
54.1107 Connect America Fund (CAF) Phase II Competitive Bidding Disbursements.

Subpart M—Connect America Fund Phase II Competitive Bidding

§ 54.1101 Connect America Fund (CAF) Phase II Competitive Bidding.

The Commission will use competitive bidding, as provided in part 1, subpart AA, of this chapter, to determine the recipients of support available through Connect America Fund Phase II Competitive Bidding and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.1102 Geographic areas eligible for support.

(a) CAF Fund Phase II Competitive Bidding support may be made available for census blocks or other areas identified as eligible by public notice.

(b) Except as provided in § 54.1104, coverage units for purposes of conducting competitive bidding and disbursing support based on the number of residential and business locations will be identified by public notice for each area eligible for support.

§ 54.1103 Provider eligibility.

(a) Except as provided in § 54.1104, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive CAF Phase II Competitive Bidding support for that area. The designation may be conditional subject to the receipt of CAF Phase II Competitive Bidding support.

(b) An applicant shall certify that it is financially and technically qualified to provide the services supported by CAF Phase II Competitive Bidding support in order to receive such support.

§ 54.1104 Service to Tribal Lands.

(a) A Tribally-owned or -controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in an auction by bidding for support in areas located within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or -controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity shall receive any CAF Phase II Competitive Bidding support only after it has become an Eligible Telecommunications Carrier.

(b) Tribally-owned or -controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or -controlled entity and

identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by twenty-five (25) percent or purposes of determining winning bidders without any reduction in the amount of support available.

(c) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements.

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five (5) business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in paragraph (c)(1) of this section, at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1106, and prior to disbursement of support, pursuant to § 54.1107, that it has substantively engaged appropriate Tribal officials regarding the issues specified in paragraph (c)(1) of this section, at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

§ 54.1105 Application process.

(a) *Application to Participate in CAF Phase II Competitive Bidding.* In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for CAF Phase II support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1106 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate.

(4) Make any applicable certifications required in § 54.1104 of this chapter.

(b) *Application by Winning Bidders for CAF Phase II Support.*

(1) *Deadline.* Unless otherwise provided by public notice, winning bidders for CAF Phase II support shall file an application for CAF Phase II support no later than 10 business days after the public notice identifying them as winning bidders.

(2) *Application Contents.* (i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter.

(ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1106 in the geographic areas for which it seeks support.

(iii) Proof of the applicant's status as an Eligible Telecommunications Carrier or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate.

(iv) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by providers in urban areas for a period extending until 5 years after the date on which it is authorized to receive support.

(v) Any applicable certifications and showings required in § 54.1104.

(vi) Certification that the party submitting the application is authorized to do so on behalf of the applicant.

(vii) Such additional information as the Commission may require.

(3) *Application Processing.* (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) A tribally-owned or -controlled winning bidder that was not as an Eligible Telecommunications Carrier shall provide its final designation as an Eligible Telecommunications Carrier.

(vi) After receipt of all necessary information, the Commission shall release a public notice identifying each winning bidder that is authorized to receive CAF Phase II support.

§ 54.1106 Public interest obligations and annual reports.

A winning bidder authorized to receive CAF Phase II shall satisfy all public interest obligations and annual reporting requirements of § 54.313.

§ 54.1107 Connect America Fund (CAF) Phase II Competitive Bidding Disbursements.

(a) A winning bidder for CAF Phase II Competitive Bidding support will be advised by public notice whether it has been authorized to receive support. The public notice will detail how disbursement will be made available.

(b) CAF Phase II Competitive Bidding support will be available for disbursement to each winning bidder authorized to receive support on a quarterly basis for five (5) years after it is authorized to receive support.

(c) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate

Tribal officials regarding the issues specified in § 54.1104(c)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(d) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of CAF Phase II Competitive Bidding support at the time that it requests the disbursement.

4. Add subpart N to part 54 to read as follows:

Subpart N—Remote Areas Fund

Sec.
54.1201 Remote Areas Fund.
54.1202 Geographic areas eligible for support.
54.1203 Provider eligibility.
54.1204 Public interest obligations and annual reports.
54.1205 Remote areas fund disbursements.

Subpart N—Remote Areas Fund

§ 54.1201 Remote Areas Fund.

This subpart sets forth procedures for determining the recipients of universal service support pursuant to the Remote Areas Fund and the amount(s) of support that each recipient respectively may receive.

§ 54.1202 Geographic areas eligible for support.

Remote Areas Fund support may be made available for census blocks or other areas identified by public notice.

§ 54.1203 Provider eligibility.

(a) An applicant applying for Remote Areas Fund support must be designated an Eligible Telecommunications Carrier in any area for which it will seek support. The designation may be conditional subject to the receipt of Remote Areas Fund support.

(b) An applicant applying for Remote Areas Fund support must certify that is financially and technically qualified to provide the supported services.

§ 54.1204 Public interest obligations and annual reports.

(a) Except as expressly provided in this paragraph or otherwise by the Commission, an applicant authorized to receive Remote Areas Fund support shall satisfy all public interest obligations and annual reporting requirements of § 54.313 for applicants receiving CAF Phase II support.

(b) An applicant for Remote Areas Fund support must pass the per location support received along to the subscriber at the qualifying location as a discount on the price of service. Provided, however, that the subscriber must pay, or provide a deposit of, an amount sufficient to assure that the subscriber is able to pay for the services to which they subscribe and to provide an incentive to comply with any terms of the service agreements regarding use and return of equipment.

§ 54.1205 Remote Areas Fund Disbursements.

(a) An applicant for Remote Areas Fund support will be advised by public notice that it is authorized to receive support. Procedures by which applicants authorized to receive support may obtain disbursements will be provided by public notice.

(b) Remote Areas Fund support will be available for disbursement to an applicant authorized to receive support on a quarterly basis for five (5) years following its authorization.

(c) Remote Areas Fund support will be disbursed in an amount calculated based on the number of newly served residences or households within an eligible area. For purposes of this paragraph, ''residence'' and ''household'' shall use the same definition applied in the Lifeline Program. Applicants for Remote Areas Fund support must certify the number of qualifying locations newly served in the most recent quarter, specifying the number of signed contracts for qualifying locations, and certify that each location meets the qualifying criteria established by the Commission.

(d) Prior to each disbursement request, an applicant authorized to receive support will be required to certify that it is in compliance with all requirements for receipt of Remote Areas Fund support at the time that it requests the disbursement.

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Part IV

The President

Executive Order 13593—2011 Amendments to the Manual for Courts-Martial, United States

Federal Register
Vol. 76, No. 242
Friday, December 16, 2011

Presidential Documents

Title 3—

The President

Executive Order 13593 of December 13, 2011

2011 Amendments to the Manual for Courts-Martial, United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473, as amended, it is hereby ordered as follows:

Section 1. Parts III and IV of the Manual for Courts-Martial, United States, are amended as described in the Annex attached and made a part of this order.

Sec. 2. These amendments shall take effect 30 days from the date of this order.

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to the effective date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

THE WHITE HOUSE,
December 13, 2011.

Billing code 3295–F2–P

ANNEX

Section 1. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) M.R.E. 504 (c)(2)(D) is added to read as follows:

"(D) Where both parties have been substantial participants in illegal activity, those communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated are not marital communications for purposes of the privilege in subdivision (b) and are not entitled to protection under the privilege in subdivision (b).".

(b) M.R.E. 513(d)(2) is amended--

(1) to delete "spouse abuse, child abuse, or" and insert "child abuse or of"; and

(2) to delete "the person of the other spouse or".

(c) M.R.E. 514 is added to read as follows:

"Rule 514. Victim advocate - victim privilege

(a) *General rule of privilege.* A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the victim and a victim advocate, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or supportive assistance to the victim.

(b) *Definitions.* As used in this rule of evidence:

(1) A "victim" is any person who suffered direct physical or emotional harm as the result of a sexual or violent offense.

(2) A "victim advocate" is a person who is:

(A) designated in writing as a victim advocate;

(B) authorized to perform victim advocate duties in accordance with service regulations, and is acting in the performance of those duties; or

(C) certified as a victim advocate pursuant to Federal or State requirements.

(3) A communication is "confidential" if made to a victim advocate acting in the capacity of a victim advocate and if not intended to be disclosed to third persons other than:

(A) those to whom disclosure is made in furtherance of the rendition of advice or assistance to the victim or

(B) an assistant to a victim advocate reasonably necessary for such transmission of the communication.

(4) An "assistant to a victim advocate" is a person directed by or assigned to assist a victim advocate in providing victim advocate services, or is reasonably believed by the victim to be such.

(5) "Evidence of a victim's records or communications" is testimony of a victim advocate, or records that pertain to communications by a victim to a victim advocate, for the purposes of advising or providing supportive assistance to the victim.

(c) *Who may claim the privilege.* The privilege may be claimed by the victim or any guardian or conservator of the victim. A person who may claim the privilege may authorize trial counsel or a defense counsel representing the victim to claim the privilege on his or her behalf. The victim advocate who received the communication may claim the privilege on behalf of the victim. The authority of such a victim advocate, guardian, conservator, or a defense counsel representing the victim to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) *Exceptions.* There is no privilege under this rule:

(1) when the victim is dead;

(2) when Federal law, State law, or service regulation imposes a duty to report information contained in a communication;

(3) if the communication clearly contemplated the future commission of a fraud or crime or if the services of the victim advocate are sought or obtained to enable or aid anyone to commit or plan to commit what the victim knew or reasonably should have known to be a crime or fraud;

(4) when necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission;

(5) when necessary to ensure the safety of any other person (including the victim) when a victim advocate believes that a victim's mental or emotional condition makes the victim a danger; or

(6) when admission or disclosure of a communication is constitutionally required.

(e) *Procedure to determine admissibility of victim records or communications.*

(1) In any case in which the production or admission of records or communications of a victim is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party shall:

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party, the military judge and, if practical, notify the victim or the victim's guardian, conservator, or representative that the motion has been filed and that the victim has an opportunity to be heard as set forth in subparagraph (e)(2).

(2) Before ordering the production or admission of evidence of a victim's records or communication, the military judge shall conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the victim, and offer other relevant evidence. The victim shall be afforded a reasonable opportunity to attend the hearing and be heard at the victim's own expense unless the victim has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings shall not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members.

(3) The military judge shall examine the evidence or a proffer thereof *in camera*, if such examination is necessary to rule on the motion.

(4) To prevent unnecessary disclosure of evidence of a victim's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(5) The motion, related papers, and the record of the hearing shall be sealed and shall remain under seal unless the military judge or an appellate court orders otherwise.

(d) The following amendments conform M.R.E. 609 to F.R.E. 609:

(1) M.R.E. 609(a) is amended to substitute the words "character for truthfulness" for the word "credibility."

(2) M.R.E. 609(a)(2) is amended to substitute the words "regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness" for the words "if it involved dishonesty or false statement, regardless of the punishment".

(3) M.R.E. 609(c) is amended to substitute the words "a subsequent crime that was punishable by death, dishonorable discharge, or imprisonment in excess of one year" for the words "a subsequent crime which was punishable by death, dishonorable discharge, or imprisonment in excess of one year".

Sec. 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 13, Article 89, Disrespect toward a superior commissioned officer, paragraph c.(1) is amended to substitute the words "uniformed service" for "armed forces" and "armed force" everywhere the words "armed forces" or "armed force" appear in that paragraph. (This change is made to clarify that the uniformed officers of the Public Health Service and the National Oceanic and Atmospheric Administration, when assigned to and serving with the armed forces, are included in the definition of a superior commissioned officer.)

(b) Paragraph 35, Article 111, Drunken or reckless operation of vehicle, aircraft or vessel, paragraph f. is amended to read as follows:

"f. *Sample Specification.*

In that _____ (personal jurisdiction data), did (at/on board _____ location) (subject matter jurisdiction data, if required), on or about _____, 20____, (in the motor pool area) (near the Officer's Club) (at the intersection of _____ and _____) (while in the Gulf of Mexico) (while in flight over North America) physically control [a vehicle, to wit: (a truck) (a passenger car) (_____)] [an aircraft, to wit: (an AH-64 helicopter) (an F-14A fighter) (a KC-135 tanker) (_____)] [a vessel, to wit: (the aircraft carrier USS _____) (the Coast Guard Cutter _____) (_____)], [while drunk] [while impaired by _____] [while the alcohol concentration in his (blood or breath) equaled or exceeded the applicable limit under subparagraph (b) of the text of the statute in paragraph 35 as shown by chemical analysis] [in a (reckless) (wanton) manner by (attempting to pass another vehicle on a sharp curve) (by ordering that the

aircraft be flown below the authorized altitude)] [and did thereby cause said (vehicle) (aircraft) (vessel) to (strike and) (injure_____)]."

(c) Paragraph 48, Article 123, Forgery, paragraph c.(4) to add the word "to" after the word "liability" the second time it appears in the fifth sentence.

(d) Paragraph 68b. is added as follows:

"68b. Article 134 (Child pornography)

a. *Text of Statute. See* paragraph 60.

b. *Elements.*

(1) *Possessing, receiving, or viewing child pornography.*

(a) That the accused knowingly and wrongfully possessed, received, or viewed child pornography; and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Possessing child pornography with intent to distribute.*

(a) That the accused knowingly and wrongfully possessed child pornography;

(b) That the possession was with the intent to distribute; and

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(3) *Distributing child pornography.*

(a) That the accused knowingly and wrongfully distributed child pornography to another; and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(4) *Producing child pornography.*

(a) That the accused knowingly and wrongfully produced child pornography; and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Explanation.

(1) "Child Pornography" means material that contains either an obscene visual depiction of a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct.

(2) An accused may not be convicted of possessing, receiving, viewing, distributing, or producing child pornography if he was not aware that the images were of minors, or what appeared to be minors, engaged in sexually explicit conduct. Awareness may be inferred from circumstantial evidence such as the name of a computer file or folder, the name of the host website from which a visual depiction was viewed or received, search terms used, and the number of images possessed.

(3) "Distributing" means delivering to the actual or constructive possession of another.

(4) "Minor" means any person under the age of 18 years.

(5) "Possessing" means exercising control of something. Possession may be direct physical custody like holding an item in one's hand, or it may be constructive, as in the case of a person who hides something in a locker or a car to which that person may return to retrieve it. Possession must be knowing and conscious. Possession inherently includes the power or authority to preclude control by others. It is possible for more than one person to possess an item simultaneously, as when several people share control over an item.

(6) "Producing" means creating or manufacturing. As used in this paragraph, it refers to making child pornography that did not previously exist. It does not include reproducing or copying.

(7) "Sexually explicit conduct" means actual or simulated:

(a) sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) bestiality;

(c) masturbation;

(d) sadistic or masochistic abuse; or

(e) lascivious exhibition of the genitals or pubic area of any person.

(8) "Visual depiction" includes any developed or undeveloped photograph, picture, film or video; any digital or computer image, picture, film, or video made by any means, including those transmitted by any means including streaming media, even if not stored in a permanent format; or any digital or electronic data capable of conversion into a visual image.

(9) "Wrongfulness." Any facts or circumstances that show that a visual depiction of child pornography was unintentionally or inadvertently acquired are relevant to wrongfulness, including, but not limited to, the method by which the visual depiction was acquired, the length of time the visual depiction was maintained, and whether the visual depiction was promptly, and in good faith, destroyed or reported to law enforcement.

(10) On motion of the government, in any prosecution under this paragraph, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography or visual depiction or copy thereof shall not be admissible and may be redacted from any otherwise admissible evidence, and the panel shall be instructed, upon request of the Government, that it can draw no inference from the absence of such evidence.

d. *Lesser included offenses.*

(1) *Possessing, receiving, or viewing child pornography.*

Article 80-attempts.

(2) *Possessing child pornography with intent to distribute.*

Article 80-attempts.

Article 134-possessing child pornography.

(3) *Distributing child pornography.*

Article 80-attempts.

Article 134-possessing child pornography.

Article 134-possessing child pornography with intent to distribute.

(4) *Producing child pornography.*

Article 80-attempts.

Article 134-possessing child pornography.

e. *Maximum punishment.*

(1) *Possessing, receiving, or viewing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(2) *Possessing child pornography with intent to distribute.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(3) *Distributing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Producing child pornography.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

f. *Sample specification.*

Possessing, receiving, viewing, possessing with intent to distribute, distributing, or producing child pornography.

In that _____ (personal jurisdiction data), did (at/on board—location),on or about _____, 20_____ knowingly and wrongfully (possess)(receive)(view) (distribute) (produce) child pornography, to wit: a (photograph)(picture)(film)(video) (digital image)(computer image) of a minor, or what appears to be a minor, engaging in sexually explicit conduct(, with intent to distribute the said child pornography), and that said conduct was (to the prejudice of good order and discipline in the armed forces) (or) (and was) (of a nature to bring discredit upon the armed forces)."

Changes to the Discussion accompanying the Manual for Courts Martial, United States

(a) A clerical amendment is made to the first paragraph of the Discussion following R.C.M. 1107(d)(1) to correctly reference R.C.M. 1003(b)(5) and (6) instead of R.C.M. 1003(b)(6) and (7).

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H.R. 2192/P.L. 112–64

National Guard and Reservist Debt Relief Extension Act of 2011 (Dec. 13, 2011; 125 Stat. 766)

S. 1541/P.L. 112–65

To revise the Federal charter for the Blue Star Mothers of America, Inc. to reflect a change in eligibility requirements for membership. (Dec. 13, 2011; 125 Stat. 767)

S. 1639/P.L. 112–66

To amend title 36, United States Code, to authorize the American Legion under its Federal charter to provide guidance and leadership to the individual departments and posts of the American Legion, and for other purposes. (Dec. 13, 2011; 125 Stat. 768)

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